UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MPE, INC.

and Case 09-CA-084228

RICHARD RANKIN

and Case 09-CA-084595

NATHAN RANKIN

ORDER

On December 3, 2014, Administrative Law Judge Mark Carissimi issued an order denying the General Counsel's Motion to Allow Video Testimony. Thereafter, the General Counsel filed a timely request for special permission to appeal the judge's ruling, and the Respondent filed a brief in opposition.

The General Counsel's request for special permission to appeal is granted. After careful consideration we find that the judge erred in denying the motion to allow video testimony. The General Counsel has demonstrated that Nathan Rankin is a key witness in this matter, and that Mr. Rankin is unavailable to testify in person because he is incarcerated in the federal prison in Morgantown, West Virginia. While we agree with the judge that Skype technology, in its current form, is not a viable means for taking video testimony, we are persuaded by the General Counsel's argument that the GLOWPOINT video conference technology used by the Board and by the Federal Bureau of Prisons is acceptable for video testimony, subject to appropriate procedural safeguards to preserve the due process rights of the parties, such as those described in OM 08-20 (Pilot Video Testimony Program in Representation Cases), or as otherwise may be agreed upon by the parties.

Accordingly, we sustain the General Counsel's appeal, and remand this matter to the Administrative Law Judge for a hearing, which will include the video testimony of Nathan Rankin. The parties are directed to meet and confer in advance of the hearing regarding the appropriate procedural safeguards for taking Mr. Rankin's video testimony within the capabilities of the GLOWPOINT video conference technology, and to ensure that there are no technological problems that could impede the hearing. If the parties are unable to agree, the judge shall implement such procedural safeguards as he believes are appropriate.

This order is without prejudice to the judge striking the video testimony of Rankin if the judge subsequently determines that the actual circumstances of the video testimony do not provide the parties with a meaningful opportunity to examine and cross-examine the witness, or give the judge the appropriate ability to assess Mr. Rankin's demeanor for the purposes of assessing his credibility.[1]

Dated, Washington, D.C., January 29, 2015

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

[1] The Respondent's request that it be awarded attorney's fee and costs is denied.