

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

**THE BOEING COMPANY,  
Employer,**

**and**

**Case No. 19-RC-15372**

**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 CONDITIONAL ORDER**

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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 Conditional Order (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 May 11, 2011. The Union seeks review of the Regional Director's Decision and Conditional Order (hereinafter referred to as "Regional Director's Decision" or "Decision") 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 its Petition seeking an *Armour-Globe* self-determination election in which Field Service Representatives (herein after referred to as the “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> The Engineering Unit consists exclusively of professional employees as defined in Section 2(12) of the National Labor Relations Act (hereinafter referred to as the “Act” or “NLRA”). 29 U.S.C. § 152(12). Beginning on January 19, 2011, a hearing was conducted before Hearing Officer Janet Little. The hearing lasted 12 days and concluded on February 3, 2011.

On April 13, 2011, the Regional Director of Region 19, Richard L. Ahearn, issued his Decision and Conditional Order. In his decision, the Regional Director determined that FSRs are not professional employees as defined by the Act and, thus, pursuant to Section 9(b) of the Act, 29 U.S.C. § 159(b), a *Sonotone* election was necessary to determine if employees in the Engineering Unit would consent to including FSRs in their unit. Because the Union had not consented to a *Sonotone* election among Engineering Unit employees, the Regional Director gave the Union a ten-day deadline to consent to the requisite *Sonotone* election. The Union did not do so and the deadline lapsed as of April 25, 2011.<sup>2</sup> On April 26, 2011, the Union filed a request for an extension of time to file its Request for Review until May 11, 2011, which was granted on April 27, 2011. On May 11, 2011, the Union filed its Request for Review. On May

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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 will be made as Regional Director’s Decision at \_\_; and references to the Union’s Request for Review will be made as Request for Review at \_\_.

<sup>2</sup> The tenth day actually fell on April 23, 2011, a Saturday, thus the deadline did not lapse until Monday, April 25, 2011. On April 26, 2011, Boeing was informed by Hearing Officer Janet Little that the Director’s Decision became a final order on that date because the Union did not consent to a *Sonotone* election before the deadline lapsed.

12, 2011, the Company filed a request for an extension of time to file its Statement in Opposition to the Request for Review until June 1, 2011. It was granted on May 13, 2011.

## **II. INTRODUCTION**

Pursuant to Sections 102.67(c)(1) and (2) of the NLRB's Rules and Regulations, the Union has requested that the Board review the Regional Director's Decision in this case. In essence, it argues that the Regional Director erred by: (1) determining that the educational background, experience, and post-hire training of FSRs was insufficient to trigger the presumption that FSRs perform professional work, and (2) concluding that the FSRs do not perform professional work. The Union has also requested that if the Board were to grant review of the Regional Director's Decision, the Board should also consider two issues not addressed by the Regional Director in his Decision, the community of interest between FSRs and Engineering Unit employees and the supervisory status of FSR team leads.

FSRs play a critical role in the Company's customer support services. In many instances, they are the principal contact between customers and the Company, with many working at customers' places of business. Among their various customer support job duties, FSRs provide technical assistance to customers to help resolve problems with airplanes. The Union asserts that this technical work is professional in nature, which in turn qualifies FSRs for classification as professional employees under the Act. Moreover, the Union argues that the educational background, experience, and post-hire training of FSRs in engineering and other professional fields support its assertion that FSRs are professional employees. However, as found by the Regional Director, the record fails to support the Union's position.

In performing technical work and assisting customers in resolving problems with airplanes, FSRs rely primarily on previously drafted manuals, drawings, and other documents. They are not responsible for preparing any of the documents themselves. When previously written solutions do not provide the answer for a particular problem, FSRs then contact Company engineers to create the needed fix. FSRs may also rely on their experience in the



aviation industry when performing these tasks; however, the work histories of FSRs vary and can consist of backgrounds in engineering as well as airplane maintenance and other aviation-related fields. In fact, only around 40 percent of FSRs have engineering degrees.

Based on these facts, the Regional Director correctly found that FSRs are not professional employees. He recognized that most FSRs do not have engineering degrees or equivalent engineering experience and they are not required to have engineering knowledge to perform their duties. Instead, he found that they primarily rely on their technical experience as well as the Company's communication tools to help customers resolve problems with their airplanes and, if they are unable to find approved solutions, they are required to notify the Company's engineers, who then create fixes for the problems. As such, the Regional Director properly concluded that FSRs as a group do not have the qualifications or perform the requisite work to qualify as professional employees under the Act.

The Union, by asserting that FSRs are professional employees, implicitly seeks to overturn approximately 70 years of Board precedent limiting Section 2(12)'s professional definition to "small and narrow classes of employees." *Express-News Corp.*, 223 NLRB 627, 630 (1976); *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 517 (1998). Indeed, if the Board were to agree with the Union's assertions that relying on technical knowledge and accessing and reviewing pre-prepared information to find solutions to airplane problems constitutes the application of engineering principles, then the Board will face an onslaught of challenges to existing units and petitioned-for units claiming that they impermissibly contain professional employees.

The record fails to show that FSRs perform professional work. The Regional Director correctly concluded that FSRs are not professional employees under the Act and a *Sonotone* election among existing Engineering Unit employees is necessary before FSRs may vote to join the unit. Therefore, because the Union has failed to consent to the requisite *Sonotone* election,

its Request for Review and its request that the Board resolve the outstanding community of interest and supervisory status issues must be denied.

### **III. STATEMENT OF FACTS**

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

All FSRs at issue work in the Company's major business unit, Boeing Commercial Airplanes ("hereinafter referred to as "BCA"). BCA is primarily responsible for the design, manufacture, and sale of commercial aircraft. A significant majority of FSRs work within several divisions of the Commercial Aviation Services department (herein referred to as "CAS") of BCA. The CAS division in which FSRs work include: Fleet Service, the Boeing Operations Center (hereinafter referred to as "BOC"), and 787 Service and Support. FSRs also work in the Boeing Business Jets division (hereinafter referred to as "BBJ") of the BCA Sales department.

The FSRs in each of the different divisions of the Company are expected to have the same minimum education and work experience backgrounds. As recognized by the Regional Director, the job duties required of FSRs in each of the different divisions are distinct. As such, the job duties of each group of FSRs must be considered in determining the professional or non-professional status of the FSR classification as a whole. Upon analysis of the general education, experience, and training of the FSRs, as well as the different job duties of each distinct group of FSRs, it is clear that FSRs are not required to perform the engineering or professional work necessary for classification as professional employees for purposes of the Act.

#### **B. General Educational and Experience Requirements of FSRs**

All FSRs are governed by the same job descriptions. The descriptions provide for three different levels of progression, with each higher level demanding greater skill and knowledge in a set of general and technical competencies. Tr. 157, 168-69; Co. Ex. 21-23. The general competencies FSRs are required to possess at increasing levels of ability include: adaptability; build positive relationships; business (operational) acumen; collaboration; communication;

customer focus; decision making; global perspective, political awareness, and strategic decision making. Co. Ex. 21-23. The required technical competencies include: aircraft knowledge; aircraft maintenance; analytical skills; aviation industry; customer knowledge; field base support; flight safety; product and services value; technical writing; and troubleshooting. Co. Ex. 21-23. None of the competencies FSRs are expected to possess, whether general or technical, require the knowledge or application of engineering principles. Co. Ex. 21-23.

## **1. Education**

FSRs are not required to have a four year college degree. Tr. 159, 210; Un. Ex. 15, 17, 21-23. The job description for an FSR Level 3 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. FSRs who are promoted to higher levels in the FSR classifications are not required to obtain any additional education prior to the promotion. Tr. 209.

The evidence regarding the educational background of the at-issue FSRs is relatively clear regarding those with engineering degrees. The Regional Director determined that at the time of the hearing there were 92 FSRs in the voting group, 38 of which were degreed engineers. Regional Director's Decision at 29. Based on this count, FSRs with engineering degrees make up only 41 percent of all at-issue FSRs. Regional Director's Decision at 29. The Union conceded in its Request for Review that it only identified 33 FSRs with the word "engineering" in the degree title, which reflects only approximately 36 percent of all at-issue FSRs. Request for Review at 16-17.

