

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

OXARC, INC.,

and

TEAMSTERS LOCAL 839 ,

and

TEAMSTERS LOCAL 690,

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,**

and

JARED FOSTER, an individual.

**Cases 19-CA-230472
19-CA-237336
19-CA-273499
19-CA-238503
19-CA-232728
19-CA-248391**

ORDER¹

The Respondent's request for special permission to appeal from Administrative Law Judge Ariel L. Sotolongo's August 3, 2020, denial of its Motion to postpone the hearing until it could be conducted in person is granted. On the merits, the appeal is denied.

The Respondent argues that conducting a virtual hearing would infringe upon the Respondent's due process rights, there is no good cause showing for a virtual hearing, the ALJ has not protected the integrity of the hearing under Section 102.35(c) of the Board's Rules and Regulations, virtual hearings require procedural mandates that go

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

beyond what is required by the rules, and the virtual hearing undermines the requirement that hearings be available to the public. The Respondent also contends that the General Counsel and the Charging Party are not prejudiced by a delay.

The Board has found that the ongoing COVID-19 pandemic establishes good cause based on compelling circumstances for taking video testimony under Section 102.35(c). *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1 (2020); *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 1 (2020). Moreover, we have found that because Section 102.35(c) pertains to hearings in which a single witness testifies via video conference in an otherwise in-person hearing, the strictures of that Section are informative but not controlling when a hearing is conducted entirely by videoconference. *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1; *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 1, fn. 2. A video hearing can also provide for the observation of witnesses for the purpose of credibility, as well as other due process concerns. *EF International Language Schools, Inc.*, 363 NLRB No. 20, slip op. at 1, fn. 1 (2015), *enfd.* 673 Fed. Appx. 1 (D.C. Cir. 2017).

We find that the judge did not abuse his discretion in ordering a video hearing here. Although the Respondent particularly emphasizes the complexity and number of exhibits involved in this case, this concern has already been addressed by the Board. As the Board recognized in *William Beaumont Hospital*:

[T]he 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 has a concrete, not speculative, concern that cannot be ameliorated by the videoconferencing technology, or other pretrial 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 receives an adverse ruling.

The Respondent also asserts that the judge's procedural request to upload documents that can be viewed by the other side prior to the hearing violates Board procedures. To begin, we note that the Respondent failed to object to this procedure in response to the judge's July 20, 2020 Pre-hearing Order or at the parties' prehearing conference on July 27, 2020. Furthermore, we decline to find that the judge abused his discretion when the Respondent failed to ask the judge for an alternate method for uploading documents, such as to a private folder. Finally, although the Respondent argues that the parties are not prejudiced by a delay, this does not mean that the judge erred in making his determination to proceed via Zoom.

Under these circumstances, we find that the Respondent has failed to demonstrate that the judge abused his discretion.

Dated, Washington, D.C., September 23, 2020.

MARVIN E. KAPLAN	MEMBER
WILLIAM J. EMANUEL	MEMBER
LAUREN McFERRAN	MEMBER