

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

THE BOEING COMPANY

Employer

and

SEATTLE PROFESSIONAL ENGINEERING  
EMPLOYEES ASSOCIATION

Petitioner

Case 19-RC-13649

**DECISION AND DIRECTION OF ELECTION**

**TABLE OF CONTENTS**

Background ..... 4

Unit Sought by Petitioner ..... 8

Employees at Issue ..... 12

    FA project administrators ..... 13

    F6 Facilities planners..... 16

    FD Facilities permits administrators..... 18

    G9 construction administrators..... 19

    GK safety/health/environmental technical consultants ..... 21

    GM physician assistants ..... 23

    GS safety & health administrators..... 23

    GT scientific data analysts ..... 25

    HZ radiation health protection administrators..... 28

Conclusions as to Professional Status ..... 31

    FA project administrators ..... 35

    F6 Facilities planners..... 35

    FD Facilities permits administrators..... 36

    G9 construction administrators..... 37

    GT scientific data analysts ..... 37

    HZ radiation health protection administrators..... 38

Conclusions as to Unit Inclusion..... 39

    GK safety/health/environmental technical consultants ..... 39

    GM physician assistants ..... 39

    GS safety & health administrators..... 40

    GT scientific data analysts ..... 40

    Certain Pc4 engineers ..... 40

    Certain FY construction environmental specialist..... 40

Summary and Voting Group ..... 41

Direction of Election ..... 41

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate voting group:

All professional engineering employees employed by the Employer in its Facilities and Safety, Health and Environmental Affairs (SHEA) organizations in the greater Puget Sound region of Washington, (including Spokane, Washington) and Portland, Oregon; but excluding all other professional employees employed in Facilities and SHEA, all guards and supervisors as defined by the Act, and all other employees.

The Employer manufactures airplanes in the Puget Sound region of the state of Washington, and at several other locations throughout the United States. Petitioner currently represents a unit of engineers who are involved in the production process, and a second unit of technical employees.<sup>2</sup> The petition requests a residual unit of engineering employees in the Facilities and Safety, Health, and Environmental (SHEA) organizations. Petitioner seeks a self-determination election among the requested employees as to whether they wish to be represented in Petitioner's existing engineering unit. The Employer opposes a self-determination election, and further contends that the unit should be all professional employees in the Facilities and SHEA organizations who are engaged in engineering, scientific, and technical work, including many employees not sought by Petitioner.

The Employer employs approximately 280,000 employees overall. Of these, Petitioner currently represents approximately 12,000 engineers. There are approximately 345<sup>3</sup> employees in the unit sought herein. There are approximately 320 additional employees that the Employer contends should be included in the unit.

---

<sup>1</sup> The parties filed briefs, which have been considered.

<sup>2</sup> The vast majority of the Employer's employees are production workers represented by International Association of Machinists and Aerospace Workers (IAM), not involved herein. IAM also represents registered nurses in the Employer's medical department, but the record does not establish whether the nurses are a separate unit or included in the unit of production workers.

<sup>3</sup> References herein to the number of employees in the unit sought and in the various classifications discussed are derived from Employer's Exhibit 64.

## Background<sup>4</sup>

The parties agree that only employees employed in the Puget Sound region should be included in the unit. The parties also agree that the Puget Sound region includes the geographic Puget Sound area and Spokane, Washington, and Portland, Oregon. There are no disputed employees in Spokane or Portland. The Puget Sound area includes Employer facilities roughly from Everett in the north to Auburn in the south, and many locations in between, most notably Seattle, Renton, and Bellevue. The parties also agree that the engineers sought by Petitioner are the only unrepresented engineers employed by the Employer in the Puget Sound region.