Of the at-issue FSRs without an engineering degree, the Regional Director found that 28 have a mechanical or technical background and 26 have an educational background not clearly

identifiable as an engineering, mechanical, or technical field, or do not have an educational background contained in the record. Regional Director's Decision at 29. Again, these numbers are relatively consistent with those found by the Union. In its Request for Review, the Union identified 20 FSRs with a non-engineering Bachelor or Master of Science degree that is in a field related to their job duties, 5 FSRs with unrelated bachelor degrees, 9 employees with associates degrees, 11 with non-college related training, and 15 with empty education fields in their employment records.<sup>3</sup> Request for Review at 16-17.

## **2. Experience**

In contrast to education, experience plays a substantial role in the requirements to be an FSR. Tr. 890. As noted in the job descriptions, no matter the level of education, FSRs are required to have related work experience. Co. Ex. 21-23. FSRs come from various educational backgrounds and are generally expected to have at least five years experience working at the Company. Tr. 113. Importantly, 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.

## **3. Training**

Most individuals selected as candidates for FSR positions are required to participate in 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 FSR. Tr. 152. Co-located, Seattle Service Center FSRs, and Intro Reps are required to complete First Base Training; BOC Controllers are not. Tr. 165.

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-

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<sup>3</sup> The Union's education numbers reflect data for 93 FSRs instead of the 92 identified by the Regional Director. p. 16-17.

the-job tasks that must be performed during the ninety-day period and is instructed on the use of the tools and resources relied on by FSRs in performing their jobs. Tr. 165, 618-19, 1667.

As part of First Base Training, FSR candidates also spend a period of time in the Seattle Support Center and, while there, attend a training session in which they are introduced to the different business units and organizations with which they will interact in performing their jobs. Tr. 165-66, 618-19. There is no evidence candidates receive any training in engineering during First Base Training.

In addition to First Base training, FSRs continue to receive training throughout their careers. Tr. 166. The ongoing training includes airplane familiarization and personal development training recommended by supervisors. Tr. 166-67. FSRs may also voluntarily attend training to aid in their career development. Tr. 167. Although FSRs are expected to complete recommended training courses, which vary in content, the record does not indicate that there are specific engineering-related training courses that FSRs are required to complete. Tr. 166-67. Moreover, there is no evidence in the record that shows that training taken by FSRs includes instruction related to the use of engineering principles in their jobs.

### **C. Field Service Representatives**

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

Co-located FSRs,<sup>4</sup> Seattle Support Center FSRs, and Field Service Intro Reps work in the Field Service organization. Co. Ex. 28. Field Service is part of Technical Customer Support (“TCS”) which falls within the Fleet Services organization, Co. Ex. 28.

##### **a) Co-located FSRs**

Co-located FSRs work on location at the facilities of one of the Company’s many first tier customers throughout the world.<sup>5</sup> Tr. 24, 35. More than one FSR may be located at a first-tier

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<sup>4</sup> Co-located FSRs were also referred to as “permanent” FSRs at the hearing. Tr. 703.

<sup>5</sup> First tier customers are airlines that have either purchased an airplane directly from the Company or are the first airplane operator who has leased an airplane from a leasing company. Tr. 84.

customer's facilities at a time. Tr. 35. The customer-based locations are referred to by Field Service as bases. Tr. 35. The offices for co-located FSRs are generally located in the customer's offices or maintenance facilities.<sup>6</sup> Tr. 40, 579-83. There are approximated 37 co-located FSRs in the United States. Tr. 781; Co. Ex. 103.

*(1) 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, act as the customer's liaison between the many Company departments. Tr. 37, 92. They are charged with ensuring that customers are satisfied with the Company's products and services and with helping to 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 develop the detailed customer knowledge they need through both reactive and proactive work and by developing good working relationships with the customer's employees with whom they regularly interact. Tr. 94, 604-05; Co. Ex. 100-01. Reactive work includes responding to problems that arise with airplanes. Tr. 94. Proactive work may include strategic planning with the customer on how to improve business practices that are having a

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<sup>6</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.

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. Each customer is assigned a CAS sales director. Tr. 45, 603. The co-located FSR interacts with the CAS sales director a minimum of two times per month and as often as daily. Tr. 603. In these interactions, the CAS sales director and co-located FSR will discuss sales strategies, identify products to market to the customer, and discuss any perceived obstacles in making the sale. Tr. 603-04.

(i) Daily Rounds

Co-located FSRs are expected to 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 visit a customer's engineering department, airline management, hangers, quality assurance, or any other group with whom they interact regularly. Tr. 600, 881. Conversations during the daily rounds may involve both work-related topics and 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 the conversations. Tr. 600-01, 883.

(ii) Customer Support Plans

Co-located FSRs at bases supporting significant customers are requested to work together with other Company organizations and the customer to create a customer support plan for that customer. Tr. 170, 174-79, 637, 895-96; See Co. Ex. 24-26. Customer support plans are typically created annually but can be modified throughout the year. Tr. 637-38, 895.

In preparing the plan, co-located FSRs, with the input from the other Company organizations, seek to identify the customer's business goals and find ways to help them successfully achieve those goals. Tr. 170-71, 174-79, 636, 895-96. The purpose of the plan is

to continually improve the quality of the contribution Field Service and the other Company organizations make to the success of the customer's business. Tr. 171. Progress on the plan is tracked by co-located FSRs at the base in a web-based project management system called MET. Tr. 181-83; Co. Ex. 25-26.

(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 by 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.

Typically, customers attempt to resolve technical issues with airplanes by themselves using Company-provided manuals and resources before involving the assigned FSRs or other Company employees in the problem. Tr. 889. If the customer is unable to resolve the problem, they may seek assistance from their assigned co-located FSRs in finding a solution. Tr. 889. In providing assistance, co-located FSRs rely significantly on their past experience in dealing with similar problems to gather the information necessary to define the problem. Tr. 710, 893, 1691. They also consult repair manuals, engineering drawings, and other similar resources available to them and the customer to determine if a fix for the problem has already been created. Tr. 610-11. The record shows that at the base in Minneapolis, Minnesota, FSRs and customers were able to resolve 11 percent of the technical problems that occurred in the past year without additional assistance. Tr. 1693.



There is also evidence that co-located FSRs and customers at the Alliance base in Texas are able to resolve approximately 40 percent of airplane technical issues that occur. Tr. 890.

When the co-located FSRs and customer determine that they are unable 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 (hereinafter referred to as "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 BCA Customer Support Engineering 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.

In their role as technical advisors, co-located FSRs do not design the engineering fixes for airplane problems. Tr. 78, 481, 487, 607. They do not conduct engineering analysis and they are not authorized to author any engineering documents or create any engineering drawings that are issued to a customer or that are added to manuals that detail designed repairs. Tr. 78-79, 598-99, 658. They may, however, provide input on a repair design based on their experience with the customer. Tr. 78-79. FSRs are not required to use any mathematical calculations beyond basic math and they do not perform anything more than a basic statistical analysis, possibly relating to the frequency of a particular problem's occurrence. Tr. 748.

#### (c) Other Job Duties

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 coordinate with the parties regarding meeting times, assist the visiting employees with travel

arrangements, meet the visiting employees when they arrive, and escort them to the customer's offices. Tr. 661, 992-93. The co-located FSR is also responsible for educating the visiting employees about the customer and its business to maximize the impact of the engagement.

Tr. 38.

Co-located FSRs 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>7</sup> organization and discuss with them the customer's needs in relation to the new airplane. Tr. 96-97. The co-located FSRs can leverage their unique relationships with the customer to resolve any conflicts that may arise between the parties related to the contract. Tr. 97. Co-located FSRs also play an important role when a customer purchases Company airplanes for the first time, as they serve as the face of Boeing for the new customer. Tr. 97-98.

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. Also, 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. The Fleet Team Conference brings together representatives of all customers who operate a certain model of aircraft to discuss issues related to that model. Tr. 608. Co-located FSRs may be asked to accompany the customer to the conference to help them navigate and understand the Company and facilitate conversations between the customer and specific individuals with whom the customer has asked to meet. Tr. 609. Fleet Team Conferences are normally held in either Seattle or Long Beach depending on the airplane model at issue. Tr. 609. Fleet Team Conferences are typically held twice per year. Tr. 610.

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<sup>7</sup> Contract Administration is a business unit at the Company responsible for drafting contracts for the sale of products and services. Tr. 97.

