

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SWCA, INCORPORATED D/B/A SWCA
ENVIRONMENTAL CONSULTANTS
Employer

and

Case 27-RM-359491

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 455
Union

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election and Decision and Certification of Representative is denied as it raises no substantial issues warranting review.¹

¹ In denying review of the Regional Director's conclusion that the Employer did not establish that the Assistant Project Archaeologists, Assistant Staff Archaeologists and Staff Archaeologists possess the authority to hire or effectively recommend hire within the meaning of Sec. 2(11) of the Act, we do not rely on his finding that there was no evidence that any employees in these classifications participate in the hiring process. Nevertheless, by merely pointing to historical and occasional phone screening of applicants, the Employer failed to demonstrate that employees in the disputed classifications hire or recommend hire using independent judgment.

Member Mayer agrees with his colleagues that the Regional Director did not err in not precluding the Union from litigating the issues raised in its Statement of Position (SOP) filed in this case on the basis that it failed to file a timely SOP in Case 27-RM-357479, where the Union demanded recognition for the same unit at issue in this case, disclaimed interest in representing the employees after failing to file a timely SOP, then made another demand for recognition in the same unit nine days later. Absent any evidence that the Union temporarily lost interest in representing these employees (and none has been advanced), this was a transparent maneuver to avoid the preclusive effect that normally applies when an SOP has been untimely served. This is not the first time that a union has engaged in procedural contortions in order to avoid preclusion. See *Detroit Education & Research*, 373 NLRB No. 15 (2024) (union requested dismissal of petition after failing to timely serve its SOP then refiled petition the same day). In Member Mayer's view, the policies of the Act would be better served by amending the Board's rules to allow regional directors some discretion to accept late-filed SOPs in cases where no prejudice has been shown. See, e.g., *Paolicelli*, 335 NLRB 881, 882 (2001) (recognizing that the Board's established policy favors determinations on the merits rather than by default).

JAMES R. MURPHY,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
SCOTT A. MAYER,	MEMBER

Dated, Washington, D.C., July 16, 2026.