

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

**John Fabick Tractor Company d/b/a Sitech Mid-
America**

Employer

and

Case 14-RC-268509

**International Union of Operating Engineers
Locals 513 and 520**

Petitioner¹

DECISION AND DIRECTION OF ELECTION

On November 3, 2020,² International Union of Operating Engineers Locals 513 and 520 (“Petitioner”) filed its original petition in this case with the National Labor Relations Board (“Board”). By this petition, Petitioner seeks to represent all field support and in-house technicians employed by John Fabick Tractor Company d/b/a Sitech Mid-America (“Employer”) at its facility currently located in Nashville, Illinois, but excluding all other employees, professional employees managerial employees, office clerical employees, guards, and supervisors as defined in the Act. There are six employees in the stipulated bargaining unit.

The only matter at issue is whether the election should be conducted by manual or mail-ballot method. Election arrangements, including the voting method, are not litigable matters at a pre-election hearing. Sec. 102.66(g)(1) of the Board’s Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). On November 23, the parties entered into a stipulated record and shortly after, pursuant to that stipulation, they submitted their positions to me on the voting method and details of election.

Based on the stipulated record, having reviewed the parties’ positions, and having considered the factors discussed below, I have determined that because of the current status of the COVID-19 pandemic in the relevant region, particularly the high testing positivity rate, the Board will conduct this election by mail ballot.

¹ Petitioner is incorrectly identified as Teamsters Local 618 in the caption for the stipulated record

² All dates are in 2020 unless otherwise noted.

POSITIONS OF THE PARTIES

The Employer does not contend that COVID-19 is no longer an issue in the community but asserts that a manual election is the most efficient use of Board resources given the small size of the petitioned-for unit and the Employer's proximity to the Region 14 office. It will comply with the suggested manual election protocols set forth in General Counsel Memorandum 20-10 ("GC Memo 20-10") and argues that its proposal to hold the manual election outdoors underneath a tent for a 1-hour session effectively mitigates the risk of exposure to, and transmission of, COVID-19.

Petitioner expresses no preference regarding the method of election, seeking only that the election be held at the earliest practicable date. In the stipulated record the parties requested any election, whether conducted by manual or mail balloting, begin on December 14; however, in its subsequent position statement, Petitioner argued the election should not be prolonged further and should be conducted during "the first week of December."

THE BOARD'S STANDARD

On November 9, the Board set forth "six situations that suggest the propriety of mail ballots due to the Covid-19 pandemic," noting that "[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election." *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 1 (2020). Those six situations are:

- 1) The Agency office tasked with conducting the election is operating under "mandatory telework" status;
- 2) Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
- 3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
- 4) The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;
- 5) There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
- 6) Other similarly compelling considerations.

Id.

As the Board acknowledged, no Regional Office, including Subregional and Resident Offices, has been in a mandatory-telework status since mid-June. The Employer's proposed polling place does not appear to violate any mandatory state or

local health orders and, as noted above, it has committed to abide by the protocols in GC Memo 20-10.

The Employer submitted that one employee has tested positive for COVID-19 in the past three months but successfully quarantined and “returned to work without any additional complications.” It highlights: “There have not been any other employees or visitors who have tested positive for COVID-19, exhibited symptoms of COVID-19, and/or were subject to quarantine for any reason related to COVID-19.”

In *Aspirus*, the Board instructed Regional Directors to “generally focus their consideration on recent statistics that reflect the severity of the outbreak in the specific locality where the election will be conducted” and stated that “a mail-ballot election will normally be appropriate if either (a) the 14-day trend in the number of new confirmed Covid-19 cases in the county where the facility is located is increasing, or (b) the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.”³ Id. slip op. at 5.

The City of Nashville, where a manual election would take place, is located in Washington County, Illinois. The testing positivity rate for Washington County has been above the Board’s 5% threshold since July 31,⁴ and the Employer acknowledges that the 7-day rolling average testing positivity rate was 21.2% as of November 20. This has only continued to increase, reaching 27.4% on November 28 with a daily positivity rate of 34.1% the same day.⁵

Based on the high positivity rate, which is increasing, a mail-ballot election is warranted.

³ As explained by Johns Hopkins University: “On May 12, 2020 the World Health Organization (WHO) advised governments that before reopening, rates of positivity in testing (i.e., out of all tests conducted, how many came back positive for COVID-19) should remain at 5% or lower for at least 14 days.” <https://coronavirus.jhu.edu/testing/testing-positivity> (accessed December 2). In other words, a locality with a testing positivity rate over 5% in one of the preceding 14 days normally warrants a mail-ballot election.

⁴ “COVID-19 County & School Metrics.” Illinois Department of Public Health (“IDPH”). <http://www.dph.illinois.gov/countyschool?county=Washington> (Time Series County Metrics Details tab; Test Positivity chart) (accessed December 2).

⁵ “Illinois Regional COVID-19 Resurgence Criteria.” IDPH. <http://www.dph.illinois.gov/regionmetrics?regionID=4> (Region 4 Details; Washington County chart) (accessed December 2).

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁶

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time field support and in-house technicians employed by the Employer at its Nashville, Illinois facility.

Excluded: All other employees, professional employees, managerial employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Union of Operating Engineers Locals 513 and 520**.

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate voting group at 3:00 p.m. on Monday, December 14, 2020, by personnel of the National Labor Relations Board, Region 14, from the office of the National Labor Relations Board, Subregion 17 – 8600 Farley Street – Suite 100,

⁶ The parties stipulated to the following commerce facts:

John Fabick Tractor Company d/b/a Sitech Mid-America, a Missouri corporation with its principal offices and sole facility involved, located at 11145 N. Mockingbird Road, Nashville, Illinois, is engaged in the non-retail sale of heavy construction and technology systems. During the past twelve months, a representative period of time, the Employer had gross revenues in excess of \$500,000, and purchased and received goods at its Nashville, Illinois facility valued in excess of \$50,000, directly from suppliers located outside the State of Illinois.

Overland Park, Kansas 66212-4677 . Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, December 21, 2020**, or otherwise requires a duplicate mail-ballot kit, should communicate immediately with the National Labor Relations Board by calling the Region 14 office at (913) 275-6525.

The ballots will be commingled and counted by the Region 14 office at 3:00 p.m. CT on **Monday, January 11, 2021**. In order to be valid and counted, the returned ballots must be received by the Region 14 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **November 27, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional Director and the parties by **Monday, December 7, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Subregion and served electronically on the other parties named in this decision. The list must be electronically filed with the Subregion by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise

shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at St. Louis, Missouri, this 3rd day of December 2020.



William B. Cowen, Acting Regional Director
National Labor Relations Board, Region 14
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