(2) *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 these tools are accessed through Field Service's home page, which is available via the Company's intranet. Tr. 43; Co. Ex.1. The 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.
- b) Manuals, Drawing, and Catalogs - contain processes, fixes, and product lists for each of the Company's aircraft and include: the Aircraft Maintenance Manual; the Fault Isolation Manual; the Aircraft Readiness Log; the Airplane Flight Manual; the Built-In Test Equipment Manual; the Component Maintenance Manual; the Supplier Maintenance Manuals; the Engineer Indication and Alerting System; the Illustrated Parts Catalog; the Maintenance Tips; the Wiring Diagram Manual; and the Structural Repair Manual. Tr. 47, 1668; Un. Ex. 23.
- c) Service Bulletins - documents that describe a specific problem with an airplane and the solution to that problem. Tr. 450.
- d) Field Service Data Store - a web-based tool that is accessed through the Field Service home page that is used to record an airplane's status and any configuration changes performed by non-Boeing companies and to 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 in which FSRs, customers, and other Company employees enter and track service requests. Tr. 42, 594, 998; Co. Ex. 1.

- f) Significant Issues Visibility Tool - an application that Field Service uses 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.
- g) Share Point Sites - web-based sites that Field Service regions use to publish information to be shared with co-located FSRs within the region. Tr. 51.

b) Seattle Support Center FSRs

Field Service provides support for second tier customers via its Seattle Support Center located in Duwamish, Washington.<sup>8</sup> Tr. 26,102. There are approximately 10 FSRs who work in the Seattle Support Center. Tr. 783; Co. 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. FSRs in the Seattle Support Center may on occasion visit their assigned customers, but such visits are infrequent. Tr. 105. The center supports approximately 400 to 500 different customers. Tr. 26, 104.

Seattle Support Center FSRs are required to perform most of the same job duties and provide the same types of customer support as co-located FSRs, but with the limitations commensurate with being at a site remote from the customer. Tr. 31, 105. They also use the same tools. Tr. 29-30, Co. Ex. 3-20. At times, FSRs in the Seattle Support Center also participate in process improvement activities with employees from other groups from TCS and CAS that are intended to help improve the Company's performance. Tr. 30.

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

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<sup>8</sup> Second tier customer customers are those airlines that have purchased used Company airplanes. Tr. 26. They are generally smaller and need support less frequently. Tr. 26, 105.

these short-term assignments are referred to as 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. Ex. 108.

Intro Reps come primarily from the flight line where they worked as mechanics. Tr. 27. They do not work on engineering processes or designs. Tr. 28. They do not test or draw any parts of the airplanes. Tr. 28-29. As FSRs in Field Service, Intro Reps use the same tools and resources as co-located FSRs. Co. Ex. 3-20.

(1) *Job Duties*

Intro Reps 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 for 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. They also contact the co-located FSRs working with the customer to help determine what type of support the customer is actually going to need. Tr. 33. Some customers are better equipped to integrate the new airplane model than others, so the information gathered from co-located FSRs related to the customer's capabilities is very valuable. Tr. 33-34.

During their assignment, Intro Reps work closely 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 are 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 arrives at 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. When an airplane arrives from a flight and all the passengers deplane, the Intro Rep, usually with the customer's lead mechanic, goes onboard the airplane to assess the airplane's health. Tr. 421.

#### (b) Overnight Maintenance

The secondary job of Intro Reps is overnight maintenance. Tr. 422. During the day, as pilots fly the airplanes, they record in a log book any problems they encountered. Tr. 423. 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 do not design or perform any repairs and 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. Tr. 276, 278, 1288. There are approximately 14 Controllers in the BOC. Tr. 785; Co. Ex. 109. Many of the Controllers hired into the BOC are hired from airlines and have a background in mechanics. Tr. 323-24. They are

hired because of their practical knowledge and not their theoretical knowledge of how to fix airplanes. Tr. 323-24, 337.

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 customer's request based on the information they collect without engaging other BOC employees. Tr. 1284, 1287-88, 1328. They resolve approximately 2 to 3 service requests out of 30 on their own. Tr. 1332. When they resolve a customer problem, they rely on manuals and drawings to determine if there is an existing solution. Tr. 1328. They do not design or develop new solutions and they do not issue engineering drawings. Tr. 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. Approximately 60 percent of a Controller's day is spent communicating with customers. Tr. 321. The remainder of their day is spent performing administrative tasks, such as directing messages to where they need to go. Tr. 322.

Controllers do not design, develop, or test component parts for airplanes and they do not design processes or systems used in Company products. Tr. 327. They are not required to have an engineering degree. Tr. 281. In performing their jobs, they rely most significantly on their prior experience working with airplanes, often as mechanics, and not on knowledge they have acquired from a course of study in engineering. Tr. 328.

Six to seven times per month, a controller will be assigned to manage the SIVT. Tr. 1333. As noted above, the SIVT is an electronic tracking tool for high priority service requests. Tr. 53-54. BOC is typically responsible for resolving the service requests list on SIVT and uses the information from SIVT in their daily meeting to help prioritize the day's work. Tr. 286-87. On the days they are assigned to manage SIVT, the controller does not perform their other typical job duties. Tr. 1333.

### **3. 787 and 747 Intro Reps**

The Company is currently flight testing two new models of airplanes: the 787 and the 747-800. Tr. 525. To prepare for deployment of the new models, 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;



Co. Ex. 106-107. The 787 Intro Reps are located in Seattle and the 747 Intro Reps are located in either Palmdale or San Bernardino, California.<sup>9</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). 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>10</sup>, or military background. Tr. 548.

a) 787 Intro Reps

There are two stages to the work performed by 787 Intro Reps. The first stage is pre-delivery of the airplane where the 787 Intro Rep is preparing for entry of the 787 into service. Tr. 426. The 787 Intro Reps are currently in this stage. Tr. 426. The second stage will come 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 is in flight test, the 787 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 the maintenance procedures, how

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<sup>9</sup> At the time of hearing, 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>10</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.

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.

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

The responsibilities of 787 Intro Reps after delivery of new 787 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 team will be onsite with the customer for approximately 90 days. Tr. 499. As part of the 787 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 and on-the-job training to the customer's maintenance employees. Co. Ex. 79.

b) 747 Intro Reps

As with the 787 Intro Reps, there are two stages to a 747 Intro Reps' assignment: pre-delivery and post-delivery. The 747 Intro Reps are currently with the airplane as it is being flight tested so they can gain experience with and knowledge about the new airplane. Tr. 419. In addition to gaining experience with the airplane, the Intro Rep may provide advice or feedback about the airplane from a customer's point of view. Tr. 419.

When the 747-800 is delivered to a customer for the first time, the 747 Intro Rep will accompany the airplane to the customer. Tr. 420. The onsite assignment will only last approximately 60 days, instead of the 90 days for other airplanes. Tr. 420. The 747 Intro Reps will be performing duties similar to those performed by Field Service Intro Reps, including performing meet and greets and overnight maintenance. Tr. 531. The 747 Intro Reps will spend approximately 65 percent of their work hours performing meet and greets and the remaining 35 percent of their time working on overnight maintenance. Tr. 543. When working on overnight maintenance, the 747 Intro Reps may engage in some troubleshooting. Tr. 543, 531. If the 747 Intro Rep is unable to fix the problem, he or she may enlist the help of the onsite service engineer for more complex troubleshooting requiring more knowledge and expertise. Tr. 531.

#### **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.

Customers are assigned to BBJ FSRs based on geographic location. Tr. 371. Typically, if a customer has BBJ and commercial airplanes, the BBJ FSR will be assigned to support that customer for all airplanes. Tr. 349. BBJ FSRs visit each of their customers two to three times per year. Tr. 352.

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.

BBJ FSRs also provide support to modification centers. Tr. 347, 368. Modification centers are Company approved third-party businesses that perform the modifications to Company airplanes to meet customer's specifications and preferences. Tr. 368. BBJ FSRs provide support to modification centers by answering questions about proposed modifications to the airplane or helping them find the right answer from other Company organizations, either directly or by filing a service request through BCS. Tr. 369-70.

The support provided to customers includes introductory support for new airplanes. Tr. 347-48. 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.

