

**UNITED STATES OF AMERICA  
THE NATIONAL LABOR RELATIONS BOARD**

**THE BOEING COMPANY,  
Employer,**

and

**Case No. 19-RC-15419**

**SOCIETY OF PROFESSIONAL ENGINEERING  
EMPLOYEES IN AEROSPACE, IFPTE,  
LOCAL 2001, AFL-CIO,  
Union.**

**THE BOEING COMPANY'S STATEMENT IN OPPOSITION TO  
THE UNION'S REQUEST FOR REVIEW OF  
REGIONAL DIRECTOR DECISION AND ORDER DATED NOVEMBER 1, 2011**

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The Boeing Company (hereinafter referred to as the "Company" or "Boeing"), pursuant to Section 102.67(e) of the Board's Rules and Regulations, submits this Statement in Opposition to the Request for Review of Regional Director Decision and Order Dated November 11, 2011 (hereinafter referred to as the "Request for Review"), filed by Society of Professional Engineering Employees in Aerospace, IFPTE, Local 2001, AFL-CIO (hereinafter referred to as the "Union" or "SPEEA"), on November 15, 2011. The Union seeks review of the Regional Director's Decision and Order, issued on November 1, 2011, pursuant to Sections 102.67(c)(1) and (2) of the Board's Rules and Regulations. For the reasons discussed below, the Union's Request for Review should be denied.

## I. PROCEDURAL HISTORY

On January 3, 2011, the Union filed a petition, Case No. 19-CA-15372, seeking an *Armour-Globe* self-determination election in which Field Service Representatives (“FSRs”) would have the opportunity to vote to join the bargaining unit described in Section 1.1(a) of the Parties’ Collective Bargaining Agreement (hereinafter referred to as the “Engineering Unit”). Jt. Ex. 1.<sup>1</sup>

On April 13, 2011, the Regional Director of Region 19, Richard L. Ahearn, issued a Decision and Conditional Order in which he found that FSRs did not perform engineering work and were not professional as defined by the Act. The Regional Director did not determine whether the FSRs and Engineering Unit employees constituted an appropriate unit, in spite of his determination that FSRs were not professional employees, because the Union had not consented to a *Sonotone* election. On May 11, 2011, the Union filed a request for review which was denied by the Board on July 7, 2011.

On July 14, 2011, the Union filed a new petition seeking the same *Armour Globe* self-determination election on behalf of the FSRs, however this time consenting to a *Sonotone* election amongst the Engineering Unit employees. On November 1, 2011, the Regional Director issue a Decision and Order dismissing the Petition finding that the FSRs and Engineering Unit employees did not share sufficient community of interest to find the petitioned-for unit appropriate. On November 15, 2011, the Union filed its Request for Review.

## II. INTRODUCTION

Pursuant to Section 102.67(c) of the Board’s Rules and Regulations, the Union seeks review of the Regional Director’s decision arguing:

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<sup>1</sup> References to the transcript of the hearing will be made as Tr. \_\_; references to the hearing exhibits of the Union will be made as Un. Ex. \_\_; references to hearing exhibits of the Company will be made as Co. Ex. \_\_; references to the hearing exhibits of the Board will be made as Bd. Ex. \_\_; joint hearing exhibits will be made as Jt. Ex. \_\_; references to the Regional Director’s Decision and Order will be made as D&O, p. \_\_; and references to the Union’s Request for Review will be made as RFR, p. \_\_.

- 1) That a substantial question of law or policy is raised because of the (i) the absence of, or (ii) departure from, officially reported Board precedent.
- 2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party . . .

In spite of this bold contention and the Union's attempt to support it, the record evidence and case law, including the Board's recent decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), belie the Union's claims.

The Union seeks an *Armour Globe* election with the intent of adding the Company's FSRs to the Engineering Unit. The Engineering Unit, throughout its almost 70 years of existence, has always required its members perform engineering work which qualifies them as professionals under the NLRA. It has also historically been geographically limited to engineers working within the Puget Sound area or other discreet locations. The FSRs do not meet either of these historical requirements and should be precluded from being joined with the Engineering Unit on that basis alone.

It is also clear FSRs and Engineering Unit employees, when combined, do not form a readily identifiable group of employees within the Company's administrative or organizational structure. The only common identity shared by FSRs and Engineering Unit employees is within the Company's Commercial Aviation Services department ("CAS"). However, two problems arise when relying on this identity to justify finding it an appropriate bargaining unit: 1) it would not include all similarly situated employees, particularly CAS engineers in Long Beach, CA, and 2) it would include engineers in the Puget Sound area that do not work in CAS. The Board has long held that it will not find fractured units like that proposed by the Union to be appropriate.

As demonstrated below, the Regional Director's decision does not raise a substantial question of law or apply facts in a manner that prejudices the Union. Thus, the Request for Review should be denied.



### III. STATEMENT OF FACTS

#### A. The Company's Business Operations

The Company is the leading aerospace company in the world. It is a Delaware Corporation with its principal headquarters in Chicago, Illinois. Bd. Ex. 2, 3. Its primary business is the development and manufacture of commercial and military aircraft. Bd. Ex. 3. Company employees work at locations throughout the United States and world. These locations include, among others: the State of Washington; Long Beach, Palmdale, Edwards AFB, San Bernardino, Huntington Beach, and Anaheim, California; Davis County and Weber County, Utah; Portland, Oregon; Mesa, Arizona; Patuxent River and Philadelphia, Pennsylvania; St. Louis, Missouri; Charleston, South Carolina; and Irving, Texas. Tr. 415, 762-64; Jt. Ex. 1; Co. Ex. 76.

The Company's global operations are divided into four major business units: Boeing Commercial Airplanes ("BCA"); Boeing Defense Systems ("BDS"); Engineering, Operations & Test ("EO&T"); and Shared Services Group ("SSG") Tr. 20, 55. BCA manufactures and sells commercial airplanes, primarily to airline customers. Tr. 20-21. BDS builds products for military customers in the United States and throughout the world. EO&T is a core engineering group that provides engineering resources and research to the entire Company. Tr. 21. It also is responsible for flight testing for both BCA and BDS products. Tr. 21. SSG includes the fundamental business structure that supports the Company. Tr. 21. This business unit includes human resources, finance, the security department, the fire department, business systems operations, etc. Tr. 21.

Each of the business units described above employs individuals in various job classifications who perform a broad range of job duties. The classifications include FSRs, engineers, technical employees, touch labor<sup>2</sup>, sales representatives, warranty personnel,

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<sup>2</sup> Touch labor is a term used at the Company that refers to the employees that do the actual physical work on airplanes. Tr. 1051. It includes mechanics and maintenance employees. Tr. 1051, 1072.

managers, administrators, and many others. Tr. 15-16, 1050-51; Jt. Ex. 1; Co. Ex. 28, 76. Many of these employees are represented by many different unions, including SPEEA. Jt. Ex. 1, Co. Ex. 75-77.

The Union currently represents separate bargaining units of engineers at Company locations including: Weber and Davis Counties, Utah; the Boeing Atlantic Test Center, Florida; the Company's Sandy Boulevard plant in Portland, Oregon; the greater Puget Sound region of Washington and Portland, Oregon; and Sedgwick County, Kansas.<sup>3</sup> Jt. Ex. 1; Bd. Ex. 3; ER Ex. 75. It does not, however, represent all engineers working within the United States, including engineers in Long Beach, California. Tr. 1743.

Employees in the Washington Engineering Unit are located in the Company's plants in the State of Washington and work in three of the Company's major business units: BCA, BDS, and EO&T. Bd. Ex. 1(a); Co. Ex. 119. There are approximately 13,600 employees in the Washington Engineering Unit, with approximately 8,700 in BCA, 2,400 in BDS, and 2,400 in EO&T. Bd. Ex. 3; ER Ex. 119. There are 43 classifications of engineers that work in the Engineering Unit. Jt. Ex. 1.

Unlike employees in the Engineering Unit, all the FSRs sought to be represented by the Union in the Petition are employed exclusively in BCA. Co. Ex. 28; Bd. Ex. 1(a), 3. There are approximately 226 FSRs located throughout the world, with approximately 99 located in the United States.<sup>4</sup> Tr. 1592-93, 1598; Bd. Ex. 3; Un. Ex. 16.

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<sup>3</sup> The following shows the approximate total number of engineers in each of the units: Weber and Davis Counties, Utah – 98; the Boeing Atlantic Test Center, Florida – currently there are no engineers in this unit; the Sandy Boulevard plant in Portland, Oregon - 51 ; Facilities and SHEA engineers in the Puget Sound region of Washington and in Portland, Oregon – 297; Sedgwick County, Kansas – 589. Bd. Ex. 3; ER Ex. 75, 78. There are approximately 27,000 engineers that are not represented by any union, including SPEEA.

<sup>4</sup> Nineteen of the 226 FSRs are currently working in non-FSR positions. Bd. Ex. 3, 3(a). The Union only seeks to organize FSRs located in the United States, which includes the 19 FSRs temporarily working in other positions.

## **B. BCA**

BCA is the business unit primarily responsible for the Company's commercial airplane business. Tr. 20-21. Employees classified as FSRs work in various organizations within BCA, including Field Service (see Section 1.a.1, below), the Boeing Operations Center ("BOC") (see Section 1.a.2, below), 787 Service and Support (see Section 1.b, below), and Boeing Business Jets ("BBJ") (see Section 2, below). Co. Ex. 28. Within these BCA organizations there are seven different FSR roles: co-located FSRs, Seattle Support Center FSRs, Field Service Intro Reps, BOC Controllers, 787 Intro Reps, 747 Intro Reps, and BBJ FSRs. Co. Ex. 28. The section of the brief that follows will discuss the relevant organizational structure.

### **1. Commercial Aviation Services**

Within BCA is a business unit called Commercial Aviation Services ("CAS"). It is responsible for all services provided to customers after airplanes are delivered to them. Tr. 445. Ninety-six of the domestic FSRs fall within CAS and are found within two CAS organizations: Fleet Services and 787 Services and Support. Co. Ex. 27, 28; Un. Ex. 16.

#### **a) Fleet Services**

Fleet Services is an organization within CAS that is responsible for all of the services the Company provides to the engineering and maintenance divisions of customers. Tr. 22, 56, 445. Within Fleet Service there is another organization called Technical Customer Support ("TCS"). Tr. 22; Co. Ex. 28. It is responsible for providing support to customers and for providing the maintenance manuals and other documents that go with a particular model of airplane. Tr. 447. Within TCS are two organizations that employ FSRs: Field Service and TCS Customer Support Engineering.<sup>5</sup> Tr. 22, 59; Co. Ex. 28.

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<sup>5</sup> Employer Exhibit 28 refers to Customer Support Engineering by its prior name, Fleet Support Engineering. Tr. 275.

