

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

AMAZON.COM SERVICES, LLC

and

**Case Nos. 29-CA-277198
29-CA-278982**

CONNOR VINCENT SPENCE

and

NATALIE MONARREZ

Case No. 29-CA-277598

and

DERRICK PALMER

Case No. 29-CA-278701

and

AMAZON LABOR UNION

**Case Nos. 29-CA-285445
29-CA-286272**

ORDER¹

We deny the Respondent's request for special permission to appeal Administrative Law Judge Lauren Esposito's Order for Hearing by Videoconference. The Respondent failed to comply with the promptness requirement set forth in Section 102.26 of the Board's Rules and Regulations.

On May 25, 2022,² Judge Esposito ordered the hearing in these unfair-labor-practice cases to proceed by videoconference and set forth various parameters and safeguards governing the remote proceeding. The hearing was set to begin at 9:30 a.m. on Monday, June 6 and continue on consecutive days that week and the following week. On Friday, June 3 at 4:40 p.m.,

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

² All dates are in 2022.

the Respondent filed with the Board the instant special appeal request, accompanied by a request that the Board stay the proceedings pending its decision on the appeal. On June 6, the hearing began, as scheduled.

Section 102.26 of the Board's Rules and Regulations requires "[r]equests to the Board for special permission to appeal from a ruling of . . . the Administrative Law Judge, together with the appeal from such ruling, [to] be filed in writing promptly and within such time as not to delay the proceeding." The Respondent waited nine days to file its special appeal request, then did so just twenty minutes before the close of business on the business day before the hearing was set to open. In contravention of Section 102.26, the Respondent neither filed its request "promptly," nor with an eye towards avoiding delay. Nor can we say that the General Counsel would suffer no prejudice from the Board's accepting the Respondent's eleventh-hour filing. Cf. *Excel DPM of Arkansas, Inc.*, 324 NLRB 880, 880 fn. 1 (1997) (emphasizing lack of prejudice in determining whether motion for summary judgment was filed "promptly" under Sec. 102.24(b) of Board's Rules and Regulations). Accordingly, we deny the Respondent's request on timeliness grounds.

Even if the request had been timely, we would deny the appeal on the merits because the Respondent has failed to demonstrate that the judge abused her discretion. Specifically, with respect to the Respondent's contention that the judge erred in failing to provide for party representatives to be present at the remote location from which each witness will testify, the Board has held that the safeguards in Section 102.35(c)(2) of the Board's Rules and Regulations do not apply in all respects to a hearing conducted entirely via videoconference. *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 2 (2020). Nevertheless, the judge remains responsible for regulating the conduct of the hearing, and the Respondent may raise any

nonspeculative concerns that arise during the course of the hearing to the judge in the first instance, without prejudice to its right to file exceptions with the Board to any adverse rulings pursuant to Section 102.46 of the Board's Rules and Regulations. Id., slip op. at 1.

Dated, Washington, D.C., June 15, 2022.

LAUREN McFERRAN, CHAIRMAN

JOHN F. RING, MEMBER

DAVID M. PROUTY, MEMBER