UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OQ CHEMICALS CORPORATION
Employer

and Case 16-RC-354943

INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE), LOCAL 564
Petitioner

ORDER

The Employer's Requests for Review of the Regional Director's Decision and Direction of Election, Report[1] on Objections, and Decision and Certification of Representative are denied as they raise no substantial issues warranting review.[2]

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[1] We have construed the Regional Director's "report" as a "decision of the Regional Director disposing of challenges and/or objections" under Sec. 102.69 of the Board's Rules and Regulations.

[2] In requesting review, the Employer argues that the Regional Director could not rely on his Decision and Direction of Election in Case 16-RC-354942—in which the Regional Director determined that the Employer's Work Group Leads are not statutory supervisors—to overrule the Employer's Objection 1 in Case 16-RC-354943, which alleged that certain Work Group Leads engaged in objectionable pro-union supervisory conduct, including the solicitation of authorization cards. We acknowledge that the Regional Director's decision here is not squarely governed by issue preclusion cases such as *Wolf Creek Nuclear Operating Corp.*, 365 NLRB 574, 574 (2017), enfd. 762 Fed. Appx. 461 (10th Cir. 2019), and *Carry Companies of Illinois, Inc.*, 310 NLRB 860, 860 (1993), where the Regional Director's decision was "final" for purposes of the issue preclusion test because it had not been appealed or because the Board had already denied review. Nor is this a this a test-of-certification case, in which the Board will (in the absence of special circumstances) decline to litigate issues that were or could have been raised in the underlying representation proceeding. Cf. *FPA Medical Management, Inc.*, 324 NLRB 802, 802 (1997).

Nevertheless, we find that the Regional Director did not err in precluding the Employer from relitigating the supervisor status of the Employer's Work Group Leads in Case 16-RC-354943. This issue was fully litigated by the parties in Case 16-RC-354942, and although the Employer filed a request for review of the Regional Director's determination in that case, Sec. 102.67(c) of the Board's Rules provides that a request for review "shall not, unless specifically ordered by the Board, operate as a stay of any action by the Regional Director." In our view, parties should not be entitled (absent a showing of changed circumstances) to relitigate an issue that has already been fully litigated in a prior representation case—and thereby get a "second bite at the apple" on an issue that would otherwise qualify for issue preclusion under *Wolf Creek*—simply because a request for review of the Regional Director's prior decision is still pending. To

JAMES R. MURPHY, CHAIRMAN

DAVID M. PROUTY, MEMBER

SCOTT A. MAYER, MEMBER

Dated, Washington, D.C., November 2, 2026.

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find otherwise would not promote the Board's interests in administrative finality and expeditious processing of representation cases. See *Wolf Creek*, 365 NLRB at 575.

We further observe that the Employer would not have been prejudiced by the Regional Director's decision to preclude relitigation of the supervisor status issue in Case 16-RC-354943, even if the Board had later reversed the Regional Director's determination in Case 16-RC-354942. Here, the Employer appropriately filed a request for review of the Regional Director's Report on Objections in Case 16-RC-354943 to preserve its appeal and to provide a mechanism for remand in the event the Board later reversed the Regional Director's supervisor status determination in Case 16-RC-354942.

In Case 16-RC-354942, Member Mayer dissented from the majority's affirmance of the Regional Director's finding that the Work Group Leads are not statutory supervisors. See *OQ Chemical Corporation*, 375 NLRB No. 62, slip op. at 5-9 (Member Mayer, dissenting). Accordingly, in Case 16-RC-354943, Member Mayer would, unlike his colleagues, grant review of the Regional Director's decision to overrule the Employer's Objection 1, and remand that objection to the Region for further consideration.

With respect to the Employer's Objection 2, we agree with the Regional Director that the union representatives' presence in the Employer's parking lot did not create an objectionable impression of surveillance because (1) the Petitioner's representatives were located a significant distance from the entrance of the polling building; and (2) the evidence does not demonstrate that the Petitioner's representatives were stationed in that location for more than two or three hours on December 19, and the election encompassed 14 hours of polling over two days. See *J. P. Mascaro & Sons*, 345 NLRB 637, 639-640 (2005) (overruling objection where "Mascaro was at least 30 feet and on several occasions as far away as 54 feet from the front door of the facility"); *Amazon.com Services LLC*, 373 NLRB No. 92, slip op. at 4 (2024) (voters would not reasonably believe that the petitioner's representatives were capable of effectively surveilling employees where the election took place over multiple polling sessions and days, and the petitioner's representatives were only stationed in certain areas for brief periods).

Finally, for the reasons stated in *Satellite Healthcare (Santa Rosa)*, 374 NLRB No. 25 (2026), we reject the Employer's argument that the Regional Director lacked authority to issue his Report on Objections, and Decision and Certification of Representative in the absence of a Board quorum.