(1) *Field Service*

The purpose of Field Service is to act as a liaison between customers and the Company and to ensure customers are able to operate their airplanes successfully. Tr. 24. The FSRs in Field Service are divided into three groups: co-located FSRs, Seattle Support Center FSRs, and Intro Reps. Tr. 24, 27, 229.

(2) *TCS Customer Support Engineering*

Customer Support Engineering is responsible for ensuring the continuing health and performance of the Company's in-service airplanes. Tr.119-20. Within Customer Support Engineering, FSRs work in the Boeing Operation Center (BOC). Co. Ex. 28. The BOC was established to support customers with urgent mechanical or operational airplane issues. Tr. 276. The FSRs in the BOC are referred to as Controllers. Tr. 32. In addition to the Controllers, the BOC includes structures engineers, stress engineers, systems technicians, and material management technicians. Tr. 278, 284, 318, 1289.

b) 787 Services and Support

787 Services and Support<sup>6</sup> is responsible for providing support to customers when they first receive the 787 or the new model 747 for use in their fleet. Tr. 415. FSRs in 787 Services and Support are referred to as 787 or 747 Intro Reps, depending on the airplane they are assigned to support. Tr. 60-61; Co. Ex. 28.

**2. BCA Sales and Boeing Business Jets**

BCA Sales is responsible for selling airplanes to customers worldwide. Tr. 140. Below Within BCA Sales is Boeing Business Jets (BBJ). Tr. 60; Co. Ex. 28. Boeing Business Jets (BBJ) is the part of BCA Sales responsible for selling commercial airplanes to private or VIP customers. Tr. 58. BBJ provides support to its private and VIP customers via FSRs. Tr. 347-48.

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<sup>6</sup> 787 Service and Support was also referred as 787 Entry Into Service or 787 EIS at the hearing. Tr. 60.

## **C. Field Service Representatives**

### **1. Field Service FSRs**

Co-located FSRs,<sup>7</sup> Seattle Support Center FSRs, and Field Service Intro Reps work in the Field Service organization. Co. Ex. 28. Field Service is made up of 11 geographic regions that cover customers worldwide with each region supervised by a regional director. Tr. 24. It provides support to approximately 900 customers worldwide. Tr. 53. Of those, approximately 100 to 150 are based in the United States. Tr. 53.

#### a) Co-located FSRs

Field Service co-locates many of its FSRs with its first tier customers throughout the world.<sup>8</sup> Tr. 24. This means that at least one co-located FSR is permanently stationed onsite at the “base” of operation for each first tier customer. Tr. 35.<sup>9</sup> The offices for co-located FSRs are generally located in the customer’s offices or maintenance facilities.<sup>10</sup> Tr. 40, 579-83. There are approximately 37 co-located FSRs in the United States in three regions. Tr. 25, 227.. Tr. 781; ER Ex. 103. The regional directors for the three U.S. regions are located in Dallas, Texas; San Francisco, California; and Seattle, Washington. Tr. 227-28. None of the regional directors supervise employees in the Engineering Unit. Tr. 26.

#### (1) *Job Requirements*

There are three levels of progression within the FSR job classification. Tr. 168-69; Co. Ex. 21-23. The job descriptions describe the minimum requirements needed by FSRs,

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<sup>7</sup> Co-located FSRs were also referred to as “permanent” FSRs at the hearing. Tr. 703.

<sup>8</sup> First tier customers are airlines that have either purchased an airplane directly from the Company or who have leased an airplane from a leasing company and is the first actual operator of the airplane. Tr. 84.

<sup>9</sup> The Company typically strives to limit an FSR’s co-location assignment to five years, although an assignment may be longer or shorter depending on the circumstances. Tr. 36-37. At the end of an assignment, a co-located FSR may be rotated to either a new domestic or international assignment. Tr.154. Co-located FSRs may also be transferred to the Seattle Support Center or into an Intro Rep or BBJ FSR position. Tr. 733.

<sup>10</sup> The airplane sales contract between the Company and a customer typically requires the customer to provide FSRs with the office space needed for the FSRs to do their jobs. Tr. 40.

including co-located FSRs, for each level, with each higher level demanding greater skill and knowledge in a core set of competencies. Tr. 157; Co. Ex. 21-23.

(a) Education and Experience

Co-located FSRs are not required to have a four year college degree, let alone an engineering degree, to work in the position. Tr. 159, 210; Un. Ex. 15, 17. The job description for an FSR Level 3, the minimum level for an FSR, states that the education and/or experience required for the position is a:

Bachelor's and typically 6 or more years' related work experience, a Master's degree and typically 4 or more years' related work experience *or an equivalent combination of education and experience.*

Co. Ex. 21 (emphasis added). The job descriptions for FSR Levels 4 and 5 mimic this language with the only deviation being increased years of experience required for each higher level. Co. Ex. 22-23.

In contrast to education, experience plays a substantial role in the requirements to be a successful co-located FSR. Tr. 890. As noted in the job descriptions, no matter the level of education, a co-located FSR is required to have related work experience. Co. Ex. 21-23. Co-located FSRs come from various educational backgrounds and are generally expected to have at least five years experience working at the Company. Tr. 113. Moreover, the experience does not need to be engineering in nature, as many of the current co-located FSRs came to the position through other work backgrounds, including aircraft mechanics. Tr. 210, 162, 740-41; Co. Ex. 103-10.

(2) *Role and Responsibilities of Co-located FSRs*

The primary responsibility of co-located FSRs is to ensure that the customer to whom they are assigned is fully informed of the Company's administrative structure and, when necessary, acts as their liaison between the many Company departments. Tr. 37, 92. They are charged with making sure customers are satisfied with the Company's products and services

and helping identify areas where customers may be able to increase efficiencies in their fleet and decrease operating costs. Tr. 37, 92; Co. Ex. 6, 7.

(a) Customer Relations

Co-located FSRs are expected to develop strong relationships with customers and their personnel, obtain detailed knowledge about them, and apply the knowledge gained to improve the services provided to customers. Tr. 37, 75, 599, 974, 1027; Co. Ex. 6. These obligations require that co-located FSRs develop an understanding of the customer's internal culture and politics, as well as any industry or geographic-based cultural and political nuances that may impact the customer's operation. Tr. 94.

Co-located FSRs support customers by identifying and responding to their needs. Tr. 94, 604-05; Co. Ex. 100-01. This includes such work as responding to airplane problems that arise and planning with the customer on how to improve business practices that are having a detrimental effect on airplane performance. Tr. 94-95, 605-07, 984. To help them develop their working relationships with customer employees, co-located FSRs are given a budget to cover the cost of entertainment activities. Tr. 81, 698-700, 959-60; Co. Ex. 100, 101. Co-located FSRs are also expected to rely on their unique customer knowledge to help market new products to customers. Tr. 37-38, 80; Co. Ex. 6.

Co-located FSRs make daily rounds to visit the individuals with whom they work in an effort to improve customer confidence. Tr. 99, 100-01, 600-01, 880; Co. Ex. 7-8. They typically visit a customer's engineering department and airline management and may also visit hangers, quality assurance, or any other group with whom they interact regularly. Tr. 600, 881. Conversations during the daily rounds may involve work-related topics and may also involve more personal topics that help the co-located FSRs get to know the people they work with better. Tr. 99, 631, 883. These daily rounds can take anywhere from one half hour to several hours depending on the size of the customer and the issues that come up in conversations. Tr. 600-01, 883.

#### (b) Technical Advisor

Another job duty of co-located FSRs is to act as a technical advisor to their assigned customer, especially the customer's maintenance, engineering and operations staff. Tr. 77, Co. Ex. 6. In the role of a technical advisor, a co-located FSR assists the customer in understanding and addressing technical issues and problems with their airplanes. Tr. 77, 597. This assistance may include helping the customer understand technical documents specific to an airplane, troubleshooting an existing problem with an airplane, or helping a customer identify and work with organizations within the Company to resolve a problem the customer is unable to resolve itself. Tr. 77, 597. Co-located FSRs also identify, monitor, and seek to change customer behavior that may lead to future problems with an airplane. Tr. 82.

When the co-located FSRs and customer determine they are not able to resolve the problem with an existing solution, one of them (either the customer or FSR) will submit a service request to BCA Customer Support Engineering via the Boeing Communication System ("BCS"). Tr. 85-86, 711-12, 885, 976-77, 991. Once a service request is received by BCA Customer Support Engineering, service engineers begin the process of designing a fix for the customer's problem. Tr. 889. While the service request is pending, co-located FSRs may make periodic contact with the Customer Support Engineering and the engineers working on the problem to monitor the service request's progress. Tr. 88. After the design of the repair is completed by Customer Support Engineering, co-located FSRs are responsible for ensuring that a repair recommended by Service Engineering in fact fixes the problem at issue. Tr. 89-90.

#### (c) Other Job Duties

FSRs have other job duties as well. When Company employees other than co-located FSRs visit a customer, the co-located FSRs act as the liaison between the visiting employees and the customer. Tr. 660-61. They also have the responsibility to help customers prepare for the introduction of a new model of airplane to an existing fleet. Tr. 96-97. They meet with the



customer and representatives of the Company's Contract Administration<sup>11</sup> organization and discuss with them the customer's needs in relation to the new airplane. Tr. 96-97.

Co-located FSRs are expected to attend customer management meetings. Tr. 83. At many bases, co-located FSRs participate in daily meetings with the customer in which the status of their fleet is discussed. Tr. 83, 601. Co-located FSRs are the only employees of the Company that attend the daily meetings on a regular basis. Tr. 83. On occasion, customers may request that their assigned co-located FSRs accompany them to Company-directed meetings, such as the Fleet Team Conference. Tr. 608. Fleet Team Conferences are typically held in either Seattle or in Long Beach depending on the airplane model at issue and are generally held twice per year. Tr. 609-10.

### *(3) Tools and Resources*

Co-located FSRs use a variety of tools in the performance of their jobs, most of which are electronic in nature. The majority of them are accessed through Field Service's home page, which is available via the Company's intranet. Tr. 43; Co. Ex.1 . These tools include:

- a) My Boeing Fleet/Toolbox – a web-based portal to the maintenance and operations manuals, service bulletins, and other information co-located FSRs rely on to help customers maintain, repair, and operate their airplanes. Tr. 41, 107, 610-11; Co. Ex. 11. For some airplane models, such as the 787, manuals, service bulletins, and the other related documents can be accessed through a new program called Toolbox. Tr. 425.
- b) Manuals, Drawing, and Catalogs – they contain processes, fixes, and product lists for each of the Company's aircraft. Tr. 447, 610-11.

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<sup>11</sup> Contract Administration is a business unit at the Company responsible for drafting contracts for the sale of products and services. Tr. 97.

