

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ERMC AVIATION, LLC
Employer

and

Case 29-RC-360278

TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO
Petitioner

ORDER

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

¹ In denying review of the Regional Director's overruling of Objection 1, which asserted that the Employer is subject to the Railway Labor Act ("RLA"), we do not adopt the Regional Director's conclusion that the Employer was precluded from advancing such an argument because it stipulated to the Board's jurisdiction in the Stipulated Election Agreement. It is well established that "Sec. 2(2) of the Act is a statutory limitation on the Board's jurisdiction and may be raised at any time." See *Bradley Pacific Aviation, Inc.*, 350 NLRB 583, 583 fn. 1 (2007) (citing *Chelsea Catering Corp.*, 309 NLRB 822, fn. 2 (1992)). Rather, we rely solely on the Regional Director's conclusion that the Employer is not subject to the jurisdiction of the RLA pursuant to the National Mediation Board's (NMB's) decision in *Swissport Cargo Services, LP*, 52 NMB 25 (2024), wherein the NMB discarded its longstanding "derivative carrier" test, at least with respect to contractors of air carriers, and instead concluded that the RLA only applies to "air carriers," not their contractors. In *Swissport Cargo Services, LP*, 373 NLRB No. 144 (2024), we afforded the NMB's advisory opinion "the substantial deference" that the Board ordinarily accords to such opinions and asserted jurisdiction over that employer. As there is no argument that the Employer is an air carrier, it is clear that—consistent with its *Swissport* decision—the NMB would have declined jurisdiction here, and it was therefore appropriate for the Regional Director to assert jurisdiction.

In denying review, Member Mayer notes that, in a future appropriate case, he would be willing to consider whether the Board should again refer the jurisdictional issue to the National Mediation Board in order to confirm that the NMB's position remains the same.

In denying review of the Regional Director's overruling of Objection 2, we reject the Employer's contention that the Regional Director lacked the authority to continue processing this petition in the absence of a Board quorum for the reasons stated in *Satellite Healthcare (Santa Rosa)*, 374 NLRB No. 25 (2026). We have considered the Employer's arguments as to why *Satellite* was incorrectly decided and reject them for the reasons stated in *UC Health v. NLRB*, 803 F.3d 669, 675-680 (D.C. Cir. 2015). We also observe that, contrary to the Employer's assertions, the Board did not lack quorum on January 29, 2026 (the day the Regional Director issued her Decision on Objections and Certification of Representative).

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

Dated, Washington, D.C., September 29, 2026.

In denying review of the Regional Director's overruling of Objection 3, Chairman Murphy and Member Mayer note that they did not participate in *Amazon.com Services*, 373 NLRB No. 136 (2024), an unfair labor practice case. They express no view as to whether it was correctly decided. In their view, the Employer's arguments in favor of overruling it are not properly cognizable in this representation proceeding.

In denying review with respect to Objection 4, which asserted that two employees engaged in objectionable pro-union supervisory misconduct under *Harborside Healthcare, Inc.*, 343 NLRB 906, 909 (2004), we agree with the Regional Director that the Employer could not mount a successful *Harborside* objection. First, it is not in dispute that the employees the Employer now alleges are supervisors cast votes in the election, and the Employer did not challenge their ballots. It is well established that the Board "will not entertain postelection challenges, or objections which are in the nature of postelection challenges." See *Prior Aviation Service*, 220 NLRB 460, 461 (1975). *Harborside* objections are of that nature. See *Poplar Living Center*, 300 NLRB 888, 1 fn. 2. (1990). Second, we further observe that the Stipulated Election Agreement, which includes "Supervisor Bus Operators" and excludes "supervisors," foreclosed such a challenge. See *Carl's Jr.*, 285 NLRB 975, 975 fn. 1 (1987); *Royal Laundry*, 277 NLRB 820, 821 (1985). We clarify, however, that the voter list prepared by the Employer did not have a preclusive effect in this regard. See *O. E. Szekely & Associates*, 117 NLRB 42, 44–45 (1957).

Since the Employer is precluded from asserting that the employees at issue in its objection are statutory supervisors, it cannot make a prima facie showing of objectionable conduct under *Harborside*. Therefore, it is unnecessary to reach the issue of whether the conduct described in the Employer's offer of proof, if proven, would constitute objectionable pro-union supervisory misconduct. See *Alpha Baking Co.*, 344 NLRB 262, 262 (2005); *Cornnuts, Inc.*, 314 NLRB 1133, 1133 fn. 1 (1994).