

NOT TO BE INCLUDED
IN BOUND VOLUMES

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUNBELT RENTALS, INC.

and

Case 07-RC-163178

LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS (IUOE), AFL-CIO

ORDER DENYING MOTION

On November 23, 2015, the Regional Director issued a Decision and Direction of Election in this proceeding, finding a petitioned-for multi-facility bargaining unit to be an appropriate unit. On July 5, 2016, the Board denied review of the Decision and Direction of Election. On July 19, 2016, the Employer filed a Motion to Reopen the Record, seeking to admit evidence of alleged changes in the operation of the facilities that have occurred since the hearing in this case.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Having duly considered the matter, we find that the Employer has not identified any material error or demonstrated extraordinary circumstances warranting reopening of the record under Section 102.65(e) of the Board's Rules and Regulations.

A party seeking to reopen the record to introduce evidence after the record of a representation proceeding has been closed must establish (1) that the evidence existed but was unavailable to the party before the close of the proceeding; (2) that the evidence would have changed the result; and (3) that it moved promptly upon discovery of the evidence. *Manhattan*

Center Studios, 357 NLRB 1677, 1679 (2011).¹ Here, the Employer seeks to introduce evidence related to alleged changes and developments that occurred after the close of the representation hearing. Because the evidence at issue here did not exist at the time of the hearing, it does not provide a basis for reopening the record. *Puna Geothermal Venture*, 362 NLRB No. 133, slip op. at 2 fns. 4, 5 (2015). Accordingly, we deny the motion.

IT IS ORDERED, therefore, that the Employer’s motion to reopen the record is denied.

Dated, Washington, D.C., August 25, 2016.

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

¹ Member Miscimarra disagrees that a motion to reopen the record must relate to evidence that could have been presented at the original hearing, and he points out that Sec. 102.65(e) in the Board’s Rules and Regulations expressly permits a motion to reopen the record based on “evidence which has become available only since the close of the hearing,” which may include evidence regarding posthearing events. However, Member Miscimarra agrees that the motion to reopen is properly denied here, since the Employer, among other things, had the opportunity to present evidence of planned or intended changes in the petitioned-for multi-facility unit that rendered the unit as it existed as of the time of the hearing unrepresentative.