- c) Service Bulletins – describe a specific problem with an airplane and the solution to that problem. Tr. 450.
- d) Field Service Data Store – a web-based tool used to record an airplane’s status and any configuration changes performed by non-Boeing companies, check customer lists, measure the quality of communications to and from the customer, and track and plan current and future assignments. Tr. 42-43, 591, 593-95.
- e) Boeing Communication System (“BCS”) – a web-based communication system used to enter and track service requests. Tr. 42, 594, 998; Co. Ex. 1.
- f) Significant Issues Visibility tool (“SIVT”) – an application used to track critical issues that could potentially cause an airplane to go out of service and be grounded for an extended period of time. Tr. 53-54.

*(4) Policies and Procedures Specific to Co-located FSRs*

Co-located FSRs are subject to policies and procedures that are specific to Field Service. Tr. 64-65; Co. Ex. 3-20; Un. Ex. 26. These policies and procedures are intended to be exhaustive and comprehensive instructions that co-located FSRs are expected to follow when performing their jobs. Tr. 65, 595. The FSR-specific policies and procedures do not apply to any employees outside of Field Service. Tr. 66.

*(5) Staffing*

Co-located FSRs are subject to staffing processes that are different from the Company’s typical processes. Tr. 149. The hiring procedure for FSRs is more complex than for engineering employees, as well as other Company employees, because candidates must pass through a multi-step process before receiving their first co-location assignment. Tr. 149. Additionally, co-located FSRs are subject to a rotation policy that is unique to the FSR classification. Tr. 153.

*(a) Hiring*

Company business units typically hire for vacancies in their organizations, including bargaining unit positions, by posting job openings for specifically identified positions on the

Boeing Enterprise Staffing System (“BESS”). Tr. 152. All Company employees may access BESS to see the job postings and apply for open positions. Tr. 152.

In contrast to the typical job posting process, Field Service job postings on BESS simply allow a candidate to apply for entry into the Field Service organization. Tr. 152, 155. Details of any post-hire assignment are not a part of Field Service’s BESS listing. Tr. 152, 155-56. Candidates for the co-located FSR opening are interviewed several times. Tr. 156.

The Field Service Operations Management Team is responsible for selecting the candidates for entry into Field Service. Tr. 742. If a candidate is selected for possible entry into Field Service, they are required to go through a very specific training program called First Base Training, where they are assessed on whether they will be able to develop the skills necessary to be a successful co-located FSR. Tr. 152.

First Base Training lasts approximately 90 days and involves sending a candidate to one of several designated bases. Tr. 165. There the candidate is given a specific checklist of on-the-job tasks that must be performed during the ninety-day period. Tr. 165, 618-19. The candidate is also instructed on the use of the tools and resources relied on by co-located FSRs in performing their jobs. Tr. 1667.

As part of First Base Training, co-located FSR candidates also spend a period of time in the Seattle Support Center and, while there, attend a training session called Vision Awareness Training. Tr. 165, 618-19. The purpose of this training is to introduce the co-located FSR candidates to the different business units and organizations with which they will interact in performing their jobs. Tr. 165-66. The team lead at the base where First Base Training takes place assesses the candidate’s performance and, based on that assessment, the candidate either becomes part of the Field Service organization or is rejected as a candidate. Tr. 165, 226, 619. Once admitted to the Field Service organization, the new co-located FSR is given a specific work assignment. Tr. 165.

Existing co-located FSRs are able to access, through FSDS, listings of open base assignments for which they may apply. Tr. 150-51; Co. Ex. 20. Only FSRs have access to these postings and only FSRs can be selected to fill them. Tr. 150-51. The base openings are not published on BESS and are not available to non-Field Service employees. Tr. 153. The regional directors and Field Service management evaluate the candidates for open assignments using specific criteria and guidelines and make the decision regarding who is best suited to fill the open position. Tr. 149; Co. Ex. 20. The hiring and probationary training process for Field Service is unique to the organization. Tr. 149-51.

#### (b) Rotations

As noted, co-located FSRs are typically in an assignment for a finite period of time, ideally between four to five years. Tr. 153, Co. Ex. 20. The Company limits the time a co-located FSR serves in an assignment because it feels that co-located FSRs provide better service to the customer if they have a diversity of experiences with different customers and in different regions of the world. Tr. 154-55. When co-located FSRs complete their assignment, they typically rotate to a new assignment. Tr. 153; Co. Ex. 20. Co-located FSRs may transfer between the various FSR positions, including co-located assignments, the Seattle Support Center, Intro Rep assignments, and BBJ assignments. Tr. 733. They may also rotate from an international assignment to a domestic assignment and vice versa. Tr. 154. Field Service maintains a detailed process governing the rotation of employees from one assignment to another to ensure the best match is created between FSRs and customers. Tr. 153-154; Co. Ex. 20.

#### (6) *Wages*

Co-located FSRs are salaried employees and are exempt from the Fair Labor Standards Act based on the administrative exemption. Tr. 225, Co. Ex 121. The Company establishes the range of salaries available to co-located FSRs. Tr. 169. They are set forth in the Salary Reference Tables for the GEC7 classification. Tr. 169; Bd. Ex. 3; Co. Ex. 132. Wage rates in the Salary Reference Tables vary depending on location. Co. Ex. 132. A co-located FSR's regional

director is primarily responsible for setting the actual salary for each co-located FSRs based on the SRTs. Tr. 225, 741.

*(7) Benefits*

The Parties stipulated to the benefits available to both FSRs, including co-located FSRs, and Engineering Unit employees. Bd. Ex. 3(d). The stipulation addresses health care, retiree medical, dental, short-term disability, long-term disability, life insurance, accidental death and dismemberment, and retirement plans. Bd. Ex. 3(d). It shows many similarities between the benefits of FSRs and Engineering Unit employees as well as all Company employees throughout the United States, but also some differences. Bd. Ex. 3(d).

*(8) Training*

As discussed above, co-located FSRs other than BOC Controllers must complete the ninety-day First Base Training to become a co-located FSR. Tr. 165. In addition to the training upon entry into Field Service, co-located FSRs continue to receive training throughout their careers. Tr. 166. The ongoing training includes airplane familiarization training with the launch of new models and personal development training upon recommendation by supervisors. Tr. 166-67. Co-located FSRs may also voluntarily attend training to aid in their career development. Tr. 167.

*(9) Interactions with Other Company Organizations*

In performing their jobs, co-located FSRs interact with many different Company organizations. These interactions may be in-person, by telephone, or through an electronic communication system, such as email. The following is a discussion of the Company organizations with which co-located FSRs interact most regularly:

*(a) Customer Support Engineering*

Customer Support Engineering is a group within the TCS business unit. Tr. 86. Customer Support Engineering has engineers located in Renton and Everett, Washington, and in Long Beach, California. Tr. 120. Engineers in Renton support the heritage Boeing's narrow-

body (single aisle) models and engineers in Everett support the heritage Boeing's wide-body (double aisle) models. Tr. 879. Engineers in Long Beach support heritage McDonnell Douglas airplanes. Tr. 120. They also support the Boeing 717. Tr. 120. The engineers located in Renton and Everett are in the Washington Engineering Unit; Long Beach engineers are not represented. Tr. 1148, 1715.

Engineers in Customer Support Engineering, both in Washington and Long Beach, are organized into several groups, including: airline support engineers ("ASEs"), service engineers, fleet support chiefs, and service bulletin engineers. Tr. 121-127; Co. Ex. 13. The role of the Customer Support engineers is to oversee the health of all in-service airplanes and to respond to airplane problems encountered by customers. Tr. 120, 612. They do this by responding to service requests and in-service data acquired from the customers. Tr. 120. Service requests that do not indicate a need for a resolution in less than 24 hours are directed to Customer Support Engineering. Tr.283. Those that indicate a solution is needed within 24 hours are directed to the BOC (see Section 1.C.2, below). Tr. 283.

#### (b) Service Bulletin Engineers

As previously noted, Service Bulletin Engineers draft bulletins regarding changes to components or systems on airplanes. Tr. 619-20. The change may be made because the FAA has ordered it to be done or it may be done voluntarily. Tr. 619-20.

#### (c) Material Management

Material Management, previously called "Spares," has operations in Seattle and in Long Beach and sells Boeing proprietary parts. Tr. 30, 132, 627. Material Management also provides logistics services for distribution of those parts and parts from other suppliers to customers. Tr. 132. The employees in material management are not members of the Engineering Units. Tr. 375.

(10) *Customer-driven Terms and Conditions of Employment*

Co-located FSRs are typically required to wear badges issued by the specific customer with which they are co-located that gives them access to the customer's facilities. Tr. 38-39, 580-83, 1030. These badges are not issued by the Company, although co-located FSRs may have a Company-issued badge in addition to the customer badge.<sup>12</sup> Tr. 39, 1030.

The work hours of co-located FSRs are established by the needs of the customer and are not dictated by the Company; thus, work hours for co-located FSRs may vary depending on their assignment. Tr. 39. Moreover, co-located FSRs are expected to be available as needed when off duty if the customer has an urgent need for the co-located FSR's assistance. Tr. 75, 160; Co. Ex. 6. Co-located FSRs may also be subject to the customer's work rules, including the dress code, which may vary depending on the customer. Tr. 39-40, 580-83, 1030.

(11) *Interchange*

Temporary interchange between co-located FSRs and bargaining unit employees occurs, but is limited and only occurs one way. Tr. 216-16, 239. When a co-located FSR is temporarily absent from his or her assigned base, Field Service may temporarily "backfill" the position until the assigned co-located FSR returns. Tr. 215. Usually, Field Service is able to use other FSRs to temporarily backfill the vacant position. Tr. 215-16. However, on the rare occasion when another FSR is not available, Field Service may backfill the open position with ASEs or other employees from TCS. Tr. 216. ASEs backfill for FSRs approximately one or two times per year. Tr. 237. The Company identified eleven incidences where the Engineering Unit's employees back filled for domestic FSR employees from 2006 to 2011. Un. Ex. 27.<sup>13</sup> There are no instances where co-located FSRs have backfilled for employees in the Engineering Units. Tr. 239.

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<sup>12</sup> Scott Hirsch testified that does he not wear his Company badge while at work. Tr. 1054.

<sup>13</sup> The Parties acknowledged that the information in Union Exhibit 27 may not be complete.

(12) *Meetings*

Many co-located FSRs participate in daily calls with other Company employees assigned to support the same customer. Tr. 634-35, 879. These calls do not take place for all customers. Tr. 634. Other participants on the call include ASEs from Seattle and/or Long Beach and a representative from material management. Tr. 635, 880. They may also include co-located FSRs from other bases. Tr. 879. The purpose of the call is to ensure that all parties are on the same page in relation to what the customer needs that day. Tr. 880.

b) Seattle Support Center FSRs

Field Service provides support for approximately 400 to 500 second tier customers via its Seattle Support Center located in Duwamish, Washington.<sup>14</sup> Tr. 26, 102, 104. Approximately 10 FSRs work in the Seattle Support Center. Tr. 229, 783; ER Ex. 104.

Unlike co-located FSRs, FSRs in the Seattle Support Center are assigned to support several different customers at a time and are not co-located with the customers to whom they are assigned. Tr. 26. The Seattle Support Center operates 24 hours per day, five days per week in order to match up with the working hours of its customers throughout the world. Tr. 30-31, 105.