The Employer's facilities include numerous production and office buildings; runways for airplane take-offs and landings; parking lots; wastewater treatment facilities; storage tanks; and other structures. The Employer's physical plant and offices are in a constant state of change: new buildings are built, additions are built onto older buildings, functions are moved, offices are moved. The Facilities organization is charged with the responsibility for the construction, remodeling, and maintenance of the physical premises, including office and production equipment housed in the various buildings. Such responsibility ranges from, for example, the placement of a chalkboard in a meeting room to remodeling the structure in Everett known as the "largest building in the world." To this end, the Employer employs architects and engineers, including civil, structural, electrical, mechanical, and chemical engineers in the Facilities organization, as well as a large number of other employees who assist and support the engineers and carry out other functions.

The Employer's production process entails the use of various metals and composite materials, along with paints, chemicals, and a variety of petroleum products. In addition, the aircraft manufactured are very large and complex, requiring employees at times to perform work high above the floor, in enclosed spaces, or in contact with potentially toxic substances. It is the responsibility of the SHEA organization to reduce and ameliorate environmental pollution, and to protect workers from harm. To this end, the Employer employs environmental and safety engineers, and other employees.

The Employer is organized in three major groups: Boeing Commercial Aircraft Group (BCAG); Shared Services Group (SSG); and Information Space and Defense Systems (ISDS).<sup>5</sup> Each of the three groups has its own Facilities and SHEA organizations; all are involved in this petition. The Facilities organization for BCAG is called Facilities Asset Management Organization (FAMO). FAMO has about 4500 employees, and covers 70 to 75 percent of the facilities needs in the Puget Sound area, maintaining 50 to 55 million square feet of buildings and 60,000 assets. FAMO works 60- to 70,000 jobs per year. At each geographic site, FAMO has a resource team, which handles complex tasks which may require extensive design activities, such as a new air system for a final assembly building. There is also a core team, which is responsible for the site infrastructure, such as substations, air lines, water lines, and boilers. In addition there

---

<sup>4</sup> The record in this case consists of 14,515 pages of transcript and 125 exhibits. The hearing was held over eight days July 9 through 23, 1998, and, pursuant to the Regional Director's remand order dated September 28, 1998, a further 54 days, commencing October 13, 1998 and concluding January 27, 1999. Throughout the hearing, the Employer contended that approximately 29 classifications of employees are professional employees who should be included in the unit. Witness testimony concluded on Day 60, January 20, 1999. The parties then convened on January 21 and 27, both on and off the record, and were able to reach stipulations with respect to all but nine of the disputed classifications.

<sup>5</sup> During the course of the hearing, ISDS was re-organized into two separate groups: Aircraft and Missile, and Space and Communications. Witnesses were sometimes unsure which new group they had been assigned to; therefore, herein the two groups will be referred to collectively as ISDS.

are customer service teams, which respond to immediate needs of their customers, who are the various office and factory areas of the company.<sup>6</sup> The customer service teams are located in conjunction with their customers. There are about 270 customer service teams, which include various skills and crafts. There are also FAMO-like organizations for SSG and ISDS. For simplicity, we will refer to the combined groupings as "Facilities" and "SHEA."

The Employer has traditionally classified its employees by payrolls, which have paycode designators such as Pc4, Pc6, and so on. Pc4 is reserved for engineers who are graduates of engineering schools accredited by the Accreditation Board for Engineering and Technology (ABET).<sup>7</sup> All engineers in Petitioner's existing unit of engineers are Pc4s. Approximately 227 of the employees in the unit sought herein are Pc4 engineers. The parties stipulated that all Pc4s in Facilities and SHEA are professional employees within the meaning of Section 12 of the Act, and that they should be included in any unit, with a few exceptions, to be discussed later herein. In addition, there are approximately 118 employees in paycode 6 (Pc6s) who have been stipulated by the parties to be professional employees within the meaning of the Act and included in any unit.<sup>8</sup> *All employees at issue herein are Pc6s.* There is no standard for Pc6s comparable to the ABET-accredited degree standard for Pc4s. Individual job classifications in the Pc6 category were established in the past by the Employer through a process called the New Salaried Payroll (NSP).

