UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GLADES ELECTRIC COOPERATIVE, INC.

and

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

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

GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR A LIVE HEARING

On August 25, 2020,[1] Region 12 issued an Order scheduling a hearing via the video conference platform Zoom for Government to begin on October 13 in this matter. On September 16, Region 12 issued an Order rescheduling the hearing to begin on October 26. On September 25, counsel for Glades Electric Cooperative, Inc. (Respondent) objected to the Orders of Region 12 and filed a Motion for Live Hearing with the Region. On September 30, Region 12 issued an Order Denying Respondent's Motion for In-Person Hearing. On October 1, Respondent filed a similar Motion for Live Hearing with the Division of Judges, which is currently at issue. Pursuant to Section 102.26 of the NLRB's Rules and Regulations, Counsel for the General Counsel (General Counsel) hereby opposes Respondent's Motion.

I. Introduction and Background

On July 2, 2018, the Board issued a Decision and Order finding, inter alia, that Respondent violated Section 8(a)(1), (3) and (4) of the Act by laying off employees Emily Hancock (now Emily Randolph) and Chad Sevigny on July 11, 2016. The Board ordered the Respondent to offer Randolph and Sevigny full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions. The Board also ordered the

[1] All dates are in 2020, unless otherwise stated.

Respondent to make whole Randolph and Sevigny for any loss of earnings and other benefits they suffered as a result of the discrimination against them.

The original and amended Compliance Specifications, as well as Respondent's original and amended Answers were filed on March 30, April 20, August 11 and August 31, respectively. Copies of these documents are attached as Exhibits 1, 2, 3 and 4.

The issues presented in this matter are whether Respondent has provided Randolph and Sevigny with valid offers of reinstatement, as well as the proper amount of backpay and other benefits that Respondent owes to them as a result of its violations of the Act. This case is currently scheduled for a hearing by video conference to begin on October 26.

II. A Hearing By Zoom Is Feasible

In its Motion, Respondent seeks an in-person hearing and contends that holding the hearing by video-conference is inappropriate because it will not be able to adequately review subpoenaed records. Respondent further states that it intends to call numerous witnesses and is concerned that some witnesses may experience issues with internet access, causing delay and increased expense. Nevertheless, a hearing conducted by Zoom video-conference technology is feasible in this case.

While the Respondent contends that the proceeding will involve the introduction of voluminous amounts of exhibits and require the testimony of numerous witnesses, the General Counsel anticipates that the parties should be able to enter into stipulations regarding many of the relevant documents, inasmuch as they mostly consist of the discriminatees' interim employment records and correspondence between the Respondent and International Brotherhood of Electrical Workers, Local 1933, AFL-CIO (the Union). In this regard, during the pre-hearing conference held on September 30 by Administrative Law Judge Sharon L. Steckler, the parties agreed that the hearing could open with the exchange of exhibits to be introduced during the hearing and, after proper review of those documents, resumption of the hearing on a mutually agreed-upon subsequent date for the testimony of witnesses.

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) of the Rules and Regulations of the National Labor Relations Board. *William Beaumont Hospital*, 370 NLRB No. 9 (2020); *XPO Cartage, Inc*., 370 NLRB No. 10 (2020); *Morrison Healthcare*, 369 NLRB No. 76 (2020). The Board has also held that video hearings can adequately address witness credibility and 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). In addition, a number of recent unfair labor practice hearings held by Zoom for Government have led to Administrative Law Judges' Decisions. See e.g., *Smyrna Ready Mix Concrete, LLC*, Cases 09-CA-251578 et al., JD-33-20 (September 1, 2020).

The procedural concerns raised by Respondent are premature and speculative. Even if litigation may ultimately become more complicated, it does not automatically necessitate an in-person hearing. Rather, these routine matters involving multiple witnesses (like other litigation matters, such as documentary evidence, subpoenas, and petitions to revoke) can be addressed on a case-by-case basis with the ALJ during the normal course of the hearing and resolved via rulings and orders. These concerns should not be an obstacle to a Zoom video conference hearing, *per se*. If any other concrete issues arise, those issues can also be raised and addressed to the Administrative Law Judge during the hearing. See *William Beaumont Hospital*, supra.

III. Conclusion

For the reasons set forth above, it is respectfully requested that the ALJ reject Respondent's Motion for an In-Person Hearing and find that a remote hearing via Zoom is proper. Additionally, Counsel for the General Counsel has no objections to opening the record on October 26, 2020, for the exchange of documents and setting another day for substantive testimony after the parties have had a chance to review the documents.

Dated at Tampa, Florida this 5th day of October, 2020.

Respectfully submitted,

Rafael Aybar

Rafael Aybar
Counsel for the General Counsel
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, Florida 33602
Tel. (813) 228-2652
Fax (813) 228-2874
E-mail: Rafael.Aybar@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of **GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR A LIVE HEARING** in Cases 12-CA-168580, 12-CA-175794 and 12-CA-180034 was served on the 5th day of October 2020, on the following persons and by the following means:

By electronic filing at www.nlrb.gov and electronic mail to:
National Labor Relations Board
Hon. Sharon L. Steckler
Administrative Law Judge
Division of Judges
1015 Half Street SE
Washington, DC 20570-0001
Facsimile: (202) 501-8686
E-mail: Sharon.Steckler@nlrb.gov

By electronic mail to:
Brian Koji, Esq.
Matthew D. Stefany, Esq.
Allen Norton & Blue, P.A.
Hyde Park Plaza, Suite 225
324 South Hyde Park Ave.
Tampa, Florida 33606-4127
E-mail: bkoji@anblaw.com
E-mail: mstefany@anblaw.com

By electronic mail to:
Doug Sellars, Union Advocate
IBEW, AFL-CIO
3202 23rd Ave. West
Bradenton, Florida 34205
E-mail: hdsellars@verizon.net
hdsellars7854@gmail.com

Gregory Krumm, President
IBEW, Local 1933, AFL-CIO
248 13th Ave. North
Naples, Florida 34102
E-mail: gekrumm@gmail.com

Respectfully submitted,

Rafael Aybar

Rafael Aybar
Counsel for the General Counsel
National Labor Relations Board, Region 12
201 East Kennedy Blvd., Suite 530
Tampa, Florida 33602
Tel. (813) 228-2652
Fax (813) 228-2874
E-mail: Rafael.Aybar@nlrb.gov