Seattle Support Center FSRs are expected to possess the same basic skills and abilities as co-located FSRs and are required to perform most of the same job duties and provide the same types of customer support, but with the limitations commensurate with being at a site remote from the customer. Tr. 21-23, 31, 105. They also interact with most of the same organizations within the Company, use the same tools, and are subject to the same policies and procedures, including staffing and rotation policies. Tr. 29-30, Co. Ex. 3-20.

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<sup>14</sup> Second tier customers are those airlines that have purchased used Company airplanes. Tr. 26. They are generally smaller and need support less frequently. Tr. 26, 105.



c) Field Service Intro Reps

Field Service provides additional short-term support to first tier operators who are receiving a new type of airplane they have not previously operated. Tr. 27. The FSRs sent on these short-term assignments are Intro Reps and are specially trained to assist the customers in integrating new airplane models in their fleet. Tr. 27. There are approximately four Field Service Intro Reps Tr. 784-85; Co. Exs. 28, 108.

The permanent work location of Intro Reps is Washington; however, they typically spend approximately 75 percent of the year on assignment away from Washington. Tr. 28, 223. When on assignment away from Washington, the Intro Reps' work schedule is dictated by the airline customer and Intro Reps can work up to 15 hour days, six to seven days per week. Tr. 28, 33.

As FSRs in Field Service, Intro Reps are expected to possess the same basic skills and abilities as co-located FSRs, including educational background and past job experience. Co. Ex. 21-23. Moreover, they are subject to the same policies and procedures as co-located FSRs, including hiring and staffing policies, and interact with most of the same organizations within the Company. Tr. 152-56; 165-66; Co. Ex. 3-20; Un. Ex. 26. They also use the same tools and resources as co-located FSRs. Co. Ex. 3-20. Intro Reps come primarily from the flight line where they worked as mechanics. Tr. 27.

(1) *Job Duties*

Intro Reps partner with and lead an entry-into-service team of Company representatives when a new model airplane is delivered to a customer. Tr. 497-98. The entry-into-service team consists of the Intro Rep, the co-located FSR, and possibly other employees with specialties relevant to the roll out of a new airplane. Tr. 498-99; Co. Ex. 79. The team is usually onsite with the customer approximately 90 days. Tr. 27, 499.

When an Intro Rep arrives on an assignment, they are charged with getting to know the customer's maintenance control people, the line maintenance leaders, and general engineering personnel. Tr. 33. During their assignment, Intro Reps work particularly close with the

customer's line mechanics to help get the airline employees familiar with how to get the airplane ready for each flight. Tr. 27. The customer's line mechanics will be largely responsible for that task once the Intro Reps assignment ends. Tr. 27.

(a) Meet and Greet

The primary day-to-day job performed by Intro Reps is called a "meet and greet". Tr. 420-21. In a meet and greet, after the customer has placed the new airplanes into service, the Intro Rep meets every newly introduced airplane as it returns to the airport and is there for every departure. Tr. 420-21, 1464. The purpose of the meet and greet is to make sure everything with the airplane is working properly and that the customer is coming up to speed with the new product. Tr. 421, 1465.

(b) Overnight Maintenance

The secondary job of Intro Reps is overnight maintenance. Tr. 422. When the airplane returns for the night, the Intro Rep will stay with the customer personnel until any issues identified during the day are resolved. Tr. 422, 1491. Although the customer's personnel are responsible for resolving the issues, the Intro Rep may assist the customer when they need help finding a component or using documents and manuals related to the airplane. Tr. 423. The Intro Reps also act as a liaison between Customer Support Engineering and the customer when there is not a fix to a problem in the existing documents. Tr. 1467, 1470. The Intro Reps rely largely on the same tools and resources as co-located FSRs. Tr. 424-25.

## **2. BOC Controllers**

The Boeing Operation Center ("BOC") is part of Customer Support Engineering. Co. Ex. 28. It was established in 2005, as a place where the Company could support customers with particularly urgent airplane issues. Tr. 276, 277-78. It operates 24 hours per day, 365 days per year and provides service to customers worldwide, basically serving as a resource for BCA

customers with mechanical emergencies on the Company aircraft, including airplane-on-the-ground (“AOG”) situations.<sup>15</sup> Tr. 276, 278, 1288.

In the BOC, FSRs are referred to as Controllers. Tr. 278-79. BOC also has structures engineers, stress engineers, systems technicians, and material management technicians. Tr. 278, 284, 318, 1289. Only one of the stress engineers is a Company employee. Tr. 312. The rest are contract employees. Tr. 312. The Company engineers are in the Washington Engineering Unit. Jt. Ex. 1. The systems technicians and material management technicians are in the Union’s technical unit. Tr. 284. All BOC employees sit in the same, open room, with Controllers sitting in the middle. Tr. 284.

There are four shift managers in the BOC that oversee the day-to-day operations of the center. Tr. 313-14, 317. The shift managers oversee all the employees in the BOC when on duty, including the Controllers. Tr. 314, 330. There are approximately 14 Controllers in the BOC. Tr. 785; Co. Ex. 109. Controllers work a variety of shifts, including four-10s, three-12s, and 7 days on/7 days off. Tr. 281-82.

a) Job Duties

The Controller’s role in the BOC is to make the initial contact with the customer once a service request is received. Tr. 279, 1320-21. Service requests are routed to the BOC via BCS if the party entering the request into the system has indicated that a resolution to a problem is needed within 24 hours of the submission. Tr. 283. When they receive a service request, the Controller calls the customer and engages them in a discussion about the details of the service request to determine if it is the type of urgent problem BOC is tasked with resolving. Tr. 287-88, 295-96, 1285, 1321. The Controller also checks to determine that the customer has a contractual right to use the BOC’s services. Tr. 297-98. Controllers may be able to resolve the

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<sup>15</sup> AOG or airplane on the ground is a situation where a customer has scheduled to be flying an airplane but is unable to place the airplane in service because of some mechanical or technical issue with the airplane. Tr. 623.

customer's request based on the information they collected without engaging other BOC employees. 1284, 1287-88, 1328.

When the Controller has determined the problem is appropriate for the BOC and has clarified it, they transfer the request to a functional lead who is then responsible for ensuring a solution is found. Tr. 296, 1286, 1324-25. The functional lead may enlist the expertise of engineers in the BOC or, if necessary, engineers outside the BOC, to resolve the problem. Tr. 302. The functional lead is usually an engineer with extensive experience in developing fixes for airplanes. Tr. 301.

Once responsibility for the service request is transferred to the functional lead, the Controller monitors the request to make sure that the BOC is going to meet the established completion deadline. Tr. Tr. 301-02, 1285-87, 1323, 1325-26. They may also be tasked with obtaining additional information from the customer, and in some cases, bringing people together to contact the customer for further discussion about the problem. Tr. 301-02, 1285-87, 1323, 1325-26.

When a resolution has been developed and delivered to the customer, the Controller is responsible for conducting a final wrap-up discussion with the customer. Tr. 302, 1327. The purpose of the call is to ensure that the customer is satisfied with the resolution they received. Tr. 302.

b) Interchange and Interaction

There are no occasions where a Washington Engineering Unit member has temporarily worked as a Controller and no Controller has temporarily worked as an engineer. Tr. 1334. Controllers interact with other Company employees outside of the BOC. Tr. 309. These include service engineering in both Washington and Long Beach, material management, airline security, and air safety. Tr. 309.

c) Staffing

Hiring for the BOC Controller position is different from the hiring for other FSR positions. Tr. 330. Controllers are hired directly into the BOC and not into the Field Service organization. Tr. 330, 750. The Controllers do not spend any time training as an FSR and they do not participate in First Base Training. Tr. 330. Many of the Controllers hired into the BOC are hired from airlines and have a mechanics background. Tr. 323-24. They are hired because of their practical knowledge and not their theoretical knowledge of how to fix an airplane. Tr. 323-24, 337.

**3. 787 and 747 Intro Reps**

To prepare for deployment of two new airplane models, the 787 and 747-800, the Company has been training 787 and 747 Intro Reps to provide short-term onsite support to customers when they receive the new airplane for the first time. Tr. 415.

There are eight 787 Intro Reps and three 747 Intro Reps. Tr. 415, 783-84; ER Ex. 106-107. At the time of the hearing, the 787 Intro Reps were located in Seattle and the 747 Intro Reps were located in either Palmdale or San Bernardino, California.<sup>16</sup> Tr. 415. In addition to the current 787 and 747 Intro Reps, there are 19 individuals that were hired to be either 787 or 747 Intro Reps but have been temporarily transferred to other positions until the new models are delivered. Bd. Ex. 3, 3(a).

Intro Reps for the 787 and 747 are not required to have a college degree. Tr. 548. To be hired as a 787 or 747 Intro Rep, it is preferred that candidates have a background in aviation along with either a college degree, A & P license<sup>17</sup>, or military background. Tr. 548. When on

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<sup>16</sup> One of the 747 Intro Reps is in the process of returning to Washington where additional 747 flight testing will take place. Tr. 418.

<sup>17</sup> An A & P license is an Airframe and Powerplant License that is issued by the FAA after an individual completes a two-year course, usually at a community college or similar institution. Tr. 211. The A & P license allows the individual to perform maintenance work on an airplane. Tr. 211.

assignment, the 787 and 747 Intro Reps may be eligible for location or hardship pay. Tr. 550. They will also be required to have customer-issued badges. Tr. 553.

There are two stages to the work to be performed by 787 and 747 Intro Reps. The first stage is pre-delivery of the airplanes where the 787 or 747 Intro Rep is preparing for entry of the airplane into service. Tr. 426. At the time of the hearing, both the 787 and 747 Intro Reps were in this stage. Tr. 426. The second stage comes when the 787 delivery begins. Co. Ex. 79. At that time, the 787 Intro Rep will be responsible for helping the customer integrate the new airplane into its fleet. Co. Ex. 79.

*(1) 787 Intro Rep Responsibilities Pre-delivery*

While the 787 and 747 is in flight test, the Intro Reps' job responsibilities are to gain experience and knowledge about the airplane and help with service readiness as the Company prepares for delivery of the airplane. Tr. 426. They visit the airplanes every day to talk with the lead mechanics, the aviation maintenance technicians, and the quality assurance representatives to understand what's going on with the airplane, what the issues are that they are seeing, and, in some cases, to offer advice on how to correct issues. Tr. 426-27, 1122-23. They also observe the maintenance crews so they can learn what the maintenance procedures are, how long they take, and what type of tools and parts are needed to do the job. Tr. 427. They do this so that when they are onsite with the customer, they will already know the procedure. Tr. 427.

