

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

GLADES ELECTRIC COOPERATIVE, INC.

and

Cases 12-CA-168580
 12-CA-175794
 12-CA-180034

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1933,
AFL-CIO

/

RESPONDENT’S MOTION FOR LIVE HEARING

The Respondent, Glades Electric Cooperative, Inc., by and through undersigned counsel, and hereby objects to the upcoming October 26, 2020 compliance hearing being conducted virtually and moves for a live, in-person hearing. In support thereof, Respondent states:¹

General Background

1. The Parties are currently scheduled for a Compliance Hearing on October 26, 2020. This proceeding follows an Order from the Board finding that Respondent violated Sections 8(a)(3)-(5) of the NLRA in taking certain personnel actions involving two of its former meter specialists, Emily Hancock and Chad Sevigny.

2. As brief background, Respondent previously employed three meter specialists — Donnie Murphy, Hancock, and Sevigny. Respondent eliminated its meter specialist position following its implementation of an electronic meter-reading system which rendered the position obsolete.

¹ The Region denied Respondent’s Motion on September 30, 2020. As addressed during the Parties’ Pre-Hearing Conference, Respondent refiles its Motion for the Judge’s consideration.

3. Rather than initiate layoffs at the time, Respondent transferred Murphy, Hancock, and Sevigny into an experimental and newly created energy services agent position effective November 30, 2015. This initiative was not successful and, coupled with the Union's insistence that Murphy, Hancock, and Sevigny be restored to their former positions, Respondent transferred all three back to "meter specialist" on June 27, 2016.

4. Effective July 11, 2016, Respondent laid off Hancock and Sevigny. Murphy remained employed performing residual meter specialist duties until the final meter specialist position was eliminated on March 7, 2017. At that time, Murphy successfully applied for an apprentice meter technician position. Murphy remains employed to date.

5. The Board subsequently determined that Respondent had violated the NLRA when it transferred the meter specialists to the energy service agent position in November of 2015 and when it laid off Hancock and Sevigny in July of 2016.

6. As part of the remedy, the Board ordered that Hancock and Sevigny be reinstated to their former meter specialist position or a substantially equivalent position. The Board has taken the position that Hancock and Sevigny are both owed back pay from July 11, 2016 through present.

Objection to Virtual Hearing

7. Respondent does not believe a virtual hearing is feasible given the nature of this proceeding and the logistical challenges it presents. These concerns were briefly discussed during the September 30, 2020 pre-hearing conference call and are not speculative in nature.

8. This proceeding fundamentally concerns two issues. Primarily, the Parties dispute whether reinstatement is an appropriate remedy in this case. Respondent maintains that reinstatement is inappropriate because Hancock and Sevigny's former position no longer exists and there is not a substantially equivalent position. The Board, of course, disagrees and the

litigation of this issue will require substantial testimony and documentary evidence beyond a typical compliance proceeding and does not lend itself to a virtual presentation.

9. The Parties also dispute the proper amount of back pay—whether back pay is appropriate for both Hancock and Sevigny and the overall amount.

10. Respondent intends to serve over a dozen subpoena duces tecum, the majority of which will be directed to Hancock and Sevigny’s post-Respondent employers. Consequently, there will be multiple third-party witnesses who will be compelled to appear for the upcoming hearing with a substantial number of documents that Respondent will be unable to adequately review and use without being physically present for their inspection.

11. Moreover, a number of the witnesses, if not a majority of them, reside in rural parts of Central Florida (i.e. the Lake Placid/Moore Haven/Sebring areas). Given the number of witnesses who will be subpoenaed for the upcoming hearing that, in a virtual format, are likely to appear from their homes, Respondent anticipates that reliable internet access may be an issue. The logistical challenges of conducting the proceeding virtually will add unnecessary length to the hearing and will require the Parties to incur time and expense which could be avoided if the hearing were to be conducted in person.

12. Accordingly, Respondent objects to a virtual compliance hearing and requests that this hearing be conducted in person. There are plenty of locations available for the hearing where all Parties and witnesses can be effectively spaced-out in compliance with social distancing guidelines to ensure maximum safety.

13. Alternatively, as briefly discussed during the Parties’ September 30th pre-hearing conference, Respondent requests that October 26, 2020 be set aside as a date for document exchange and a second day be scheduled for substantive testimony. The General Counsel’s

Office advised during the hearing that they have no objection to this proposal, and Respondent submits this bifurcated approach would at least minimize the disruption/prejudice associated with the aforementioned document review concerns.

14. Even under a bifurcated arrangement where the October 26th date is reserved for document exchange, Respondent requests that, at minimum, the substantive hearing be conducted where the Parties and witnesses are able to appear at the same location in-person, with appropriate safety precautions taken. If the Parties are at least able to be present with the witnesses, after having the opportunity to review subpoenaed documentation, then the Parties will be in position to present testimony efficiently and without delays associated with virtual presentation. This will ensure both a more streamlined presentation of evidence and save the Parties' time and expense from an unnecessarily prolonged proceeding.

WHEREFORE, Respondent respectfully requests that the Hearing in this case be held in person rather than by videoconference. Alternatively, Respondent requests the October 26, 2020 hearing date be reserved for the exchange of documents and that another day be set aside for substantive testimony after the Parties' have had a chance to review. If the substantive hearing date is not conducted in-person, Respondent requests, at minimum, that the Parties be permitted to appear in-person with the witnesses.

Respectfully submitted,

Brian Koji

BRIAN KOJI
Florida Bar No. 0116297
bkoji@anblaw.com

MATTHEW D. STEFANY
Florida Bar No. 98790
mstefany@anblaw.com

ALLEN NORTON & BLUE, P.A.
Hyde Park Plaza - Suite 225
324 South Hyde Park Avenue

Tampa, Florida 33606-4127
Ph: (813) 251-1210 | Fax: (813) 253-2006

On behalf of Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2020, a true and correct copy of the foregoing has been furnished via e-filing and via email to:

Rafael Aybar, Counsel for the General Counsel
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, Florida 33602-5824

Doug Sellars, Advocate
International Brotherhood of Electrical Workers, Local 1933
3202 234d Avenue West
Bradenton, Florida 34205

and

Greg Krumm, President
International Brotherhood of Electrical Workers, Local 1933
248 13th Avenue N.
Naples, Florida 34102

Brian Koji
Attorney