

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

WELLS FARGO BANK, N.A.,

Respondent

vs.

Case No. 27-CA-358799

**WELLS FARGO WORKERS UNITED,
A/W COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,**

Charging Party.

**COUNSEL FOR THE GENERAL COUNSEL’S OPPOSITION TO RESPONDENT WELLS
FARGO BANK, N.A.’S MOTION TO PERMIT LIMITED TESTIMONY BY ZOOM
VIDEOCONFERENCE**

On December 10, 2025, Region 27 of the NLRB issued a Complaint and Notice of Hearing. On December 23, 2025, Respondent filed a motion to postpone the commencement of the hearing to March 9, 2026. On the same date, the Regional Director granted the motion to change the scheduled hearing to March 9, 2026.

On March 2, 2026, Respondent filed Respondent Wells Fargo Bank, N.A.’s Motion To Permit Limited Testimony By Zoom Videoconference (“Motion”) requesting permission to present witness Wayne Thurston’s (“Mr. Thurston”) testimony via videoconference. Counsel for the General Counsel (“General Counsel”) respectfully opposes Respondent’s Motion.

I. LEGAL STANDARD

Section 102.35(c) of the Board’s Rules and Regulations, adopted in 2017, provides that “[u]pon a showing of good cause based on compelling circumstances, and under appropriate

safeguards, the taking of video testimony by contemporaneous transmission from a different location may be permitted.” *See also* NLRB Bench Book Section 12-400 (Jan. 2022).

Section 102.35(c) mirrors Rule 43(a) of the Federal Rules of Civil Procedure, which considers remote testimony to be a limited exception to the rule favoring in-person testimony. ALJ Eleanor Laws explained that rule 102.35(c), “like any federal regulation, is not aspirational; it is binding. It is not some loose or optional guidance that can be scooted aside with a wink and a nod. The fact that a live hearing is inconvenient or has other perceived ‘drawbacks’ in comparison to a video hearing is of no moment.” *Starbucks Corp.*, Case No. 28-CA-289622, et al. (June 3, 2022). Moreover, courts and tribunals have been admonished to proceed with caution to ensure the exception does not swallow the rule:

The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. Transmission cannot be justified merely by showing that it is inconvenient for a witness to attend trial.

FED. R. CIV. P. 43 Advisory Committee’s Note (emphasis added).

II. ARGUMENT

The Motion should be denied because no compelling circumstances exists warranting video testimony. In support of its Motion, Respondent argues that its witness is unavailable to testify in person and offers Mr. Thurston resides in Phoenix, Arizona and suffers from a medical condition and significant fear of flying, making air travel to Casper, Wyoming impossible. While Respondent in its Motion argues “requiring Mr. Thurston to drive nearly 15 hours from Phoenix to Casper to attend the trial in person would present an undue hardship and exacerbate his condition,” Mr. Thurston’s own assertions do not provide such a conclusion. Rather, Mr. Thurston asserts “because air travel is the only practical means of reaching the court’s location, appearing in person would create a considerable hardship and exacerbate my condition.” *See* Motion, Ex. A.

While Respondent styles its motion as “limited” it is clear from its Motion that Mr. Thurston’s testimony goes to the heart of the case. Indeed, Respondent’s decision and motivation for terminating employee Andrew King is arguably the single most important issue set for hearing. Indeed, the General Counsel alleges that Andrew King was subjected to harsher discipline for policy violations in retaliation for his union activity. Thus, it is vital for the trier of fact to witness this individual’s credibility and demeanor while he is questioned and cross-examined. The fact that Mr. Thurston’s testimony is required and not simply corroborative, underscores the need for in-person testimony. *DH Long Point Mgmt, LLC*, 369 NLRB No 18, fn. 9 (2020).

Counsel for the General Counsel submits that the Mr. Thurston’s demeanor will need to be assessed in arriving at a decision regarding his credibility. *See Casino Pauma*, 362 NLRB 421, 423, n.4 (2015); *Standard Dry Wall Products, Inc.*, 91 NLRB 544, 545 (1950), enf’d. 188 F.2d 362 (3rd Cir. 1951) (demeanor is a “factor of consequence” in credibility resolutions). Such determinations are better served by observing the witness in-person rather than remotely.

Setting aside the admitted superiority of live testimony, Respondent’s Motion fails to state why Mr. Thurston is unable to travel, through other means than air travel, to Casper, Wyoming, for the hearing. It seems that Respondent’s Motion is meant to avoid any inconvenience to Mr. Thurston. While Mr. Thurston may be inconvenienced by taking time out of his schedule to drive to Casper to provide testimony concerning his asserted reasons for discharging employee Andrew King, inconvenience is not a compelling circumstance or good cause¹. As ALJ Anzalone noted in denying a similar request from the General Counsel in March of 2023, “...it is well established that mere

¹ *See also Lamonica v. Safe Hurricane Shutters, Inc.*, No. 07-61295-CIV, 2011 U.S. Dist. LEXIS 32043, 2011 WL 917726, at *1 (S.D. Fla. Feb. 18, 2011) (the alleged financial and logistical burdens of attending trial did not constitute “good cause” or “compelling circumstances” under Rule 43, even where the plaintiffs lived outside of the country and would have to travel internationally).

inconvenience to a witness does not meet the Board’s ‘compelling circumstances’ test.” *See Starbucks*, 27-CA-295554, et al (March 10, 2023) (27-CA-295554 G.C. Ex. 1(aac)).

Finally, the Motion fails to state a compelling reason for this request occurring on the eve of trial. Counsel was on notice as of December 23, 2025, that the hearing was set to commence on March 9, 2026. Likewise, Respondent was well aware of the allegations concerning employee Andrew King’s discipline and discharge.

Respondent could have requested a postponement of the hearing based on its witness’s availability in a timely manner. Instead, Respondent waited until a week prior to hearing before asserting the need for remote testimony. The Motion fails to set forth when counsel became aware of its witness’s location and limited ability to fly and why this issue could not have been addressed months ago. Accordingly, the Motion fails to set forth good cause or compelling circumstances warranting the taking of video testimony.

III. CONCLUSION

In summary, Respondent has failed to show good cause or compelling circumstances warranting the taking of video testimony. Accordingly, if Respondent believes this witness’s testimony is critical it should make arrangements for Mr. Thurston to appear in Casper, Wyoming to testify in person.

Respectfully submitted this 2nd day of March 2026.

Respectfully submitted,

/s/ Olivia R. Lettenberger

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2026, I served, by email, *Counsel for the General Counsel's Opposition To Respondent Wells Fargo Bank, N.A.'s Motion To Permit Limited Testimony By Zoom Videoconference* to Respondent's counsel, listed below:

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Respectfully Submitted,

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