In addition to interacting with the mechanics and technicians working on the 787 and 747 flight test, the Intro Reps interact with quality systems, liaison engineering, the shift manager, ground ops engineering, and other program personnel. Tr. 427. They also interact with the "Tool Box" designers, maintenance document writers, maintenance engineering, and service engineering. Tr. 427. During flight testing, at least for the 787, the Intro Reps provide 24 hours per day coverage, Monday to Friday. Tr. 431. They also cover two shifts on Saturday and

Sunday. Tr. 432. Their work schedules are approved by Bizar, however, the Intro Reps have significant input into the schedule. Tr. 431.

The 787 and 747 Intro Reps attend daily operational review meetings. Tr. 429. These last about one half hour and include about 20 to 30 people. Tr. 431. In addition to the 787 Intro Reps, the operational review meeting is attended by representatives from the BOC, Entry Into Service monitoring, Gold Care<sup>18</sup>, and representatives from suppliers. Tr. 430. Additionally, the 787 Intro Reps attend daily manager's meetings with flight test manufacturing. Tr. 431.

*(2) 787 Intro Rep Responsibilities Post-delivery*

The responsibilities of 787 and Intro Reps after delivery of new airplanes to a customer will be similar to those that Intro Reps in the Field Service organization perform. Co. Ex. 79. As with the typical entry-into-service team, the 787 or 747 team will be onsite with the customer for approximately 90 days. Tr. 420, 499. As part of the 787 and 747 entry-into-service team, the Intro Rep will be responsible to perform meet and greet duties, assist with problem resolution, participate in daily meetings, and provide information on-the-job training to the customer's maintenance employees. Co. Ex. 79.

b) 787 and 747 Intro Reps Loaned out to Flight Test

Approximately nineteen employees who were originally selected to be 787 and 747 Intro Reps have been temporarily assigned to other positions. Tr. 489-92. These employees, who have been "loaned" from Field Service to their temporary positions, are expected to return to their Intro Rep positions once the airplanes to which they are assigned begin to be delivered to customers. Tr. 490.

Approximately eight of the loaned FSRs are currently working as ground operations engineers, who are represented by the Union in the Washington Engineering Unit. Tr. 489-90; Co. Ex. 27. Seven of the loaned FSRs currently work as flight analysts. Tr. 491-92; Co. Ex. 27.

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<sup>18</sup> Gold Care is a service group that deals with the sale of services to customers. Tr. 430.

Five are working on the 787 program and two are working on the 747 program. Tr. 492-93; Co. Ex. 27. Flight analysts are represented by the Union in the technical employees unit, not the Engineering Unit. Tr. 492.

#### **4. BBJ FSRs**

Boeing Business Jets (BBJ) sells and modifies standard commercial airplanes for private or VIP use. Tr. 58. Customers are typically private operators, not commercial. Tr. 350. FSRs working in the BBJ are not considered to be part of Field Services. Tr. 57. There are five BBJ FSRs, two of which are located in the United States. Tr. 345. The two domestic BBJ FSRs are located in Dallas, Texas, and Ventura, California. Tr. 345, 365. They work out of their homes, but travel to visit customers about 100 to 130 days per year. Tr. 347, 353. They are on-call 24 hours per day. Tr. 357. It is preferred that BBJ FSRs work in an assignment for at least six years because of the time it takes for them to get familiar with customers in a private aviation setting. Tr. 350-51.

The main responsibility of BBJ FSRs is to support customers and help them resolve any problems with their airplanes. Tr. 347. As part of their support efforts, BBJ FSRs are expected to build and maintain relationships with their assigned customers. Tr. 355. BBJ FSRs spend approximately 50 percent of their time communicating with customers. Tr. 359.

The support provided to customers includes introductory support for new airplanes. Tr. 347-48. Generally, the BBJ sales agreement contains an agreement that the Company will provide 30 days of introductory support to the customer. Tr. 350. When the BBJ FSR provides the introductory support, they travel to the customer's base of operation and provide on-the-job training and familiarize the customer with basic servicing and other tasks. Tr. 350. Although a customer is typically permitted 30 days of support, the BBJ FSR does not generally support the customer for that long. Tr. 353.

In performing their duties, the BBJ FSRs interact with service engineering, the BOC, material management, the BBJ contracts directors, supplier management, BBJ program



management, sales support, airline support engineers, and digital data.<sup>19</sup> Tr. 356, 372, 387. BBJ FSRs do not design or test parts of airplanes and they do not release engineering drawings. Tr. 359, 371. They are subject to the same staffing procedure as Field Service FSRs. Tr. 345.

#### **D. Characteristics of the Engineering Unit**

The Washington Engineering Unit consists of approximately 13,600 engineers in 43 different job classifications working in Company plants within the State of Washington.<sup>20</sup> Tr. 11; Jt. Ex. 1, 2; Jt. Ex. 1. Less than half of all Company engineers fall within the Engineering Unit. Tr. 11. There are also engineers in locations such as Long Beach; Weber and Davis Counties, Utah; Portland, Oregon; and Sedgwick County, Kansas. Tr. 1743; Jt. Ex. 1.

There are two principal characteristics of the Engineering Units: 1) its members must be engineers and 2) the members must work either within the State of Washington (or be on assignment from Washington to Edwards AFB or Palmdale, California) or the greater Puget Sound area in Washington and Portland, Oregon.<sup>21</sup> Employees working in the Engineering Unit's classifications are required to have at least a bachelor's degree in engineering, computer science, mathematics, physics or chemistry and to apply engineering principles regularly in the performance of their jobs.<sup>22</sup> Co. Ex. 32-74; Bd. Ex. 3. Language from the Parties' contract supports this position. Jt. Ex. 1. It states:

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<sup>19</sup> Digital data maintains the Company's electronic communications systems used by Company employees and customers. Tr. 372-73.

<sup>20</sup> The parties dispute the inclusion of engineers at Edward AFB and Palmdale, California, in the Engineering Unit. Bd. Ex. 3.

<sup>21</sup> The Collective Bargaining Agreement covering the Washington Engineering Unit also applies to the Facilities and SHEA Unit in the greater Puget Sound region of Washington and Portland, Oregon. Jt. Ex. 1. The petition seeks to add the FSRs to both the Washington Engineering Unit and the Facilities and SHEA Unit based on its contention, which is contrary to the Parties' Agreement, that those two units are actually a single unit. See Stipulation, ¶ 4. In addition to those two units, the Collective Bargaining Agreement also applies to other distinct bargaining units, including a unit in Weber and Davies Counties, Utah; a unit of the Company's plants at the Boeing Atlantic Test Center, Florida; and a unit covering the Company's Sandy Boulevard plant in Portland, Oregon. Jt. Ex. 1.

<sup>22</sup> The parties stipulated that the job descriptions contained in Employer Exhibits 21-23 and 32-74 accurately reflect the job requirements for FSRs and engineering unit employees. Bd. Ex. 3.

When, pursuant to the provisions of Article 1, the Company classifies an individual in one of the Engineer classifications listed in Appendix B, it will give consideration to the nature of the work involved and the qualifications of such individual. Inclusion in these classifications shall be limited to those employees who, in performance of their assigned work, regularly apply engineering disciplines to the research, design, development, test and evaluation of Company products or processes, and who satisfy the definition of “professional employee” as stated in Section 2(12) of the National Labor Relations Act . . . .

Jt. Ex. 1, p. 45.

The Union, in its 1999 Second Post Hearing Memorandum, affirmed that “the engineering employees throughout Boeing share common educational backgrounds and job requirements.” Co. Ex. 136, 26. In its 1999 Memorandum, the Union acknowledged that the bargaining unit at issue in both the 1999 case and here constitutes an engineering unit and that to be eligible for inclusion in the unit, a classification of employees must perform engineering work. Co. Ex. 136, p. 2.

The Union has consistently taken the position that the Engineering Units consist of engineers, and have the exclusive right to perform engineering work in their geographical area. Tr. 310; Co. Ex. 29. In 1979, the Company and Union participated in an arbitration in which the Union accused the Company of failing to recognize an employee as a member of the Engineering Unit. Co. Ex. 29. In the alternative, it argued that the Company had violated the contract by allowing an employee who was not an engineer as defined the Parties’ contract to perform engineering work. Co. Ex. 29. Similarly, the Union has filed at least three grievances asserting that technical employees in the BOC who are not in the Engineering Unit have performed Engineering Unit work. Tr. 310.

#### **E. Bargaining History**

The Company has had a bargaining relationship with the Union since at least 1946. Since that time, the Parties have negotiated contracts covering several different bargaining units in several different locations throughout the United States. Jt. Ex. 1; Co. Ex. 75, 76, 77.

## 1. Lack of Bargaining History Regarding FSRs

Since 1946, the Company has recognized the Union as the bargaining representative of engineering employees in the State of Washington. Bd. Ex. 3; Co. Ex. 136, p. 5. At no time have FSRs been included in the unit nor has the Union sought to include them in any way.

## 2. Historic Geographic Bargaining Standard

As indicated, the Union represents several employee groups at the Company, including the Engineering Units. Each of the units represented by the Union is specifically limited in their geographic scope. Jt. Ex. 1; Co. Ex. 75-77.

### a) The Engineering Units

The Engineering Units have been and continue to be limited in their geographic scope. While the Parties disagree regarding whether the engineers described in Section 1.1(e) (the Facilities and SHEA Unit) of the Parties' Agreement are part of the same bargaining unit as Section 1.1(a) (the Washington Engineering Unit), the Parties' Agreement conclusively establishes that they have agreed to treat the two groups as separate, stand-alone bargaining units based on their geographic location:

**Section 1.1 Recognition.** For the purposes of collective bargaining with respect to rates of pay and other conditions of employment, the Company recognizes the Union as the exclusive bargaining agent for the following collective bargaining units:

**1.1(a)** All persons working in the Company's plants in the State of Washington, including persons who are on travel status from such plants, who are classified by the Company in one of the classifications listed in Appendix B and including those persons assigned (other than on travel status) at Edwards AFB, California or Palmdale, California who are classified by the Company in one of the classification listed in Appendix B.

...

**1.1(e)** All professional engineering employees in the Company's Facilities and Safety, Health and Environmental Affairs (SHEA) organizations in the greater Puget Sound region of Washington and in Portland, Oregon; excluding all other professional employees employed in Facilities and SHEA, all guards and supervisors as defined by the National Labor Relations Act, and all other employees.

Jt. Ex. 1, §1.1. Accordingly, the description of these units as well as the other units listed in §§1.1(b) through (d) explicitly relies on the geographic location of employees to determine inclusion or exclusion from the respective units.<sup>23</sup>

In addition to the plain language of the contract, the Parties maintain a practice of removing employees from the Washington Engineering Unit when they are only temporarily assigned to positions outside of the State of Washington, even with full expectation of return. Tr. 754-56; Un. Ex. 6. When an engineer who is a member of the Washington Engineering Unit is sent on an assignment outside the State of Washington that is scheduled to last for more than two years, the employee is no longer considered to be a member of the bargaining unit at the time the assignment begins. Tr. 754-55. This agreement applies even if that employee is scheduled to return to their assignment in Washington and even if they continue to be supervised from Washington. Tr. Tr. 754-55. Likewise, if an employee from outside the State of Washington is sent on an assignment to Washington that is scheduled to last more than two years, the employee becomes a member of the bargaining unit at the start of their assignment. Tr. 754-55.

