

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JVK OPERATIONS, LTD.  
Employer

and

Case 29-RD-192880

ANA FUNES  
Petitioner

and

LAUNDRY DISTRIBUTION AND FOOD  
SERVICE JOINT BOARD, WORKERS UNITED,  
AFFILIATED WITH SERVICE EMPLOYERS  
INTERNATION UNION  
Union

ORDER

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

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<sup>1</sup> Chairman Miscimarra joins his colleagues in denying review and affirming the Certification of Representative. Here, the Employer filed an objection to the election on the grounds that it had hired additional employees after the eligibility date set forth in the Stipulated Election Agreement, and that these new employees were not permitted to vote. The election, however, had been deferred for approximately two months under the Board's "blocking charge" doctrine and the Regional Director had rescheduled the election without changing the eligibility date. In Chairman Miscimarra's view, where the Board's blocking charge doctrine results in a change to the election date in the Stipulated Election Agreement, the Board cannot reasonably enforce other material terms of the Agreement—here the eligibility date—against either party. *Tekweld Solutions, Inc.*, 361 NLRB No. 18, slip op at 3-4 (2014) (Member Miscimarra, dissenting in part), affd. 639 Fed. Appx. 16 (2d Cir. 2016). However, the Union won the decertification election by 40 votes, the Employer had only hired 35 new employees in the period between the eligibility date and the election, and only 27 ballots were challenged, making the challenged ballots non-dispositive. As a result, the votes of the new employees who attempted to vote could not have been determinative, unlike those at issue in *Tekweld*, and Chairman Miscimarra would therefore find no need to set aside the election results and direct a new election. Accordingly, Chairman Miscimarra joins his colleagues in denying review.

PHILIP A. MISCIMARRA,	CHAIRMAN
MARK GASTON PEARCE,	MEMBER
MARVIN E. KAPLAN,	MEMBER

Dated, Washington, D.C., December 15, 2017.

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Member Kaplan joins his colleagues in denying review. In his view, due to election delays subsequent to the filing of blocking charges, newly hired employees may be disenfranchised by the use of the stipulated eligibility date. However, as Chairman Miscimarra notes, in this case, the votes of the newly hired employees could not have been determinative. In an appropriate case, Member Kaplan would explore whether it may be necessary, under certain circumstances, for a Regional Director to modify a stipulated eligibility date *sua sponte* in order to prevent the disenfranchisement of newly hired employees.