BBJ customers are encouraged to contact their assigned FSR whenever they have a problem with their airplane. Tr. 356-57. The BBJ FSR will then submit the necessary service request to BCA Customer Service Engineering. Tr. 356-57. This is unlike the situation with commercial customers, who are encouraged to contact the Company directly through BCS. Tr. 357. The purpose of having BBJ customers contact their FSR directly is to signal to them that they will be treated more directly and more personally than their commercial counterparts. Tr. 357.

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

One of the principal characteristics of the Engineering Unit is that its members must be engineers. Employees working in Engineering Unit classifications are required to have at least a bachelor's degree in engineering, computer science, mathematics, physics or chemistry.<sup>11</sup> Co. Ex. 32-74; Bd. Ex. 3. They are also required to regularly use engineering principles in the performance of their jobs. Co. Ex. 32-74; Bd. Ex. 3. The Union, in its 1999 Second Post Hearing Memorandum in NLRB Case No. 19-RC-13649, affirmed that "the engineering employees throughout Boeing share common educational backgrounds and job requirements." Co. Ex. 136, 26.

The Union in its 1999 Second Post Hearing Memorandum also acknowledged that the bargaining unit at issue in this case constitutes an engineering unit and that for classifications of employees to be eligible for inclusion in the unit they must perform engineering work.

Co. Ex. 136, p. 2. Language from the Parties' contract supports this position. Jt. Ex. 1.

It states:

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<sup>11</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.

As far as the disciplines that constitute engineering work, the Union explained in its 1999

Petitioner's Second Post Hearing Memorandum:

All engineers, regardless of field, study a common curriculum during their first two years of study. They then take more specialized classes, with considerable overlap, depending upon the particular field of engineering they elect. Tr. 13437. All four-year engineering degree programs are rigorous in their requirements for calculus, differential equations, compound mathematics, thermodynamics, dynamics, chemistry, physics, and statistics. Tr. 10721-28, 10902-03.

Co. Ex. 136, p. 20.

The Union has a history of defending the contractual right that Washington Engineering Unit members have to perform engineering work. 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 by 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.

There is no evidence that the Union has ever filed a grievance arguing either that FSRs should be recognized as engineers as defined by the Parties' contract or that the Company has violated the contract by having FSRs perform work exclusive to engineers. Tr. 310.

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

The Union seeks review of the Regional Director's determination that the FSRs sought by the Union to be added to the existing Engineering Unit through an *Armour-Globe* election are

not professional employees and, thus, the Union was obligated to consent to a *Sonotone* election among existing Engineering Unit employees before the *Armour-Globe* election could go forward. It also requests that the Board resolve the outstanding community of interest and supervisory status issues related to the case.

The evidence fails to show, however, that (1) the FSR group sought to be represented by the Union consists primarily of individuals with professional degrees and, (2) that FSRs perform work that requires “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.” 29 U.S.C. § 152(12). Accordingly, the Regional Director correctly found that FSRs are not professional employees as defined by the Act and that the *Armour-Globe* election sought by the Petition is inappropriate without also holding a *Sonotone* election among existing Engineering Unit employees. The Union has not consented to the required *Sonotone* election. Therefore, the Union’s Request for Review must be denied and the Board should deny the Union’s request that it resolve the outstanding community of interest and supervisory status issues.<sup>12</sup>

**A. Professional Employees Under the NLRA**

As the Regional Director correctly noted, the Petition and facts in this case present a threshold issue – are the FSRs that the Union seeks to include in the voting group professional employees? This question is critical because Section 9(b) of the Act prohibits the inclusion of non-professional employees in a unit with professional employees unless a majority of the professional employees vote for inclusion in such a unit. 29 U.S.C. § 159(b). Accordingly, if the

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<sup>12</sup> The Board’s Rules and Regulations are quite specific, noting a Request for Review will only be granted for reasons such as the Regional Director’s decision: (1) raises a substantial question of law or policy (see 102.67(c)(1)) (emphasis added); or (2) a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party (see 102.67(c)(2)) (emphasis added). As noted in greater detail below, the Union’s Request for Review does not meet these high standards. The Regional Director’s decision was consistent with 70 years of Board precedent and the factual findings are fully supported by the record.

FSRs are not professional employees, a *Sonotone* election must be held in which the employees in the existing Engineering Unit, an acknowledged professional employee unit, must vote to determine whether they desire to include the FSRs in their unit. *See Sonotone Corp.*, 90 NLRB 1236 (1950). Only then can the FSRs participate in an *Armour-Globe* election to determine whether they want to join the Engineering Unit and elect the Union as their exclusive bargaining representative.

Section 2(12) of the Act defines "professional employee" in relevant part as:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

29 U.S.C. § 152(12).

Accordingly, FSRs must satisfy each of the four requirements set forth in Section 2(12)(a) before they qualify as professional employees within this definition *Greenhorne & O'Mara*, 326 NLRB 514, 517 (1998); *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993); *see also Group Health Assn.*, 317 NLRB 238, 240 (1995) ("Section 2(12)(a) of the Act defines professional employees as those who meet four conjunctive criteria[.]"). The Board has warned that the professional employee classification "was meant to apply to small and narrow classes of employees." *Express-News Corp.*, 223 NLRB at 630; *Greenhorne & O'Mara, Inc.*, 326 NLRB at 517.

The Parties do not contest that the at-issue FSRs meet the first three criteria of the professional definition. However, the Union failed to sustain its burden of adducing evidence upon which the Regional Director could find that the fourth criterion was met. *See Willett Motor Coach Co.*, 227 NLRB 882 n.3 (1977) ("the parties have the burden of adducing evidence upon

which a resolution of these challenges may be based”). Thus, the Regional Director’s conclusion that FSRs are not professional employees is appropriate.

**B. The Evidence Does Not Support a Presumption That FSRs Are Professional Employees**

The Regional Director determined that only 38 of the 92 at-issue FSRs have a degree in engineering. That constitutes approximately 41 percent of the at-issue FSRs. Based on these numbers, the Regional Director, declined to presume that FSRs are professional employees.

The Union challenges the Regional Director’s conclusion on four grounds:<sup>13</sup>

- 1) the Regional Director erred in its analysis because he failed to recognize that the Engineering Unit can include professional employees other than engineers and he failed to consider degrees in aeronautics-related fields as professional degrees;
- 2) the Regional Director should not have categorized FSRs whose educational information was blank in their records as employees without professional degrees;<sup>14</sup>
- 3) the Regional Director failed to properly consider the experience of the FSRs in his education analysis; and
- 4) the Regional Director ignored the post-hire training received by FSRs that is engineering in nature.

The Board has long held that when determining the professional status of employees, it is the work performed by those employees that is the determining factor and not necessarily their educational backgrounds. *See Avco Corp.*, 313 NLRB 1357 (1994); *Western Electric Co.*, 126 NLRB 1346 (1960). Although work performed is the predominant factor in determining professional status, the educational backgrounds of at-issue employees may also play a role, especially when the employee group at issue consists primarily of individuals with professional

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<sup>13</sup> See paragraphs 1-6 on pages 8-9 of the Union’s Request for Review.

<sup>14</sup> Employees are responsible for entering their own educational information in the Company’s system. Thus, there are several possible reasons for the absence of information, including not having an educational background or not having an educational background relevant to their FSR duties.



degrees. When the employee group consists primarily of individuals with professional degrees, a presumption is triggered that the work performed by those employees is professional in nature. *See Avco*, 313 NLRB at 1357; *Western Electric*, 126 NLRB at 1349.

In spite of the Union's claims to the contrary, the presumption does not apply in this case. The evidence fails to support the Union's assertions that aeronautics-related degrees are professional in nature or that FSRs gain the requisite professional knowledge through their work experience and/or post-hire training. Thus, the Regional Director did not err in declining to rely on the presumption that FSRs are professional employees.