A similar policy applies to virtual employees. Virtual employees are those employees who work from home on a permanent basis, but who have a designated work location at one of the Company's facilities. Tr. 757-58. The recognized practice between the Parties is that virtual employees who have a designated work location in the State of Washington, but who work from their home outside of Washington, are not members of the bargaining unit. Tr. 758-59. The Union has in the past attempted to reverse the Parties' policy related to virtual employees, but the Company has held firm to its position on this policy. Tr. 118; Co. Ex. 102; Un. Ex. 6. For example, in negotiations for a new contract in 2005, the Union proposed to change this policy

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<sup>23</sup> If the employees in §§ 1.1(a) and 1.1(e) are found to constitute a single collective bargaining unit as the Union contends, then the language in the first paragraph of §1.1 would be rendered meaningless, and then the petition would also have to include the units described in §§ 1.1(b) through (d).

through suggested changes to the recognition clauses. However, the Company refused the Union's overtures and the Union's proposal was not included in the ratified contract. Tr. 1189; Co. Ex. 102; Un. Ex. 6.

Additionally, the Parties continue to dispute the applicability of the collective bargaining agreement to engineers in Palmdale and Edwards Air Force Base, California, since the engineers there became permanent employees at those locations instead of employees assigned from Seattle. Bd. Ex. 3.

b) Other Units Represented by the Union

The geographic nature of the Parties bargaining history is not limited to the unit at issue. The Parties have a long established history of bargaining almost exclusively on a geographic basis. For example, in addition to the engineering employees represented in Washington, the Union represents or has represented units of engineering employees in: Weber and Davis Counties, Utah; the Boeing Atlantic Test Center, Florida; the Company's Sandy Boulevard plant in Portland, Oregon; and Sedgwick County, Kansas. Tr. 77, 75. It also represents technical employees located in: the State of Washington and assigned at Edwards AFB and Palmdale, California; 19000 N.E. Sandy Boulevard, Portland, Oregon; Cape Canaveral Air Force Station, Florida; and Irving, Texas. Co. Ex. 77.

#### **IV. ARGUMENT AND CITATION OF AUTHORITY**

The Union asserts that the Regional Director failed to apply established Board precedent correctly and reached prejudicial factual conclusions in determining that FSRs do not have a community of interest with the existing Engineering Unit sufficient to justify an *Armour-Globe* election. As will be discussed below, the Regional Director's decision is consistent with existing case law and supported by the record evidence. Thus, the Union's Request for Review should be denied.

## **A. The Legal Standard**

In its recent case, *Specialty Healthcare*, the Board clarified the legal standards for determining when petitioned-for units are appropriate for certification under Section 9(b) of the Act. In so doing, it discussed several factors that must be considered when making the decision. These include the employees' choice as to the extent of the unit, the community of interest shared between employees in the petitioned-for unit, and whether the unit readily conforms to the administrative or organizational structure of the employer. Additionally, the Board thoroughly vetted its long standing policy that a unit need not be the most appropriate unit, but instead, only an appropriate unit.

The Board began its discussion of appropriate units in *Specialty Healthcare* by addressing the relevance of the extent of the unit requested by the Union. It stated:

Procedurally, the Board examines the petitioned-for unit first. If that unit is an appropriate unit, the Board proceeds no further. As the Board recently explained, "the Board looks first to the unit sought by the petitioner, and if it is an appropriate unit, the Board's inquiry ends." *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127, slip op. at 1 fn. 2 (2010). See also *Boeing Co.*, 337 NLRB 152, 153 (2001).

*Specialty Healthcare*, 357 NLRB No. 83, slip op. at 8. It then clarified the limits of this standard:

Section 9(c)(5) of the Act provides that "the extent to which the employees have organized shall not be controlling." But the Supreme Court has made clear that the extent of organization may be "consider[ed] . . . as one factor" in determining if the proposed unit is an appropriate unit. *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 442 (1965). In *Metropolitan Life*, the Court made clear that "Congress intended to overrule Board decisions where the unit determined could *only* be supported on the basis of the extent of organization." *Id.* at 441 (emphasis added). In other words, the Board cannot stop with the observation that the petitioner proposed the unit, but must proceed to determine, based on additional grounds (while still taking into account the petitioner's preference), that the proposed unit is an appropriate unit.

*Id.* at 9.

Recognizing, therefore, that the extent of the petitioned-for unit is relevant, but not controlling, the Board discussed the next step in determining if a petitioned-for unit is

appropriate: a community of interest analysis. In so doing, it reiterated the factors it weighs to determine if a community of interest exists. They are:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Id.* It is here where the Board interjected its first comment regarding the importance of the employer's administrative and organizational structure in its consideration of an appropriate unit.

It stated:

It is highly significant that, except in situations where there is prior bargaining history, the community-of-interest test focuses almost exclusively on how the employer has chosen to structure its workplace. As the Board has recognized, "we have always assumed it obvious that the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination." *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1951). In other words, in determining whether employees in the proposed unit share a community of interest, the Board both insures that the employees can be fairly represented by a singled representative and that bargaining will occur within boundaries that make sense in the employer's particular workplace. This is true not simply because most of the facts at issue (lines of supervision, skill requirements, wage rates, etc.) are established by the employer, but also because the line across which those facts are compared are typically drawn by the employer: lines between job classifications (as here), departments, functions, facilities, and the like.

*Id.* The Board then summarized the legal standard for determining the appropriateness of a unit:

We therefore take this opportunity to make clear that, when employees or a labor organization petition for an election in a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit.

*Id.* at 12-13. After announcing this standard, the Board reiterated the relevance of an employer's administrative or organizational structure in its appropriate unit analysis:

A petitioner cannot fracture a unit, seeking representation in “an arbitrary segment” of what would be an appropriate unit. *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999). “[T]he Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis.” *Seaboard Marine*, 327 NLRB 556, 556 (1999). If the proposed unit here consisted of only selected CNAs, it would likely be a fractured unit: the selected employees would share a community of interest but there would be “no rational basis” for including them but excluding other CNAs. If the proposed unit here consisted of only CNAs working on the night shift or only CNAs working on the first floor of the facility, it might be a fractured unit. Cf. *Wheeling Island Gaming*. In other words, no two employees’ terms and conditions of employment are identical, yet some distinctions are too slight or too insignificant to provide a rational basis for a unit’s boundaries.

*Id.*

**B. The Union’s Misinterpretation and Misapplication of *Specialty Healthcare***

The Union asserts that the Regional Director’s decision is at odds with *Specialty Healthcare* and the legal standards it describes. It claims that the Regional Director erred in ignoring the general principle, repeated in *Specialty Healthcare*, that a unit need only be appropriate and not the most appropriate to qualify for certification by the Board. It also argues that the Regional Director misapplied the Board’s counsel regarding the role of the administrative and organizational structure of the Company in his analysis of the appropriateness of the petition-for unit. The Union, however, is wrong on both counts.

First, the Regional Director did not ignore the basic principal that a unit need only be an appropriate unit and not the most appropriate unit. The fact of the matter is that the Regional Director was never faced that dilemma because he never found that the petition-for unit, a unit consisting of both FSRs and existing Engineering Unit employees, to be an appropriate unit in the first instance.

Second, the Regional Director did not misapply the Board’s counsel regarding the role of the Company’s administrative and organizational structure in its appropriateness analysis. The Union’s claim is based largely on the fact that the Union does not believe that the Company’s administrative or organizational structure should play a role in determining whether the petitioned-for unit is appropriate. It wrote, in a critical tone, “If this Regional Director had to make



a unit determination, *ab initio*, he would (apparently) find that the only appropriate unit is one with 'boundaries that make sense in the Employer's particular workplace.,' . . ."

RFR, p. 35, citing D&O, p. 40 citing *Specialty Healthcare*, 357 NLRB No. 83, fn. 19. However, as made clear by the Board in *Specialty Healthcare*, what the Union criticized him for considering is exactly what the Regional Director should have considered, the appropriateness of the petitioned-for unit within the context of the Company's administrative and organizational structure, under *Specialty Healthcare*. 357 NLRB No. 83.<sup>24</sup>

**C. The Petitioned-For Unit Does Not Consist of a Readily Identifiable Group of Employees**

The Union has petitioned for a unit that consists of all FSRs nationwide and Engineering Unit employees. As noted above, a critical component of the Board's appropriate unit analysis is that the petitioned-for unit have a readily recognizable identity. The Board gave examples of what types of identities are readily recognizable in *Specialty Healthcare* listing groups based on "job classification, departments, functions, work locations, skills, or similar factors." *Id.* at 12. The Act itself contains a list of readily identifiable groups as well. In Section 9(b), it lists the following as appropriate units, all of which are readily identifiable groups of employees: "the employer unit, craft unit, plant unit, or subdivision thereof." 159 U.S.C. § 159(b). Although neither of these lists is comprehensive, they provide sufficient direction to aid in determining when a group of employees is readily identifiable. It is also important to note, that consistent

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<sup>24</sup> The Union also engaged in an irrelevant dialogue regarding *Specialty Healthcare's* discussion about the size of bargaining units. It accuses the Regional Director of considering the addition of employees not sought by the Union in the petitioned-for unit in contravention *Specialty Healthcare's* counsel that such an addition is only appropriate if the additional employees share an overwhelming community of interest with the petitioned-for unit. Contrary to the Union's argument, any question regarding the size of the unit is moot because no one has sought to add any employees to the petition-for unit, including the Regional Director. The Region Director simply recognized that there is no rational basis to include the FSRs in the existing Engineering Unit without also including other engineers who work in CAS. This is because a unit consisting of FSRs and the Engineering Unit does not have a rationally based identity without them. Although the Regional Director makes this observation, at no time did he seek to compel the union to represent the additional employees as part of the petitioned-for unit; thus, any discussion regarding the size of the petitioned-for unit is irrelevant and the overwhelming community of interest analysis is unnecessary.

with the Board's position in *Specialty Healthcare*, each of the groups listed by the Board and in the Act are based on the standard administrative and organizational structures of employers.<sup>25</sup>

Here, employees in the existing Engineering Unit share a readily recognizable identity within the Company's administrative and organizational structure: they are all within the Company's engineer classifications, with their commensurate educational and skill requirements, who work in the Puget Sound area or other discreet locations identified the Parties' collective bargaining agreement. All the employees within the defined engineering classifications that work in the Puget Sound area are included in the unit.

