UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

PIZZA PIAZZA, INC. d/b/a BADO’S
PIZZERIA & DELICATESSEN AND d/b/a
BADO’S PIZZA GRILL AND ALE HOUSE,

Respondent

and

Case 06-CA-279445

ANDREW YOHO,

Charging Party

REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL OF THE
ADMINISTRATIVE LAW JUDGE’S ORDER ADJOURNING THE HEARING

Now comes Counsel for the General Counsel, pursuant to Section 102.26 of the Rules and Regulations of the National Labor Relations Board, and requests special permission to appeal from a ruling of Administrative Law Judge Ira Sandron (ALJ Sandron) adjourning the hearing in the above-captioned matter, with the hope that it may resume in person on March 28, 2022. In support of the request for special permission to appeal, and in support of the appeal, Counsel for the General Counsel states as follows.

1. The Complaint and Notice of Hearing in this matter was issued on November 23, 2021.

2. By Order dated December 10, 2021, the Regional Director for Region Six (the Regional Director) rescheduled the hearing in this matter to February 9, 2022, and further ordered that the hearing be a video conference hearing to be conducted via the Zoom platform.

3. On January 6, 2022, Respondent filed a motion with the Regional Director requesting that the hearing in this matter be held in person, either on February 9, 2022, or on a date to be determined.
4. On January 10, 2022, the Regional Director denied Respondent’s motion both for an in-person hearing, and for a postponement of the hearing.

5. On February 9, 2022, ALJ Sandron opened the record in this matter, and, after receiving the formal papers into the record, but before taking any substantive evidence, adjourned the hearing to March 28, 2022, with the hope that the hearing could be held in-person at that time. ALJ Sandron stated that if an in-person hearing could not be held on March 28, 2022, the hearing would likely go forward by videoconference on March 28, 2022. ALJ Sandron further stated that, if an in-person hearing could not be held on March 28, 2022, and if conditions at that time are such that an in-person hearing may be held soon after March 28, 2022, he might further postpone resumption of the hearing.

6. Counsel for the General Counsel objects to ALJ Sandron’s adjournment of this proceeding, and hereby requests permission to file this special appeal for the following reasons:

As the Regional Director stated in her order denying Respondent’s motion for an in-person hearing, the Agency has not yet set a date for the resumption of in-person operations, and there are no protocols in place for visitors to the Field Offices. In addition, Allegheny County’s COVID-19 positivity rate, where the Regional Office is located and where any in-person hearing would be held, remains high; it is currently at 21%.1

This hearing can proceed safely, expeditiously, and fairly by Zoom technology and the facts of this case do not present compelling reasons for an in-person hearing. The Complaint in this matter involves a straightforward and common allegation in Board proceedings: Respondent discharged one individual in retaliation for his protected, concerted activities. When evidence is

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presented via videoconference, ALJ Sandron will be able to see the witnesses up close, which would not be possible at an in-person hearing during this pandemic, where it is likely that witnesses would be far away and wearing masks.

Not only is a hearing by videoconference a reasonable alternative under the present circumstances, but conducting an in-person hearing in a safe manner presents difficult logistical challenges. These challenges include analyzing each participant’s personal and family health situation and finding an appropriately safe location in which to hold an in-person proceeding. The way to ensure prompt resolution of this matter is to conduct the hearing by Zoom, as the Regional Director ordered.

ALJ Sandron adjourned the hearing to March 28, 2022, in the hope that the hearing will be able to be safely conducted in person at that time. As noted above, ALJ Sandron further stated that he may again postpone the hearing if an in-person hearing is not possible on March 28, 2022, but if it seems that an in-person hearing could be conducted soon after. In light of the unpredictability of the COVID-19 pandemic, ALJ Sandron’s plans confirm that it is not clear when an in-person hearing could be conducted.