**1. The Engineering Unit is an Engineer-Only Professional Unit and Aeronautics-Related Degrees are not Engineering or Professional in Nature**

The Union argues that the Regional Director failed to recognize that the NLRA does not require that a professional unit consist solely of one type of professional employee and, that in so doing, he failed to consider FSRs with aeronautics-related degrees when determining if the education presumption applied in this case. Request for Review at 14. By making this argument, the Union concedes that degrees in aeronautics-related fields are not engineering in nature. The Union position also ignores the fact that 1) the Engineering Unit is an engineer-only unit by the terms of the parties' collective bargaining agreement, 2) the Union has acknowledged and defended the historic engineer-only nature of the Engineering Unit in past proceedings before the Board, and 3) there is no support in the record that aeronautics-related degrees are professional in nature.

a) The Collective Bargaining Agreement Explicitly Limits Inclusion in the Unit to Employees who Perform Engineering Work

Article 22, Section 1(a), of the parties' collective bargaining agreement states that the unit "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." Jt. Ex. 1, p. 45. By the clear terms of the language, the collective bargaining agreement does not permit the inclusion of those employees that

periodically or sporadically apply engineering disciplines in their work or employees who only apply non-engineering disciplines. It clearly requires that the application of engineering principles be a regular part of the work performed by eligible employees.

The Union itself, contrary to its current argument, has actively defended the exclusive nature of the unit as an engineer-only unit. In its 1999 Second Post Hearing Memorandum, it asserted, “. . . Boeing and SPEEA have over a 50 year history of recognizing an engineer only bargaining unit as appropriate.” Co. Ex. 136, p. 48. In that case it rejected the Company’s attempt to include non-engineering professionals in the Engineering Unit. Co. Ex. 136, p. 47. Clearly, the Union’s current claim that non-engineering professional employees may be joined with the Engineering Unit is prohibited by the explicit terms of the parties’ collective bargaining agreement and the established history of the parties recognizing an engineer-only unit.

b) There Is No Evidence Showing That Aeronautics-Related Degrees Are Professional In Nature

Conceding, in effect, that an aeronautics-related degree is not an engineering degree, the Union claims that aeronautics-related degrees are professional in nature and, thus, FSRs with those types of degrees should be considered when determining if the educational presumption applies. Request for Review at 13-18. However, as discussed above, the Engineering Unit is an engineer-only unit and, therefore, FSRs with such degrees were properly excluded from those with engineering degrees in the Regional Director’s presumption analysis.

More importantly, the record fails to establish that aeronautics-related degrees are professional in nature. Thus, the Regional Director’s decision to not find a presumption of professional status is not impacted.

The record shows the fundamental components of an engineering degree which reflect its professional nature. As explained by the Union in its 1999 Petitioner’s Second Post Hearing Memorandum:

All engineers, regardless of field, study a common curriculum during their first two years of study. They then take more specialized classes, with considerable overlap, depending upon the particular field of engineering they elect. . . . All four-year engineering degree programs are rigorous in their requirements for calculus, differential equations, compound mathematics, thermodynamics, dynamics, chemistry, physics, and statistics.

Co. Ex. 136, p. 20.

The evidence addressing aeronautics-related degrees shows significantly different requirements. Union witness Andrew Somers testified that his degree in professional aeronautics was a general degree, not an engineering degree. Tr. 1515-16. This statement is corroborated by the course description of a professional aeronautics degree from Embry-Riddle Aeronautical University. Co. Ex. 128, 129. Required courses for the professional aeronautics degree that are related to aeronautics include: statistics with aviation applications, aeronautical science for management, aviation legislation, aviation law, basic aerodynamics, basic aircraft performance, aviation safety, and aeronautical science capstone course. Other required courses include: principles of management, financial accounting, advanced computer based systems, and management of technical operations. Co. Ex. 129. This degree description from Embry-Riddle, when compared to the rigors of an engineering degree as noted above, reflects the type of general degree course work the Board has determined is insufficient for purposes of the professional status presumption. *See Express-News Corp.*, 223 NLRB 627, 629 (1976). If aeronautics-related degrees, like the professional aeronautics degree discussed above, constitute a professional degree for purposes of the Act, then any field-specific degree would constitute a professional degree, a result that would (a) expand the Section 2(12) professional definition beyond its intended statutory bounds and (b) fly in the face of the Board's counsel that the professional employee classification "was meant to apply to small and narrow classes of employees." *Id.* at 630; *Greenhorne & O'Mara*, 326 NLRB at 517.

## **2. The Inclusion or Exclusion of FSRs Who Lack Educational Information Does Not Impact the Regional Director's Decision Not to Find a Presumption of Professional Status**

The Union argues that the Regional Director erred when he included FSRs with no listed educational information with FSRs who did not have engineering degrees. Request for Review at 15-16. The Regional Director's decision is reasonable considering there is no evidence on record that the FSRs without educational information listed actually have engineering degrees. As the party seeking to invoke the professional status presumption, the Union has the responsibility to ensure that the evidence supports its assertion. *See Willett Motor Coach*, 227 NLRB at 882 fn. 3. It did not do so. Thus, the Regional Director was justified when he included FSRs with no listed educational information with FSRs who lack an engineering degree.

Even if the FSRs without educational information are excluded from consideration as suggested by the Union, the number of FSRs with engineering degrees is not sufficient in relation to those without to trigger the presumption. The Union concedes in its Request for Review that only 33 FSRs have a degree with engineering in the title. Request for Review at 16-17. That constitutes just 42 percent of the 78 FSRs that remain after decreasing the total number of FSRs by those who show no educational information. These numbers would still fail to show that the FSR group consists primarily of individuals with professional degrees.

## **3. The Union's Argument that Experience is a Suitable Substitute for Education is Not Supported by the Record**

The Union, in its attempts to overcome the non-professional educational background of the FSR group as a whole, seeks to establish that the experience of FSRs is a sufficient substitute for acquiring professional knowledge through formal education. Request for Review at 19-21. Although there is no doubt that most FSRs have extensive experience in their positions, as demonstrated below in Section IV.C of this Opposition to the Union's Request for Review, there is no evidence showing how the FSRs without engineering degrees have learned

to perform engineering work through their experience alone. *See Loral Corp.*, 200 NLRB 1019, 1021 (1972) (certain employees were found to be technical employees, not professional employees, in spite of the fact many had considerable experience in the industry); *F.W. Sickles Company*, 81 NLRB 390, 394 (1949) (there was insufficient evidence to establish that an employee with 11 years experience with the employer and additional three additional years in the industry was a professional employee).

The weakness of the Union's claim that experience is a viable substitute for a professional education is highlighted by considering new FSRs or FSRs with only limited experience. For example, the Union identified in its Request for Review three FSRs with only associates degrees that have six years of experience or less, one of which has less than one year experience. Request for Review at 20. It gives no explanation, however, as to how these three FSRs acquired professional knowledge with such limited experience and it seeks no exception to their inclusion in the FSR group for purpose of the Petition. *See Express-News Corp.*, 223 NLRB at 630 (refusing to find professional status where the employees are able to perform the required work with limited or unrelated academic backgrounds and/or experience because it would be "contrary to the narrow limits imposed by Congress in enacting Section 2(12) of the Act").

#### **4. The Evidence Regarding Training is Insufficient to Establish that FSRs are Trained in Engineering Skills after Hire**

The Union finally seeks to establish the professional knowledge of the FSRs by relying on training they receive after hire. Request for Review at 22-23. However, there is no evidence that FSRs are required to participate in training that would provide the necessary exposure to the rigors of engineering principles to provide them with professional knowledge.

To become an FSR, candidates must participate in First Base training. First Base training generally takes the form of on-the-job training in which candidates must complete a list

of job-related tasks. There is no evidence that it includes any classroom-like instruction on engineering principles.

The Union points to additional training taken by some FSRs post-hire that it claims shows FSRs receive instruction regarding engineering principles. Request for Review at 22. It listed in its Request for Review several training programs attended by FSRs that appear to address engineering issues. *Id.* However, there is no evidence that FSRs without engineering degrees are required to attend engineering-based training programs and there is no evidence showing the curriculum of any of the training courses listed by the Union and how in-depth the engineering-related training is. Moreover, there is no evidence showing how that training applies to their job duties.

Contrary to the claims of the Union there is no evidence that the FSR group sought to be represented by the Union consists primarily of individuals with engineering degrees or individuals with experience or training in engineering sufficient to trigger the presumption that FSRs perform engineering work. Thus, the Regional Director properly refused to apply the presumption in the case.

### **C. The FSRs Do Not Perform Engineering Work**

In addition to declining to apply the presumption that FSRs are professional employees based on their educational background, the Regional Director determined that the work performed by FSRs does not require the application of engineering knowledge and, instead, mainly requires FSRs to act as conduits of information between the Company and its customers. He concluded, therefore, that FSRs are not professional employees as defined by the Act.

