

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

July 19, 1994

DECISION AND DIRECTION OF SECOND ELECTION

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections and challenges in an election held on October 22, 1993, and the hearing officer's report recommending disposition of them. The tally of ballots shows 6 for and 8 against the Petitioner with 3 challenged ballots, a sufficient number to affect the results of the election.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings<sup>1</sup> and recommendations.<sup>2</sup>

<sup>1</sup>In adopting the hearing officer's finding that, under settled Board law cited by him, the granting of a benefit during the critical period is considered objectionable unless the employer comes forward with

[Direction of Second Election omitted from publication.]

an explanation for the timing of its action, we do not rely on his use of the term "presumption." See *Shore & Ocean Services*, 307 NLRB 1051 (1992), and *Springfield Jewish Nursing Home*, 292 NLRB 1266 fn. 3 (1989).

<sup>2</sup>In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendations that the challenge to the ballot of Glen Cox be sustained and the challenges to the ballots of Victor Manwill and Robert Goad and Objection Nos. 2 and 3 be overruled.

We deny as lacking in merit the Employer's motion to reopen the hearing to introduce its general manager's two affidavits provided to the Regional Director and a third affidavit taken by a Board agent, all in connection with the Region's investigation of the case, and to permit further examination with respect to the Employer's reasons for granting a wage increase to employee Coombs. The hearing officer initially denied this motion finding that the evidence sought to be introduced was not newly discovered or previously unavailable. We agree. We additionally note that the affidavits are not part of the formal record in this proceeding. See Sec. 102.69(g)(1)(i) of the Board's Rules and Regulations. We further note that the Employer's general manager was called by the Employer and testified at the hearing but was not questioned with respect to Coombs' wage increase. Finally, in these circumstances, we reject the Employer's contention that the evidence it now seeks to adduce should have been taken at the hearing and is therefore a basis for reopening the record pursuant to Sec. 102.65(e)(1) of the Board's Rules.