

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
NEW YORK BOARD DIVISION OF UJDES**

**ALSTATE MAINTENANCE, LLC.**

**and**

**Case No. 29-CA-252004**

**VERNON HARRIS, an individual**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 32BJ**

**and**

**Case No. 29-CB-252635**

**VERNON HARRIS, an individual**

**PRETRIAL ORDER: INSTRUCTIONS, GUIDELINES, AND  
RECOMMENDATIONS FOR ZOOM HEARING**

On July 10, 2020,<sup>1</sup> I issued an order directing that the trial in the above-captioned matter, currently scheduled for August 4, at 9:30 a.m., be conducted remotely by video using Zoom technology. I have held three conference calls with the parties to discuss their positions and the arrangements for holding a video trial. Although the Respondents have expressed concern regarding the ability of Charging Party Vernon Harris to participate in the hearing by cellular smart phone (as opposed to a computer with wifi), they do not currently oppose an attempt to hold the trial by video. It is hereby ORDERED that my July 10 order be supplemented as follows:

**Bailiff and Host**

An NLRB Board-side attorney will be participating in the hearing as a “bailiff.” The bailiff will be recused from working on this case following the trial. The bailiff will be available to assist with Zoom technology and the video hearing, including the presentation of documents. Throughout the hearing, the bailiff or I will be the “host” of the Zoom meeting with the ability to control certain functions of the program, including muting participants, hiding video feeds of participants, sending individuals to breakout rooms, and moving participants to/from the waiting room.

**No Recording of the Hearing**

Any and all recording, videotaping, broadcasting, or photographing of the trial by anyone other than the official court reporter is strictly prohibited.

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<sup>1</sup> All dates refer to 2020.

## **Participation and Testimony of Vernon Harris**

Harris will be allowed to participate and testify in the hearing by cellular smart phone. The phone should be fully charged and applications other than Zoom should be closed. If the participation of Harris by smart phone does not prove to be viable, I will entertain motions to postpone the hearing and continue at a later date with alternative arrangements.

## **Participants, Witnesses, Waiting Room, and Breakout Rooms**

Subject to a potential sequestration order, the parties are not restricted from inviting individuals of their choosing to access the Zoom hearing. Upon entering, participants should select "Join with Computer Audio." Participants will be placed in an online waiting room until they are admitted to the meeting.

Witnesses need not join the meeting significantly before it is time for them to testify, but should err on the side of joining somewhat early. We can expect a video hearing to take longer than a standard in-person trial and will need the best efforts of participants to avoid undue delay and expense. The video feed of each participant must include the individual's correct name, and counsel shall identify each participant's role in the proceeding.

Only one attorney for each party shall be unmuted at any given time in order to avoid extraneous sound. Further, in addition to being muted, the boxed video feed of individuals other than myself, the Bailiff, counsel, and the witness shall be "hidden" (removed from the gallery display) so as to avoid confusion.

Witnesses may not use virtual backgrounds. Other participants may use virtual backgrounds.

Witness shall not have any surreptitious communication with anyone or view non-exhibit materials while testifying. I will instruct each witness to that effect when I administer the oath.

Counsel should arrange in advance to have witnesses, upon being called to testify, scan the location where they are testifying to ensure that it is free of people and materials. If this cannot be accomplished with a computer, the witness may mute their computer Zoom feed (avoiding feedback) and temporarily access the meeting by smart phone. The smart phone can then be used to scan the location. Once this is accomplished, the witness will be asked to leave the meeting from the smart phone and place the phone out of reach.

At my discretion, witnesses may be temporarily removed from the primary hearing and returned to the waiting room if it is necessary to discuss an issue outside the presence of the witness.

If counsel desire to consult with each other or speak with clients (other than a client on the witness stand), they may ask to be placed in a private breakout room for a pre-determined period of time. Conversations in a breakout room cannot be heard by people outside of it.

### **Documents and Exhibits**

A SharePoint page has been prepared for this case and the parties should use that page to upload and access documents. If counsel would like additional people to have access to the SharePoint page, the names of those individuals and their email addresses should be emailed to me. A link to the SharePoint page has already been emailed to counsel. Folders have been generated on the SharePoint page for exhibits and subpoenaed records. However, parties may create additional folders as they deem necessary.

In addition to using SharePoint, the parties may also exchange documents by email or other forms of transmission as they deem necessary and convenient.

The parties shall exchange subpoenaed records no later than August 3, at 1 p.m. Further, no later than August 3, counsel shall upload into SharePoint and distribute by email those documents which are expected to be entered into evidence. The exhibits should be email to me, the Bailiff (email to be provided), and the parties (including Harris). I recommend that each party pre-mark/paginate their exhibits in a single Adobe file with bookmarks to the first page of each exhibit. Exhibits need not be produced in advance if the introducing party has a legitimate reason to withhold them, including a strategic reason or uncertainty as to whether the document will be necessary. During our last conference call, the parties indicated a willingness to exchange documents earlier than August 3, and I strongly suggest that they do so as soon as possible.

The Zoom "Share Screen" function will be used as the primary method of presenting exhibits to witnesses because this function allows other participants to see the witness while the witness reviews the document. As indicated on the conference call, participants are encouraged to use two computer monitors if possible.

### **Jencks Statements**

Jencks statements such as affidavits will not be produced by the General Counsel until a witness has been called by the General Counsel and testifies on direct examination. Upon the conclusion of the hearing, Respondents' counsel **MUST** delete all Jencks statements from their computers and represent that they have done so.

## **Chat**

Zoom is equipped with a chat function which allows participants to send typed messages to each other and exchange documents. Private chat between individual participants will be disabled. However, public chat among all participants will be allowed.

## **Advance Notice of Difficulties**

I strongly encourage parties to be proactive in notifying each other and me about any technical difficulties or other issues they may encounter in the course of preparing for trial. In particular, Zoom participants sometimes struggle with connectivity and audio. To establish a stable connection, it may be helpful to remain close to the router (perhaps tethering the computer to the router by wire), close unused applications, and/or limit the number of devices that are using the wifi. It will also be useful to test your computer speaker and microphone shortly before the trial.

Dated: July 21, 2020  
New York, New York

*Benjamin W. Green*

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Benjamin W. Green  
Administrative Law Judge

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