The Union asserts that the Regional Director erred in determining FSRs are not required to perform engineering work based on four basic arguments:<sup>15</sup>

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<sup>15</sup> See paragraphs 7-11 on pages 9 of the Union's Request for Review.

- 1) the Regional Director misapplied case law when determining that FSRs do not regularly perform professional work;
- 2) the Regional Director wrongly concluded that the FSR job descriptions do not reflect that the performance of engineering work is a necessary part of the job;
- 3) the Regional Director failed to consider that FSRs rely on professional knowledge other than engineering knowledge in the performance of the work; and
- 4) the Regional Director failed to consider the fact that FSRs need engineering knowledge to communicate with engineers.

For the reasons set forth below, the Union has failed to establish that the Regional Director did not properly consider the case law and record evidence in making his decision that FSRs do not perform professional work. Therefore, the Request for Review should be denied.

#### **1. FSRs Must Perform Professional Work to be Deemed a Professional Employee**

Although the FSRs are highly skilled and critical to the success of the Company, the position does not require knowledge of the advanced type contemplated by the Act.

In evaluating whether employees meet the fourth criterion of Section 2(12)(a), even if the employees have an advanced degree, the Board must look to the employees' actual work performed because Section 2(12) cannot be met by merely considering an employee's degree, license, or other qualification. *Avco Corp.*, 313 NLRB 1357, citing *Western Electric*, 126 NLRB at 1347-1348. Thus, in determining whether employees are professional employees, the Board does not examine the individual qualifications of each employee but rather the character of the work required of them as a group. See, e.g., *Chesapeake Telephone Co.*, 192 NLRB 483 (1971); and *Loral Corp.*, 200 NLRB 1019 (1972). See also *Avco Corp.*, 313 NLRB 1357.

#### **2. Professional Employee Work Must Require Application of Advanced Knowledge**

The Board has consistently found that engineers do not qualify as professional employees under the Act when they perform routine work and/or work that does not require the

application of any engineering principles or advanced mathematics. For example, in *A.A. Matthews Associates*, 200 NLRB 250 (1972), the Board held that “engineer-inspectors” who held engineering degrees were not professionals because the major portion of their work involved inspection of construction work similar to that performed by admittedly nonprofessional employees, and even assuming that they exercised some discretion, they did not do so consistently. *Id.* at 251. Similarly, in *Design Service Co.*, 148 NLRB 1050 (1964), the Board found 151 “engineers” to be technical employees, where only 24 had engineering degrees and none performed work consistently requiring the exercise of discretion and judgment predominantly intellectual in character, but rather merely wrote specifications for necessary material and equipment after studying blueprints submitted by the employer. *Id.* at 1051–1052.

In *F.W. Sickles Company*, 81 NLRB 390 (1949), the Board considered whether employees with virtually the same job requirement and job duties as FSRs should be included in a voting group of technical employees or engineering employees. In deciding to place the production engineers in the technical employee group, the Board determined that the most important requirement for employment as a production engineer was a thorough knowledge of the employer’s products and that, in performing their jobs, the production engineers were to act as “trouble shooters,” represent the engineering unit as a whole, and have a good deal of contact with the customers. *Id.* It also noted that even when responding to customer complaints, the production engineer only initiated and directed corrective action. *Id.* Given these duties, the Board determined that the engineers did not qualify as professional employees under the Act. *Id.*

In *New York Telephone Co.*, the Board came to a similar conclusion, finding that employees working as special representatives were not engineers. 79 NLRB 1124, 1125 (1948). In that case, the Board acknowledged that the special representatives handled customer requests for installation and servicing of equipment; however, requests for more complicated equipment were handled by service engineers. *Id.* It also noted that the job did not require



knowledge of engineering or mathematics because it was limited to handling of predesigned equipment as set forth in manuals furnished by the employer. *Id.* Finally, the special representative was only required to attend a three week training course to acquaint them with the equipment they would be servicing. *Id.*

In *Loral Corp.*, 200 NLRB 1019 (1972), the Board found that several employee classifications were technical and not professional in nature. First, the marketing managers functioned as “technical liaison representatives” who dealt with military representatives. Second, the quality assurance engineers and senior quality assurance engineers worked from and interpreted military specifications. They did this to determine the quality criteria the employer should establish to evaluate its manufacture of electronic components and systems so as to achieve satisfactory contract performance. Third, the methods engineers, senior methods engineers, and production engineers used engineering designs to decide the most efficient manufacturing procedures, the components needed, and the production process involved. They also changed materials and tolerances if necessary and determined appropriate manufacturing sequences and man-hours needed to assure contract performance. Although the Board found that while the employees in these classifications were generally highly experienced in technical areas, the character of the work required of them as a group fell short of that required of professional employees as it did not clearly require knowledge of an advanced type. *Id.* at 1022.

Even when employees do engage in intellectual work, the Board still requires considerable evidence establishing that knowledge of an advanced type is needed for a substantial portion of their work. For example, in *Texaco Port Arthur Works Employees Federal Credit Union*, 315 NLRB 828, 831 (1994), the Employer did not establish that its loan officers engaged in intellectual work required by the Act. The employer put forth no evidence of how much time the loan officers spent making loan decisions as opposed to performing loan interviews that only involved the gathering of information upon which the decision was made. The Board found that if any of the loan officers’ work was intellectual and involved the exercise

of discretion and judgment as required by Section 2(12), there was no evidence as to the nature of the discretion and judgment actually exercised by the loan officers when performing their job duties or whether those job duties comprised a major portion of their work. *Id.* at 831-32. Rather, the evidence established that the employer had guidelines dictating when loan officers and others could approve loans. *Id.* at 832. *See also A.A. Matthews*, 200 NLRB at 250 (discretion and advanced knowledge not exercised consistently).

In contrast, where there is considerable and definitive evidence that the employer's engineers use their engineering knowledge for a major portion of their duties, the Board frequently finds those engineers to be professionals under the Act. *See, e.g., Utah Power & Light Co.*, 258 NLRB 1059, 1060 (1981) (engineers, most with B.S. in engineering and many with M.S. in specialized field of engineering, assigned to highly complex and technical projects); *Union Electric Co.*, 217 NLRB 666 (1975) (experienced graduate engineers whose work required the use of mathematical techniques involving statistics and calculus and understanding learned in their engineering education qualified as professionals; as well as an engineer who recently obtained his bachelor's degree in engineering but who had not in the few weeks of his employment had an opportunity to apply his technical knowledge, where the employer had hired him to act in the capacity of a professional); *Westinghouse Electric Corp.*, 89 NLRB 8 (1950) (engineers, most of whom had degrees, and junior engineers with degrees working under full engineers and expected to progress to higher engineering classifications); *Westinghouse Electric Corp.*, 80 NLRB 591 (1948) (production engineers, most of whom had degrees and the remainder had acquired comparable skills thru experience); *Solar Mfg. Corp.*, 80 NLRB 1358 (1948) (degreed junior engineers working under general supervision of senior engineers).

### **3. The FSRs Are Not Required to, and Do Not, Primarily Apply Engineering Knowledge in the Performance of Their Duties**

Consistent with Board law, the Regional Director found that the Union made no showing that the FSRs' work is predominantly intellectual in character or requires the use of judgment that is based on advanced intellectual instruction. The Regional Director's Decision correctly focuses on "engineering" as the knowledge "customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning" that the FSRs are alleged to use in the performance of their work, as there is no evidence of any other advanced knowledge of a specific kind used by the FSRs. *Cf. Wurster, Bernardi & Emmons, Inc.*, 192 NLRB 1049 (1971) (although a modelmaker for an architectural firm had a degree in business administration and had taken some architectural courses, they were unrelated to his work).

As the Regional Director notes, engineering involves the application of science and mathematics to properties of matter and sources of energy in nature to make them useful to people. *See, e.g., Union Electric Co.*, 217 NLRB 666 (finding that the engineers were professionals because they were required to use mathematical techniques involving statistics and calculus which was not required or utilized by the technical employees). However, as the Regional Director correctly determined, there is no evidence FSRs in any group perform any work at the design, manufacturing, and/or testing stages, other than the limited testing exceptions discussed and appropriately addressed by the Regional Director in his decision. Accordingly, the proper issue is whether the FSRs are applying science and mathematics to the level of an engineer in the performance of their duties.