A determination regarding the feasibility of an in-person hearing would require an assessment of any number of factors specific to each individual involved in the proceeding, including age, risk tolerance and possibly underlying health conditions. Counsel for the General Counsel objects to any delay in these proceedings. Board policy favors expeditious resolution of disputes arising under the Act. It is not sufficiently clear that there is anything to be gained by delaying the hearing in this matter. On the other hand, each day that the hearing is delayed is an unwarranted and undue delay in delivering justice in this case. In addition, rescheduling the hearing placed an unreasonable burden on the Charging Party, an individual, as it requires him to
take additional time off from his current employment, with an attendant loss of wages, by not proceeding as originally scheduled.

Section 102.35(c)(2) of the Board’s Rules and Regulations provides for the possibility of videoconference testimony, stating that safeguards for videoconference testimony must “ensure” that the administrative law judge can “assess the witness’s credibility and that the parties have a meaningful opportunity to examine and cross-examine” witnesses. To that end, on January 12, 2022, ALJ Sandron issued a prehearing order regarding the manner in which he intended to conduct the instant hearing by videoconference. ALJ Sandron’s order provides appropriate safeguards to allow for a fair hearing by videoconference. While ALJ Sandron also received into the record his “Covid-19 Protocol Guidelines” in anticipation of an in-person hearing at some time in the future, it is unknown whether these guidelines would conform with any requirements set forth by the Agency for in-person proceedings at some future, unknown date.

WHEREFORE, based on the above, it is hereby requested that permission be granted to appeal from the ALJ Sandron’s order adjourning the hearing in this matter to March 28, 2022,

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2 ALJ Sandron’s Covid-19 Protocol Guidelines were admitted as ALJX-1, and are attached hereto as Attachment A.
that the adjournment be overturned, and ALJ Sandron be ordered to promptly reopen this hearing by videoconference.

Dated at Pittsburgh, Pennsylvania, this 10th day of February, 2022.

Respectfully submitted,

/s/ Julie R. Stern
Julie R. Stern
Counsel for the General Counsel

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COVID-19 PROTOCOL GUIDELINES

The following guidelines will help to ensure that an in-person hearing on March 28, 2022 (the hearing date), will meet COVID-compliant safety measures that minimize the risks to all participants, whether the venue is the Pittsburgh Regional Office or another facility that the General Counsel or other parties have been able to secure. If the latter, the facility’s safety measures shall also be followed. These guidelines are subject to change, depending on local conditions and Center for Disease Control (CDC) guidelines on the hearing date.

- All fully vaccinated participants may attend the hearing in person. The court reporter will be fully vaccinated. The CDC definition of “fully vaccinated” as of the hearing date will govern. I will not inquire if a person is fully vaccinated but will assume that counsels have confirmed that with all persons they will have present. In the event that certain individuals have valid health or other reasons for not attending in person, counsels should raise this to me before the hearing, and appropriate arrangements can be made for them to testify remotely.

- No observers may enter the hearing room without being fully vaccinated and without my express permission. Please inform me prior to the hearing date if there will be non-participants attending the hearing. I may limit hearing room capacity if I determine that is appropriate.

- The Region is required to have hand sanitizers in the hearing room located at the attorneys’ tables, witness stand, judge’s dais, and with the court reporter. The Region is to ensure and represent to me that the hearing venue is appropriately ventilated and the room large enough for social distancing.
• All participants and observers are required to wear a mask that covers the person's nose and mouth. Bandannas, gaiters, and masks with valves are not permitted. Witnesses are required to wear a mask while testifying unless the audio is indiscernible by the parties or the court reporter. Mask usage will be within my discretion if the Region provides plastic shields at the attorneys’ tables and for the witnesses. Observers are required to wear a mask at all times during the hearing.

• Counsels must adhere to social distancing rules by standing or sitting at least six feet away from other individuals (except for co-counsel if that arrangement is agreed upon).

• All potential exhibits should be identified and provided to opposing counsel prior to the hearing date to minimize the exchange of documents during the course of the hearing. Copies of said exhibits should also be provided ahead of the hearing to me and the court reporter.

I am open to considering any other safety measures that any party may suggest.

Date: February 9, 2022

Ira Sandron
Administrative Law Judge

ALJ EXH. 1