Employees involved herein are employed at numerous locations, under approximately 200<sup>9</sup> supervisors. Typically, the employees are assigned to small groups which include a mixture of job classifications. Thus, for example, there are FA project administrators working in groups under the same supervision as Pc4 engineers at some locations. Approximately 65 supervisors have both Pc4s and Pc6s in their group; another 110 supervisors have only Pc6 employees; and 27 have only Pc4s.<sup>10</sup>

During the course of the hearing, the Employer was in the process of reclassifying its unrepresented employees, including employees in Facilities and SHEA. Both Pc4 and Pc6 employees were "mapped" into "job families," in a system called Salaried Job Classification (SJC). SJC was implemented by the Employer on February 12, 1999.<sup>11</sup> The result with respect only to the employees involved herein<sup>12</sup> is set forth below, where the positions in italics are Pc4s

---

<sup>6</sup> The term "customers" where used herein refers to internal Employer entities, not to purchasers of the Employer's products.

<sup>7</sup> In rare circumstances, an engineer lacking an ABET approved degree, or even lacking any degree at all, could be classified as a Pc4 through a rigorous exception procedure. No such exceptions are involved herein.

<sup>8</sup> The stipulation does not recite that they are also "engineers" but the parties agree that it would be appropriate to place these professionals into the Union's "engineer(ing)" unit.

<sup>9</sup> The number of supervisors is derived from Employer's Exhibits 40, 41, and 47.

<sup>10</sup> The record generally does not reveal other employees reporting to the supervisors of the employees involved herein.

<sup>11</sup> The Employer's motion to reopen the record for the receipt of the affidavit of Diane Miller is hereby granted, and said affidavit, dated February 17, 1999, is hereby received into the record. The affidavit verifies the date of implementation of the SJC.

<sup>12</sup> That is, only those employees who are acknowledged by the parties to be included and those whose inclusion remained at issue after close of hearing.

and the other positions are Pc6s [numbers in brackets are the number of employees in each classification]:

**AF - Facilities Analyst**

FA - Facilities Project Administrator [1]

**AG - Facilities Equipment Engineer**

FA1, 2, 3, or 4 - Plant Engineer [4]  
FE1, 2, or 3 - Equipment Engineer [129]  
FO2 - Plant Oper./Maint. Engineer [12]  
FC - Facilities Maintenance Analyst [1]  
G3 - Facilities Mechanical Designer [1]  
G6 - Facilities Equipment Designer [21]

**AJ - Facilities Plant Engineer**

FA1, 2, 3, or 4 - Plant Engineer [17]  
FC1 - Construction Engineer [2]  
FE1, 2, or 3 - Equipment Engineer [5]  
FO2 - Plant Oper/Maint. Engineer [10]  
FP1 - Planning/Oper./Programming Engineer [5]  
F2 - Architect [8]  
G3 - Facilities Mechanical Designer [6]  
G4 - Facilities Electrical Designer [4]  
G5 - Facilities Structural Designer [1]

**AK - Facilities Planner**

FA1, 2, 3, or 4 - Plant Engineer [2]  
FP1 - Planning/Oper./Programming Engineer [2]  
FR1 - Resource Engineer [1]  
F6 - Facilities Planner [77]  
FA - Facilities Project Administrator [1]  
FY - Construction Environmental Specialist [1]

**AL - Facilities Project Administrator**

FA - Facilities Project Administrator [49]  
FD - Facilities Permits Administrator [7]  
G9 - Construction Administrator [42]

**DG - Epidemiologist**

GT - Scientific Data Analyst [1]

**DW - Industrial Hygiene & Safety Specialist**

GK - Safety/Health/Env. Technical Consultant [9]  
GS - Safety & Health Administrator [93]

**DX - Toxicologist**

GT - Scientific Data Analyst [2]

**DY - Radiation Safety Specialist**

GT - Scientific Data Analyst [1]  
HZ - RHP Administrator [11]

**DZ - SHEA Chemistry Specialist**

GT - Scientific Data Analyst [12]

**EA - SHEA Support Specialist**

GS - Safety & Health Administrator [1]

GT - Scientific Data Analyst [2]

**EB - SHEA Program Management Specialist**

GT - Scientific Data Analyst [2]

