

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**HEALTHBRIDGE MANAGEMENT, LLC; CARE REALTY, LLC; CARE ONE, LLC; 107 OSBORNE STREET OPERATING COMPANY II, LLC d/b/a DANBURY HCC; 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC d/b/a LONG RIDGE OF STAMFORD; 240 CHURCH STREET OPERATING COMPANY II, LLC d/b/a NEWINGTON HEALTH CARE CENTER; 1 BURR ROAD OPERATING COMPANY II, LLC d/b/a WESTPORT HEALTH CARE CENTER; 245 ORANGE AVENUE OPERATING COMPANY II, LLC d/b/a WEST RIVER HEALTH CARE CENTER; 341 JORDAN LANE OPERATING COMPANY II, LLC d/b/a WETHERSFIELD HEALTH CARE CENTER**

**and**

**Cases 34-CA-070823 et al.**

**NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU, AFL-CIO**

**ORDER TO SHOW CAUSE FOR AND IN OPPOSITION TO CONDUCT THE  
SCHEDULED OCTOBER 21, 2020 HEARING  
BY ZOOM VIDEOCONFERENCE**

The hearing in the above-captioned case is currently scheduled for 10:00 a.m. on October 21, 2020 (May 26, 2020 Order Granting General Counsel’s Motion to Reschedule the Hearing)<sup>1</sup> and to continue at the Hartford Federal Courthouse (SubRegional Office) in Hartford, Connecticut. Per Board Rule 102.35(c), due to “compelling circumstances” created by the current Coronavirus Disease (COVID-19) pandemic, NLRB proceedings, including hearings, can be conducted remotely via video using Zoom technology. *See Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020); *William Beaumont Hospital and Michigan Nurses Association*, 370 NLRB No. 9 (August 13, 2020) and *XPO Cartage, Inc.*, 370 NLRB No. 10 (2020). The Board rejected arguments that the COVID-19 pandemic did not constitute “compelling circumstances” warranting remote hearing via video technology and characterized as “speculative” sundry problems parties in those cases predicted would occur.

Nevertheless, the parties are given an opportunity to address this issue and are ordered to show cause for or in opposition to a video hearing before I make a ruling on the feasibility of conducting the hearing by videoconference. I direct the parties to the language in *William Beaumont Hospital*, where the Board stated

---

<sup>1</sup> I noted in the same order that “To be clear, if we cannot proceed with an in-person hearing on the rescheduled dates because of the pandemic, I will revisit the use of video in lieu of an in-person hearing, since video hearings may well be the norm rather than the exception if the pandemic continues.”

We also find that the judge did not abuse his discretion in directing the trial judge to impose appropriate safeguards informed but not controlled by those listed in Section 102.35(c)(2) of the Board's Rules. As noted above, that direction is consistent both with *Morrison*, 369 NLRB No. 76, slip op. at 1 fn. 2, where we found that Section 102.35(c)(2)'s safeguards do not apply in all respects to a hearing conducted entirely via videoconference, and with Section 102.35(a)(6), which authorizes the trial judge to "regulate the course of the hearing."

Certainly, the trial judge has the discretion to determine whether the case is too complex; cumbersome; or witness-, document-, and fact-heavy to be heard remotely. And, to the extent the Respondent (or any party) has a concrete, not speculative, concern that cannot be ameliorated by the videoconferencing technology, or other pre-trial accommodations or stipulations among the parties, the Respondent may raise it to the trial judge in the first instance, or on exceptions to the Board pursuant to Section 102.46 of the Rules and Regulations, in the event the Respondent (or parties) receives an adverse ruling.

I would also note that the Board in *Morrison Healthcare* stated that the "safeguards" contained in Section 102.35(c) are fundamentally intended to protect due process and ensure that witness credibility can be adequately assessed by "enabl[ing] the observation of the witness at all material times." 369 NLRB No. 76 at p. 1 (2020), quoting *EF International Language Schools*, 363 NLRB No. 20 at p. 1, fn. 1 (2015).<sup>2</sup> As such, this language clearly envisions that in a hearing conducted entirely by videoconference, the adjudicating administrative law judge will develop procedural safeguards consonant with the goal of allowing meaningful direct and cross-examination and ensuring the adequate observation of the witness for credibility purposes by "enab[ling] observation of the witness at all material times."

The Office of the General Counsel recently stated that the Regions should move forward in scheduling remote unfair labor practice hearings unless

The Region believes that unusual aspects of the contemplated trial make video hearing unfeasible.

There are witnesses the General Counsel wishes to call who do not have access to equipment that will enable a connection to the video technology platform the Agency is using for remote hearings.<sup>3</sup>

As a preliminary matter and in moving forward with a video hearing, if participants do not already have a Zoom account, they should visit Zoom.US and create an account using their real names. It will be important for all involved to familiarize themselves with the Zoom platform in advance of the hearing. Zoom has several video tutorials which may be helpful. Counsel will also be responsible for ensuring that their witnesses have access to equipment, internet, and training necessary to fully participate in the Zoom video hearing. Although it is possible to access a Zoom meeting by smart phone or tablet, a computer generally provides a more stable connection and better functionality. Accordingly, counsel and their witnesses must

---

<sup>2</sup> I would again note that the October 21 hearing was limited in scope to one witness and, perhaps, a couple of rebuttal witnesses that I had not yet approved as necessary.

<sup>3</sup> Office of the General Counsel Memorandum GC 20-12 (August 25, 2020).

participate with a computer unless, for good cause shown, I grant permission to use a handheld device. If counsel anticipates that their witnesses may have problems with equipment and/or an internet connection, the parties and I should be notified immediately so alternatives can be considered to address the issue. However, this obstacle alone will not deter conducting the hearing by video.

Additional instructions regarding the Zoom hearing protocols and procedures and public access will be issued after a ruling is made on the feasibility of a video hearing.

Consequently, the parties are directed to submit their responses to this Show Cause Order as to the feasibility of a video hearing no later than September 14, 2020.

Dated: September 3, 2020  
New York, New York

*Kenneth W. Chu*

---

Kenneth W. Chu  
Administrative Law Judge

Served by email on the following:

Jennifer Dease, Esq.  
John McGrath, Esq.  
Kevin A. Creane, Esq.  
Seth Kaufman, Esq.  
Brian Gerhengorn, Esq.  
Rosemary Alito, Esq.  
George P. Barbatsuly, Esq.  
Stephen Mitchell, Esq.

A copy of this Order will also be electronically filed.