The Union's contention that the FSRs are professional employees fails because the undisputed record evidence establishes that a significant portion of FSR duties consist of customer service responsibilities and relationship building with the Company's clients. For example, co-located FSRs conduct daily rounds designed primarily to build relationships with

the customers. These rounds take between five to 20 percent of each work day. At times, relationship building is their exclusive activity; for example, when accompanying their customer to meet with the Company for Fleet Team conferences. As it is undisputed that these customer liaison duties are wholly unrelated to engineering and/or technical knowledge, the Regional Director correctly determined that the FSRs are not professional employees under the Act.

Similarly, the record supports the Regional Director's finding that the BBJ FSRs spend 30 to 40 percent of their day simply communicating with customers, much of which involves building positive relationships, and spend 30 percent of their time each year visiting customers on-site. Again, much of this time is devoted to building positive relationships with the customer, not on purely technical tasks.

For the FSRs employed at the Boeing Operations Center (the Controllers), they spend 60 percent of their time communicating with customers and assisting them with their issues. There was no evidence that the Controllers used any engineering knowledge when assisting customers. Indeed, the Controllers are only able to resolve about 10 percent of the issues they receive without involving an engineer employed at the BOC. The Controllers spend the remaining 40 percent of their time on administrative tasks.

Turning to the more technical tasks performed by the FSRs, the Regional Director correctly determined that FSRs are not required to, and do not regularly, apply engineering disciplines to the research, design, development, test and evaluation of Company products or processes. The overwhelming record evidence establishes that when recommending fixes to airplanes, FSRs are only required to use manuals, catalogs, service bulletins, and other resources that contain pre-designed, pre-tested, and pre-approved solutions. While this data may be technical in nature, contrary to the Union's assertions, there is absolutely no evidence that engineering principles or advanced mathematics are required to decipher them.

In performing their technical duties, FSRs are generally capable of resolving no more than 40 percent of the problems brought to their attention without involving Customer Support

Engineering. In resolving these issues, the record evidence establishes that many FSRs like Andrew Somers often rely on their prior mechanical experience and their knowledge of manuals and drawings they used as a mechanic rather than any engineering principles.<sup>16</sup> Notably, if a FSR cannot locate a solution in the available resources, the problem is sent to the Company's engineers to design and develop a solution. It is not just sent to other FSRs.

Meanwhile, the Intro Reps primarily perform meet and greets for newly introduced airplanes as they arrive at the airport. Tr. 420-21, 1464. As Mr. Somers testified, when a new airplane arrives, Intro Reps walk around the airplane from nose to tail looking for "fuel – anything that might hinder the dispatch of that airplane for the next flight, . . . cuts in tires, damaged heat shields on the brakes, fuel coming out of the vents or out of panels, . . . hydraulic fluid dripping, . . . worn tires, . . . control surfaces that aren't in the right position, elevator up/elevator down at the gate when they're supposed to be both up or down." Tr. 1474. He also testified that Intro Reps confer with the pilots and the crew to determine if there are any questions, concerns, or issues with anything on the airplane. As such, the Intro Reps work is very similar to work performed by mechanics, which Mr. Somers described as follows:

If we – if the plane was going to go out again, say it – we were – they would go off to test something. Fly for an hour, come around. The pilots would maintain control of the airplane, not return it to shop. We would do a brief inspection to make sure there were no worn tires, the brakes looked good, the fuel was good, the hydraulics were good, the engines had no damage to them from bird strikes or FOD ingestion, FOD being foreign object debris, and make sure the plane was airworthy to go out again.

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<sup>16</sup> For example, while on assignment as an Intro Rep, Mr. Somers had an issue where the wastewater system on a new airplane model was not working properly. Initially, the customer attempted to troubleshoot the problem, but the customer's fix did not work. After it was brought to his attention, Mr. Somers worked with Customer Support Engineering to fix the problem and recommend possible troubleshooting options to the customer. He also participated in applying and testing solutions recommended by the engineers in Customer Support Engineering. In helping to resolve the issue, Mr. Somers testified that he relied primarily on his past experience as an airplane mechanic and his knowledge of manuals and drawings he had used as a mechanic. There is no evidence that he designed or developed any repairs to the wastewater system or issued any engineering drawings.

Tr. 1519. This similarity between the duties performed by Intro Reps and mechanics confirms that the work performed by FSRs is only technical and does not require knowledge of engineering principles.

Contrary to the Union's assertions, none of the examples it propounded in its Request for Review establish that FSRs perform engineering work. Rather, as described and discussed by the Regional Director, the FSRs' technical work merely involves trouble shooting issues and providing customer service. For example, when FSR Hirsch helped a customer address cracks in a pylon, Hirsch attempted to locate a replacement part, explored whether an equivalent part existed on another aircraft, submitted the request for the "no technical objection" statement from Customer Support Engineering, convened several conference calls with engineering departments, and informed Customer Support Engineering that the engineers did not fully realize the difficulties created by an 800 operating hours check. However, as the Regional Director aptly noted, in each of these instances Hirsch's primary function was conveying information to the Company's engineers or locating information for the customer's engineers. In none of those tasks did he apply any engineering principles. Instead, he facilitated communication and advocated the customer's concerns to Customer Support Engineering. Indeed, the record evidence establishes that it was the customer's employees that measured the crack and drafted the design, and Hirsch admitted that his advice for a solution was based on his experience in Field Service, not his engineering knowledge.

Although the Regional Director acknowledged that Hirsch applied his engineering knowledge when he developed the "bathtub" fix with the customer's engineer and recognized the thermal interplay of the tire pressure gauge components, and that other FSRs who are degreed engineers sometimes use their engineering knowledge to make recommendations, he correctly found no evidence that engineering knowledge is *required* of FSRs. Rather, as the Regional Director noted, Hirsch's engineering knowledge merely allowed him to make "a particularly useful contribution" but the Company "had an engineering process in place that

presumably would have resolved the problem absent such a suggestion...” Regional Director’s Decision at 32. Confirming that engineering knowledge is not required for the FSR position, the Regional Director accurately found that the 60 percent of FSRs who do not have engineering degrees are still capable of being fully effective FSRs that can carry out the work assigned to and expected of them.

The Union’s remaining examples that allegedly exhibit FSRs relying on engineering knowledge only demonstrate the application of the FSRs’ mechanical and technical experience to troubleshoot problems. For example, as the Regional Director observed, the inlet cowl o-ring and slat asymmetry examples do not demonstrate any engineering principles. Specifically, the o-ring issue was a mechanical issue regarding the method of inspection, and the real issue was simply explaining that the o-ring was not observable in the manner Service Engineering indicated. Further, contrary to the Union’s assertions that Hirsch made "detailed drawings" of the situation, the record evidence established only that Hirsch submitted annotated photographs, which the Regional Director correctly found were not technical drawings of the type made by an engineer. Instead, his pictures were simply a demonstration of how the o-ring was obscured. Regarding the slat asymmetry example, Hirsch merely accessed the Company’s My Boeing Fleet to find an existing solution to the problem. Clearly, accessing a database to locate an existing solution involves no engineering principles or advanced mathematics. Moreover, as the Regional Director stated, the Union identified no engineering principles that were applied.

In addressing the scribe line issue, the Regional Director accurately described FSR Hess’ involvement. Stated simply, Hess brought the issue to Service Engineering, provided information sufficient to determine the issue was serious, and at that point handed the issue off to the Company’s engineers. Indeed, the Regional Director summed it up best when he noted, “This appears to be consistent with the way the Employer has designed this aspect of its operations and the role of the FSR within that operation.” Regional Director’s Decision at 33.

The Union points to the wingtip lights as an example of an FSR applying engineering knowledge. Request for Review at 27. But the FSR did nothing more than conduct technical troubleshooting and facilitate communication between the client's and the Company's engineers. Specifically, the FSR informed Service Engineering that sealant degradation was causing the problem to the wingtip lights and that the initial fix presented economic and technical problems for the customer. The FSR then obtained permission for a deviation so that the aircraft could operate without a functioning wingtip light. The FSR's proposed short-term fix – essentially securing the cover with tape – clearly does not involve the application of any engineering principles or advanced mathematics. While the Union argues that the FSR was also involved in the long-term solution to the wing-tip lights, there was no evidence establishing that the FSR used any engineering principles in helping to develop the clear protective cover. Thus, the Regional Director correctly declined to speculate that the FSR used engineering knowledge in this regard.