The question is necessarily asked, then, whether the FSRs and Engineering Unit employees, combined, share some readily recognizable identity. It is clear they do not primarily because the Engineering Unit's historical identity has been its classification-specific and geographically-limited scope. The Regional Director in his decision in Case No. 19-CA-15472, has already concluded that FSRs do not perform engineering work and are not professional employees under the Act. The Union does not challenge that conclusion, which was previously upheld by the Board. Thus, it is clear the identity of the petitioned-for unit cannot be based on classification, skill, or function. Moreover, it is obvious that the diverse geographic nature of the FSRs as a nationwide group is incongruous with the geographically limited Engineering Unit. This is made most apparent by the fact that employees outside of Puget Sound that are in the

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<sup>25</sup> In addition to a petitioned-for group having a readily recognizable identity, the Board requires that a unit seeking to include that group include all its members, not a portion of the group. As stated in *Specialty Healthcare*:

A petitioner cannot fracture a unit, seeking representation in "an arbitrary segment" of what would be an appropriate unit. *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999). "[T]he Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis." *Seaboard Marine*, 327 NLRB 556, 556 (1999). . . . In other words, no two employees' terms and conditions of employment are identical, yet some distinctions are too slight or too insignificant to provide a rational basis for a unit's boundaries.

*Id.* at 13; see also *Turner Industries Group*, 349 NLRB 428, 430 (2007) ("The Board does not permit the arbitrary, heterogeneous, or artificial grouping of employees.")

exact same engineering classifications as Engineering Unit employees are either represented in other bargaining units or are not represented at all.

The Union argues that it is appropriate to allow the FSRs to join the Engineering Unit because the employees in the engineering unit themselves do not share some of the community of interest criteria in common, e.g. first level supervision, a single workplace. However, the Union misses the point. The community of interest analysis does not demand that employees in an appropriate unit meet all of its criteria. It only requires that the petitioned-for group's common interest outweigh the interest not shared in common. See, e.g., *Publix Super Markets*, 343 NLRB 1023 (2004); *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Trumbull Memorial Hospital*, 338 NLRB 900 (2003); *United Operations, Inc.*, 338 NLRB 123 (2002); and *Hotel Services Group*, 328 NLRB 116 (1999). The fact is that all employees in the Engineering Unit share the same readily recognizable identity: they are all in engineering classifications and work within the Puget Sound area. Jt. Ex. 1. The Board has routinely recognized classification-based units to be appropriate, most recently in *Specialty Healthcare*. 357 NLRB No. 83; see also *Turner Industries Group*, 349 NLRB at 430. However, there is no readily recognizable identity that is shared by all employees in the petitioned-for unit except for their employment with the Company. Without at least a modicum of shared identity specific to all employees in the petitioned-for unit, the unit cannot be found to be appropriate.

The Union, in its Request for Review, relies most heavily on the Board's decision in *Lockheed Aircraft Corp.*, 202 NLRB 1140 (1973), claiming that, out of all of the Board's decisions, that case is the most similar to this one. Although there are some similarities between the cases, e.g. engineers and non-engineers working for an aircraft manufacturer, the difference between the two are substantial. First, unlike here, the union in *Lockheed Aircraft* was seeking to include a group of non-professional employees in a unit that already included both professional and non-professional employees. *Id.* at 1141. More importantly, the existing unit in *Lockheed Aircraft* was readily identifiable as a unit consisting of employees in the Company's

engineering department, the department in which the at-issue employees worked. In fact, the union *Lockheed* did not seek to include other employees in the same classifications as the at-issue employees in the proposed unit, presumably because they did not work in the engineering department. *Id.* at 1142. Additionally, the evidence showed that all of the at-issue employees worked in the same building as existing unit employees under the same first line supervisors and that there was a line of progression from the positions of the at-issue employees to the positions held by existing unit employees. *Id.* at 1141-43. Thus, unlike in this case, it is clear that all the at-issue employees and all the employees in the existing unit in *Lockheed Aircraft* shared a readily recognizable identity as member of the engineering department. As established above, unlike in *Lockheed Aircraft*, there is not a readily recognizable identity shared uniquely by all FSRs and all Engineering Unit employees.

#### **D. FSRs and Engineering Unit Employees Do Not Share a Community of Interest**

Even if the FSRs and Engineering Unit employees were deemed to be a readily identifiable group of employees within the Company's administrative or organizational structure, the Regional Director's decision would nevertheless be correct because FSRs and Engineering Unit employees do not share the requisite community of interest. Although he did find that some factors weighed in favor of finding the unit appropriate, the Regional Director properly concluded that those factors were outweighed by the factors showing no community of interest existed.<sup>26</sup>

##### **1. FSRs and Engineering Unit Employees Have Different Job Functions and Skills and Are Subject to Different Training Requirements**

The Union challenges the Regional Director's conclusion that the skills, training, and job functions of FSRs are not sufficiently similar to those of Engineering Unit employees to weigh in

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<sup>26</sup> The Union argues that use of the traditional community of interest analysis is inappropriate when the employer at issue is a "large" employer. RFR, p. 39. It cites no case law to support its claim nor provides any rational reason why the traditional community of interest test should not apply in the context of a large employer.

favor of finding a community of interest between the two employee groups.<sup>27</sup> It builds its argument almost exclusively on the similarity of work between the FSRs and ASEs, claiming that “the evidence shows that the FSRs and ASEs have almost identical skills, training, and functions.” RFR, p. 24. This statement is simply not true. Although ASEs and FSRs do share some similar job functions, their functions are far from identical. Moreover, they are not required to use the same skills or have the same training.

As noted by the Regional Director, FSR job duties fall within two basic categories: customer technical support and customer relations. To the extent there is overlap between the FSR and ASE job duties, it lies with the customer technical support portion of an FSR’s responsibilities. It is true that both FSRs and ASEs work with customers to resolve airplane problems. However, their role in the process is clearly different. For example, co-located FSRs work day-to-day at the customers’ places of business where they interact face-to-face with customers to remedy airplane problems. They can personally inspect the airplane to help identify the problem. This is something ASEs do not do.

The overlap of ASE job duties does not extend to the customer relations responsibilities of FSRs. FSRs, especially those that are co-located, are tasked with building personal relationships with the customers with whom they work. They make daily rounds through the customer’s offices to talk with customer employees, they participate in routine customer meetings, and they have a budget with which to entertain the customer. ASEs do not have these same responsibilities.

As far as skills and training are concerned, the requirements of the FSR position and the ASE position, or any engineering position for that matter, are clearly different. There should be little doubt this is true as Engineering Unit employees are required to have the skills to perform

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<sup>27</sup> The Union essentially recognizes that FSRs do not share similar skills, training, and job functions with the overwhelming majority of Engineering Unit employees. RFR, p. 23-24.

engineering work where FSRs are not. The training required of the two positions is also different. In order to be eligible for hire into any positions within the Engineering Unit, including the ASE position, the candidate must have an engineering degree. FSRs on the other hand are not even required to have a college degree. In fact, many FSRs come from the mechanics ranks and have been trained instead on the actual building and repair of airplanes.

Another significant difference between the training of FSRs and Engineering Unit employees, including ASEs, is the 90-day First Base training FSR candidates must complete before being eligible for inclusion in the FSR classification. Clearly this unique preliminary training requirement signals that the job demands of the FSR position are not the same as those of Engineering Unit positions, including the ASE position, which do not require candidates to complete the same training to become eligible for an engineering position.

The Union emphasizes that some of the FSRs have engineering degrees and worked as engineers prior to becoming FSRs. Testimony was presented to establish that these former engineers, not surprisingly, use their engineering knowledge to help customers resolve airplane problems. However, the fact that some FSRs have engineering backgrounds and use previously acquired engineering skills in performing their job does not establish that all FSRs are required to use engineering skills in performing their jobs or that such training and skills are necessary to perform the job. This would be the same as saying that a nursing position requires all nurses to have the skills and training of a doctor because some of the nurses were previously doctors or a paralegal position requires all paralegal to have the skills and training of a lawyer because some of the paralegals were previously lawyers. Does the FSR position require an FSR to have the skills and training of a mechanic because some FSRs rely on their previous mechanic experience in helping customers resolve airplane problems? The answer is clearly, "no." Just because some FSRs rely on their prior training and experience as engineers does not mean all FSRs use engineering skills in performing their job or that the FSR position requires the use of engineering skills.

In addition to essentially asserting that FSRs perform engineering and thus professional work in contravention of an established conclusion that they do not, the Union asserts that even if they do not, the fact that they do not should not prohibit their inclusion in the existing Engineering Unit. It claims that such a standard would essentially prohibit the joining of any non-professional employee group with a professional employee group, which is contradicted by established case law, particularly *Lockheed Aircraft Corp*, 202 NLRB 1140. The problem with this argument is that, as with several other Union arguments, it fails to recognize the balancing nature of the community of interest analysis. The lack of similar skills and job duties does not fatally undermine the joining of differing employee groups in every instance. It simply requires that the two groups share other community of interest factors that outweigh the deficiency in the similarity of skills. This was clearly the case in *Lockheed Aircraft* where the non-professional and professional employees, although performing different work, were found to have a community of interest due to their inclusion in the same department, similar working conditions, and the same first level supervisors. The problem for the Union in this case, however, is that the majority of community of interest factors relied on to find an appropriate unit in *Lockheed Aircraft* do not exist in this case.

The Regional Director properly concluded that the differences in job duties, skills, and training between FSRs and Engineering Unit employees weigh against finding a community of interest between them. The Union's assertion that the Regional Director failed to correctly consider their limited similarities should be dismissed.

## **2. FSRs Share the Same Functional Integration with Non-Engineering Unit Employees as They Do With Engineering Unit Employees**

As demonstrated above in the discussion related to the readily identifiable nature of the petitioned-for unit, it is clear that FSRs and ASEs are part of the Company's customer service operation and, thus, share some integration. The Union asserts that this relationship provides strong evidence in support of finding a community of interest between the two groups. The

Regional Director acknowledged the integration between the two groups as part of the Company's CAS organization, but correctly determined that any weight given the integration was mitigated by the fact that FSRs shared the same level and type of integration with engineers outside the Engineering Unit who were also part of CAS. The Regional Director is correct. Because the FSRs have the same level of functional integration with engineers in CAS that are not in the Engineering Unit as those that are, there is no reason to give integration any weight in the community of interest analysis. See *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1083 (2004) (finding that although the employees in the petitioned-for unit shared a community of interest, it was not separate and distinct from the community of interest shared with other employees); *Stormont-Vail Healthcare*, 340 NLRB 1205, 1207 (2003) (finding that the evidence failed to show that the employee in the petitioned-for unit shared a community of interest distinct from other employees).

**3. FSRs Have the Same Contact with Non-Engineering Unit Employees as They Do With Engineering Unit Employees**

Similarly, the contacts between FSRs and Engineering Unit employees stem from their work in CAS. Thus, it is also important that FSRs have similar contacts with other members of CAS, including other engineers. Again, there is no rational basis to rely on the contacts FSRs have with Engineering Unit employees to justify joining FSRs with the Engineering Unit without also including other CAS employees. *Laboratory Corp. of America Holdings*, 341 NLRB at 1083; *Stormont-Vail Healthcare*, 340 NLRB at 1207.

