

Delta Diversified Enterprises, Inc. and International Brotherhood of Electrical Workers, Local Union 357, AFL-CIO, Petitioner. Case 28-RC-5161

August 31, 1994

ORDER AND AMENDED DIRECTION OF
SECOND ELECTION

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On July 19, 1994, the National Labor Relations Board issued a Decision and Direction of Second Election in this proceeding¹ finding that the Employer had engaged in objectionable conduct, setting aside the election, and directing a second election.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On August 1, 1994, the Employer filed a Motion for Reconsideration and Clarification. The Employer contends that the Board adopted the recommendations of the hearing officer with respect to the challenged ballots in the absence of exceptions when, in fact, the Employer had excepted to the hearing officer's recommendation that the ballots remain unopened and uncounted. The Employer further contends that the decision uses an eligibility formula different from that used by the Regional Director in the first election. Finally, the Employer requests that the Board clarify whether

¹ 314 NLRB 442.

the eligibility formula used in *Brown & Root, Inc.*, 314 NLRB No. 4 (June 7, 1994), a recent Board decision with respect to voter eligibility in the construction industry, should be the formula applied in the second election here.

The Board having duly considered the matter,

IT IS ORDERED that the Employer's motion for reconsideration is denied as lacking in merit.²

IT IS FURTHER ORDERED that the Employer's motion to clarify with respect to the direction of election is granted.³

[Amended Direction of Second Election omitted from publication.]

² It is clear that the Employer did not except to the hearing officer's substantive disposition of the challenged ballots, i.e., that the challenge to the ballot of Cox be sustained and that the challenges to the ballots of Manwill and Goad be overruled, as the Board noted in its original decision. Rather, the Employer contested only the recommendation that the ballots of Manwill and Goad remain unopened and uncounted. The Board considered this recommendation in light of the exceptions and adopted the hearing officer's recommendation.

³ In the first election the Regional Director applied the eligibility formula the Board currently uses in the construction industry. See *Daniel Construction Co.*, 133 NLRB 264 (1961), modified 167 NLRB 1078 (1967), reaff'd. in *Steiny & Co.*, 308 NLRB 1323 (1992). We shall modify the Direction of Second Election here to clarify that the Regional Director shall use the same formula in the second election. In this regard, we note that the Board on July 15, 1994, corrected its original decision in *Brown & Root*, supra, to clarify that the eligibility formula to be used in that case was the same formula as set forth in *Daniel* and *Steiny*. Thus, there is no inconsistency between our decision here and *Brown & Root*, contrary to the Employer's contention.