The Regional Director correctly found that these and the remaining few examples paraded by the Union only confirm the role of the FSR as a conduit of information between the Company and its clients' engineers, rather than a source of engineering solutions. For example, an FSR observing that cargo blowout panels were not holding up very well and consulting a bulletin to resolve an issue with a retractable landing light do not require engineering knowledge. Request for Review at 27. Additionally, contrary to the Union's assertion in its Request for Review, merely locating a part using the Company's computer systems does not require knowledge of an advanced type. *See Boeing Airplane Co.*, 116 NLRB 1775, 1777 (1956) (spares engineers, whose primary function was to decide what parts of an airplane are to be classified as spare parts and to estimate the quantity of spare parts necessary to support the airplane, were not professional employees because their knowledge could be acquired by a thorough and detailed knowledge of the employer's spare parts procurement system and not by a prolonged course of specialized instruction and study in an institution of higher learning).



Indeed, the tools used by FSRs in these examples—i.e., telephone, e-mail, Boeing Communication System, My Boeing Fleet, FSDS, SIVT—are nothing more than communication tools for sending and receiving information, to facilitate research, and access information. Contrary to the Union’s assertions, these are not engineering tools that perform mathematical calculations, make technical drawings, or otherwise develop a solution involving engineering applications as contemplated by Section 2(12)(a). As the Regional Director opined, if the FSRs were truly engineers applying engineering knowledge, they would have tools to facilitate calculation and design rather than only these tools of communication. Regional Director’s Decision at 33. Accordingly, these examples and the tools used by the FSRs lend no support to the Union’s claim that the FSRs qualify as professional employees under the Act.

In sum, the FSRs have many duties ranging from customer service, to technical advisor, to liaison between the customer and the Company’s Service Engineering (CSE), to administrative tasks. While some of their work may involve technical support, the FSRs are not required nor expected to apply any engineering principles in resolving customer issues. Instead, they are expected to help the customer locate a solution and/or parts using the Company’s communications tools, bulletins, and manuals. When that fails, they are expected to contact and interact with CSE on the customer’s behalf to formulate a solution, and it is ultimately CSE’s task to develop a solution to the problem. Accordingly, there is no evidence that the FSRs are required or expected to apply any engineering disciplines in the performance of their duties. Therefore, the FSRs do not qualify as professional employees under the Act.

**D. The Petition was Properly Dismissed Because the Union Has Not Consented to a *Sonotone* Election**

Because the FSRs are not professional employees under the Act, the Regional Director correctly determined that a *Sonotone* election must be held to permit the professional employees in the Engineering Unit to vote on whether they want to be included in a mixed unit of professional and non-professional employees with the FSRs. Pursuant to the Regional

Director's Decision and Conditional Order, the Union had 10 days to notify the Regional Director whether it wished to proceed with a *Sonotone* election. As the Union provided no such notice nor requested a stay of that deadline pending resolution of its Request for Review, the Petition was properly dismissed.

**E. The Board Should Remand the Case to the Regional Director to Issue a Decision on Any Outstanding Issues**

The Union asks the Board, if it grants review, to decide all remaining issues not decided by the Regional Director in his Decision, particularly whether FSRs share a community of interest with Engineering Unit employees and whether FSR team leads are supervisors. In the Company's view, because the Request for Review should be denied and the Union has failed to consent to a *Sonotone* election, all other issues are moot. However, even if the Board were to determine that the remaining issues must be addressed, the Company opposes the Union's request that they be decided by the Board without remand to the Regional Director.

Clearly, the request for review procedure is intended for the specific purpose of reviewing the *decisions* of regional directors in representation proceedings. Section 102.67(b) of the Board's Rules and Regulations states:

*A decision by the Regional Director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the Regional Director shall be final: Provided, however, That within 14 days after service thereof any party may file a request for review with the Board in Washington, D.C. (emphasis added)*

In this case, the Regional Director has yet to issue a decision related to community of interest or supervisory status. Thus, the Union is seeking review of a decision that has not yet been made. This is not sanctioned by the Board's Rules and Regulations.

Moreover, the determination as to whether the FSRs and Engineering Unit employees share a community of interest or whether FSR team leads are supervisors falls squarely on the Regional Director. Section 3(b) of the Act states:

The Board is . . . authorized to delegate to its regional directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof, . . . .

29 U.S.C. § 153(b). The Board's delegation to Regional Directors of its authority under Section 9, including the authority "to determine the unit appropriate for the purpose of collective bargaining" and "to direct an election," is found in Section 102.67(a) of the Board's Rules and Regulations which states:

The Regional Director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter.

The Board's Rules and Regulations provide a procedure by which the Regional Director, at his discretion, may transfer a pending Section 9 case to the Board to be decided. See Section 102.67(h)-(j) of the Board's Rules and Regulations. But there is no procedure in the Board's Rules and Regulations permitting the Board to assume, without consent of the Regional Director, the Regional Director's delegated authority. Therefore, because there is no procedural basis upon which the Board may assume the Regional Director's authority in this situation, the Union's request must be denied.

Practical factors also weigh against the Board undertaking the responsibility to make the community of interest and supervisory decisions. The Union argues that remanding the case to the Regional Director will unduly add to the time taken to resolve the issues at hand and, thus, delay an election. However, the Regional Director is in a much better position to expeditiously issue a decision on the outstanding matters. He spent significant time and energy familiarizing himself with the contents of the record in order to issue his Decision and Conditional Order, and certainly, that effort included a thorough review of the community of interest and supervisory status issues. Because the Board will need to spend significant time reviewing the expansive record, it should take less time for a decision to issue from the Regional Director.

Therefore, because there is no procedural basis upon which the Board may assume the authority to issue a decision on the outstanding community of interest and supervisory issues, and because practical factors weigh in favor the Regional Director issuing any additional decision, the Board should deny the Union's request that the Board decide the outstanding issues.

## **V. CONCLUSION**

The FSRs are technical, not professional employees, as most do not have an engineering degree or equivalent engineering experience and they are not required to have engineering knowledge to perform their duties. Instead, they primarily rely upon their technical and mechanical experience, as well as the Company's communication tools, to help customers resolve their issues. If they are unable to find an approved solution, they are required to notify the Company's engineers and serve as a liaison between the engineers and the customer. As such, the FSRs as a group neither have the qualifications nor the requisite work to qualify as professional employees under the NLRA.

Recognizing that the FSRs do not satisfy current Board law, the Union implicitly seeks to overturn approximately 70 years of Board authority limiting Section 2(12)'s professional definition to "small and narrow classes of employees." *Express-News Corp.*, 223 NLRB at 630; *Greenhorne & O'Mara, Inc.*, 326 NLRB at 517, and greatly expand the definition of professional employee. Indeed, if the Board were to agree with the Union's assertions that accessing and reviewing technical data to find solutions and locate parts requires the application of engineering principles, then the Board will face an onslaught of challenges to existing units and petitioned-for units claiming that they impermissibly contain professional employees. *E.g., Loral Corp.*, 200 NLRB 1019 (1972) (several classifications of employees performing job duties similar to those of FSRs were included in a bargaining unit of technical employees instead of a professional employee unit); *A.A. Matthews Associates*, 200 NLRB 250 (1972) (the Board overturned the

regional director's decision to include engineer-inspectors in a professional employee unit instead of a technical employee unit).

The Regional Director correctly found that the FSRs are not professional employees. Therefore, the Union's Request for Review must be denied and the Board should deny the Union's request that it resolve the outstanding issues regarding community of interest and supervisory status.

Respectfully submitted this 1<sup>st</sup> day of June, 2011.

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## 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 Conditional Order** in Case No. 19-RC-15372 via electronic mail upon the Regional Director of Regional 19 of the National Labor Relations Board as follows:

Richard L. Ahearn  
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National Labor Relations Board  
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**The Boeing Company's Statement in Opposition to the Union's Request for Review of Regional Director Decision and Conditional Order** was also served via electronic mail upon counsel of record for the Petitioner, as follows:

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This 1<sup>st</sup> day of June, 2011.

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