**4. FSRs and Engineering Unit Employees Do Not Share Terms and Conditions of Employment Unique to Only Those Two Groups**

The Regional Director correctly noted the variety of differences in the terms and conditions of employment between FSRs and Engineering Unit employees. The Union contests most of the Regional Director's finding regarding terms and conditions of employment, specifically his conclusions about wages, dress codes, and work hours. However, what the Union does not show is that even if FSRs and Engineering Unit employees do share similar



terms and conditions of employment, that those terms and conditions are different from employees outside the petitioned-for unit. See *Laboratory Corp. of America Holdings*, 341 NLRB at 1083; *Stormont-Vail Healthcare*, 340 NLRB at 1207. As observed by the Regional Director, the terms and conditions of employment shared between FSRs and Engineering Unit employees are also shared by employees outside the petitioned-for unit.

**5. FSRs and Engineering Unit Employees Do Not Generally Share The Same Direct, Day-To-Day Supervision**

The Regional Director correctly concluded that the lack of common supervision between FSRs and Engineering Unit employees below the third and fourth levels weighs against a finding of community of interest. In challenging his conclusion, the Union first recognizes that the common wisdom is that “employees who share a common supervisor at the first or perhaps second level are more inclined to have common interests in the workplace, in regard to that supervisor or otherwise.” RFR, p. 46-47 citing the D&O, p. 39. However, the Union then asserts, “A community of interest standard that requires, or even puts any weight upon, common first level supervision would undercut the ability of a bargaining unit to form in almost any large employer.” RFR, p. 47. The Union cites no case law to support this conclusion.

Significantly, the Board in *Specialty Healthcare* reiterated that common supervision at the first or second level supervision, or the lack thereof, remains a viable and useful factor in its community of interest analysis. 357 NLRB No. 83, slip op. at 9. In addition to including it in its recitation of the community of interest factors, the Board specifically relied on the fact that the employees in the petitioned-for unit did not share immediate or intermediate supervision with employees sought to be included by the employer to find that the petitioned-unit was appropriate. *Id.*

The problem with the Union’s attempt to diminish the role of common supervision in the community of interest analysis, in addition to it being legally baseless, is it again fails to recognize that the community of interest analysis is a balancing test. It fails to recognize that

other factors may be sufficiently compelling to support a community of interest finding when common supervision is lacking. In fact, the Union fails to consider the possibility that a community of interest among Engineering Unit employees may exist not by ignoring the lack of common supervision, but instead, by recognizing that other factors, particularly their similar classifications, skills, and training, outweigh the lack of common supervision.

It is clear that FSRs, except for the few controllers in the BOC, do not share common first or second-level supervision with Engineering Unit employees. Thus, the Regional Director properly concluded that this factor weighs against finding the requisite community of interest.

#### **6. The Parties' Bargaining History Is Relevant and Weighs Against Finding a Community of Interest between FSRs and Engineering Unit Employees**

One factor not listed by the Board in *Specialty Healthcare* that must be considered in a community of interest analysis is bargaining history. *Canal Carting, Inc.*, 339 NLRB 969 (2003); *Ready Mix USA, Inc.*, 340 NLRB 946 (2003). Here, the Regional Director determined that bargaining history was irrelevant to his decision. As discussed below, however, the Parties' bargaining history provides a necessary backdrop to the community of interest analysis in this case.

Interestingly, the Regional Director noted that bargaining history is a relevant component in the community of interest analysis when all or part of the employees at issue have a history of bargaining. He wrote:

Unlike the other factors, bargaining history does not exist in every case, but where it does exist, the Board has been clear that bargaining history is a relevant and substantial factor in the community of interest analysis. *Canal Carting, Inc.*, 339 NLRB 969 (2003); *Ready Mix USA, Inc.*, 340 NLRB 946 (2003). Accordingly, I will also consider the factor of bargaining history in reaching my findings.

D&O, p. 29. Then, after making this statement of law, he failed to consider bargaining history in his analysis, stating:

. . . , bargaining units are not required to remain static and unchanging. An *Armour Globe* election can, by its nature, bring unrepresented employees into an existing unit, and the mere fact that a bargaining unit has had a certain

characteristic for a period of time does not, alone, weigh against allowing such an *Armour Globe* election.

D&O, p. 30. Although this statement may be true to the extent that bargaining units may change over time, that fact alone does not disqualify bargaining history from consideration in the community of interest analysis.<sup>28</sup> If it did, there would be no point to the case law that the Regional Director cited to favorably that says that bargaining history does in fact matter.

To escape the clear contradiction between the stated law and his own conclusion, the Regional Director seeks to distinguish case law cited by the Company in its post-hearing brief based on the facts of each of the cases. See *Canal Carting*, 339 NLRB 969; *Children's Hospital of San Francisco*, 312 NLRB 920 (1993). However, he clearly misses the point. Those case are applicable not just because of their factual details but for the legal conclusion regarding the importance of bargaining history in the community of interest analysis.

Bargaining history is relevant to the discussion of an appropriate unit because it helps support one of the two main purposes of the NLRA – labor stability. See *Central Transport, Inc.*, 328 NLRB 407, 408 (1999). The Board has routinely refused to permit changes to bargaining units based in large measure on the bargaining history of the parties. See *Canal Carting, Inc.*, 339 NLRB at 970 (“It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate.”); *Disneyland/Div. of Walt Disney Co.*, 308 NLRB 1040 (1992) (“... the Board is reluctant to alter bargaining units where they are supported by a long established bargaining history.”); see also *Supermercados Pueblos*, 203 NLRB 629 (1973). This case should be no different.

Significantly, that the Regional Director did address the different skill requirements of the FSRs and Engineering Unit employees and the incongruent geographic scope of both groups in

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<sup>28</sup> This is not a situation in which FSRs would not have other options for representation. The Company has indicated on multiple occasions that it would consent to an election in a bargaining unit consisting of the FSR classification only. There is no dispute that such a unit would be appropriate under the Act.

his decision and found them to weigh against finding an appropriate unit. However, he did so outside of the context of the Parties' bargaining history, which would have only served to strengthen his conclusion about both.

a) Bargaining History Shows the Engineering Unit Has Historically Been Exclusively an Engineer-only Unit

Since its inception, the Engineering Unit has consisted solely of employees who perform engineering work that qualifies them as professionals as defined by the Act. The Parties' contract states:

When, pursuant to the provisions of Article 1, the Company classifies an individual in one of the Engineer classifications listed in Appendix B, it will give consideration to the nature of the work involved and the qualifications of such individual. Inclusion in these classifications shall be limited to those employees who, in performance of their assigned work, regularly apply engineering disciplines to the research, design, development, test and evaluation of Company products or processes, and who satisfy the definition of "professional employee" as stated in Section 2(12) of the National Labor Relations Act . . . .

Jt. Ex. 1, p. 45. This standard has not changed in any way in the almost 70 year history of the unit. As it has been concluded that FSRs are neither engineers or professional employees, the Union now seeks to change the historic character of the unit by not only including non-engineers, as defined by the Parties' contract, but also by including non-professional employees as defined by the Act. The fact that making such a significant change to the unit after almost 70 years of existence does not give the Regional Director some pause is quite frankly surprising.

Moreover, placing weight on the bargaining history does not preclude the addition of employees to the Engineering Unit as insinuated by the Regional Director. In 1999, the same region, Region 19, found several classifications of employees to be appropriately added to the Engineering Unit. Un. Ex. 28. However, consistent with the Parties' bargaining history, the Regional Director found only employees who performed engineering work were properly added. He excluded from the unit those employees that did not perform the requisite engineering work. Ironically, in that case, the Union itself argued that the unit was exclusive to engineering employees.

Further illustrating the Company's history of bargaining based on classification is the BOC. Although BOC employees share common supervision and have daily contact, shared workspace, and significant integration, in addition to the other myriad of interests they clearly share, BOC employees are represented in two bargaining units. The lone factor that justifies permitting the fragmentation of the BOC is the history of Company employees being separated into bargaining units based on their classification. That is the only justifiable basis upon which engineers, technical employees, and material management employees that work in the BOC could be represented by different unions.

b) The Bargaining History Shows the Engineering Unit Has Historically Had a Limited Geographic Scope

Moreover, at no time in its existence has the Engineering Unit been nationwide in scope. It has always been limited to the Puget Sound area and other discreet locations. However, the FSRs sought to be added by the Union constitute a nationwide group of employees. Again, permitting them to be added to the unit would fundamentally change the historic nature of the unit which has governed the unit from the beginning. Consistent with Board law, forcing such a change should not and cannot be taken lightly.

## **V. CONCLUSION**

The Union failed to establish that the Regional Director improperly applied established Board precedent or reached prejudicial factual conclusions in determining that FSRs do not have a community of interest with the existing Engineering Unit. The record clearly shows that a unit consisting of only FSRs and Engineering Unit employees does not form a readily recognizable group within the Company's administrative or organizational structure and, thus, does not meet the minimum threshold for appropriateness. Moreover, in spite of some interests shared between FSRs and Engineering Unit employees, the balance of interests weighs against finding a unit consisting of both groups to be appropriate, especially considering the Parties'

bargaining history in the Engineering Unit. Therefore, because the Union has not shown that it was prejudiced by the Regional Director's decision, its Request for Review should be denied.

Respectfully submitted this 30<sup>th</sup> day of November, 2011.

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A handwritten signature in cursive script, reading "Richard B. Hankins", written over a horizontal line.

Richard B. Hankins

Alston D. Correll

Drew E. Lunt

Attorneys for The Boeing Company

**VI. CERTIFICATE OF SERVICE**

This is to certify that I have served a true and correct copy of the **The Boeing Company's Statement in Opposition to the Union's Request for Review of Regional Director Decision and Order Dated November 1, 2011** in Case No. 19-RC-15419 via electronic mail upon the Regional Director of Regional 19 of the National Labor Relations Board as follows:

Richard L. Ahearn  
Regional Director, Region 19  
National Labor Relations Board  
915 2nd Avenue, Room 2948  
Seattle, WA 98174-1078  
Richard.Ahearn@nlrb.gov

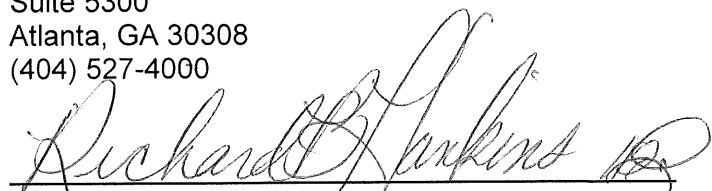
**The Boeing Company's Statement in Opposition to the Union's Request for Review of Regional Director Decision and Order Dated November 1, 2011** was also served via electronic mail upon counsel of record for the Petitioner, as follows:

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This 30<sup>th</sup> day of November, 2011.

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