**ED - Environmental Engineer/Scientist**

*FA1, 2, 3, or 4 - Plant Engineer [26]*

*NE1 - Environmental Engineer [12]*

GJ - Environment Program Administrator [67]

CH - Organization Advisor [1]

FY - Construction Environmental Specialist [11]

**EH - Energy & Conservation Specialist**

F6 - Facilities Planner [6]

**EL - Health Services Administrator**

GT - Scientific Data Analyst [1]

**EM - Physician Assistant**

GM -Physician Assistant [3]

Employees reporting to any one supervisor are not necessarily all mapped into the same job family. For example, six employees involved herein report to supervisor Joyce Schmidt. Among them are two GJs, three GSs, and one Pc4 engineer (an FA4). The GJs and the Pc4 are mapped into the ED job family; the GSs are mapped into the DW job family.

Employees sought by Petitioner include all professional employees in job families AG, AJ, and ED. Petitioner does not seek any employees in the AK job family, even though five such employees are Pc4 engineers. The Employer contends that F6 Facilities planners, FA Facilities project administrators, FD Facilities permits administrators, G9 construction administrators, GK safety/health/environmental technical consultants, GM physician's assistants, GS safety & health administrators, GT scientific data analysts, and HZ RHP administrators are professional employees who should be included in the unit. Petitioner disagrees.

The Employer's physical magnitude and organizational structure present some unusual circumstances with respect to the normal analysis used in Board cases. Here, employees in any one classification may report to several different supervisors at several different locations. Further, employees in any one classification are not necessarily all performing the same type of work. Within most classifications involved herein there are different grade levels which distinguish among the employees not only as to seniority in the position and salary, but also with respect to the duties performed, as the higher levels may be assigned significantly more complex projects than the lower levels. While the number of classifications and employees at issue is not by any means staggering, the sheer size and intricacy of the Employer's business adds a layer of complexity not normally encountered. It is unnecessary here to thoroughly describe all the permutations to be found in the Employer's organization; rather, it is sufficient to set forth only those circumstances which are directly relevant to the matters at hand.

## Unit Sought by Petitioner

The unit requested in the petition is as follows:

All engineering employees who are professional employees within the meaning of [the Act] employed by the [Employer] working in the Plant Facilities or Safety, Health and Environmental Affairs (SHEA) departments of the [Employer's] plants in the states of Washington and Oregon, including persons who are on travel status from such plants.

The petition states that there are about 360 such employees.

The specific job classifications *initially* sought by Petitioner, all of whom are PC4s, are:

*FA1 Facilities A&E/Plant Engineer – Architectural:* Design engineers and cost engineers who perform all or principally all of the following tasks: technical consultation, engineering analysis, conceptual design, final design (drawings or specifications) and cost estimates (conceptual or final design) for the architectural phases of building, equipment installations, utility systems and grounds.

*FA2 Facilities A &E/Plant Engineer – Civil/Structural:* Same description as FA1 except it is “civil/structural.”

*FA3 Facilities A&E/Plant Engineer – Electrical:* Same description as FA1 except it is “electrical.”

*FA4 Facilities A&E/Plant Engineer – General/Support Services:* Perform in one or more of the principal areas of pollution control, building code and regulations or utility engineering; providing engineering analysis, interpretation and guidance in the application of governing or applicable pollution regulations, building codes, fire prevention regulations, facilities licensing, permit requirements, utility rate structures, utility service negotiations and utility cost control.

*FA5 Facilities A&E/Plant Engineer – Mechanical:* Same description as FA1 except it is “mechanical.”

*FC1 Facilities Construction Engineer:* Field engineer and project management engineers who perform all or principally all of the following: field supervision and inspection of construction projects, administration of construction contracts, overall coordination and administration of design/construction projects; related to one or more of the phases (architectural, structural, mechanical, electrical) of construction involving buildings, equipment installations, utility systems and grounds.

*FE1 Facilities Equipment Engineer – Chemical/Thermal:* Performs engineering analysis to determine type, configuration and application of equipment to fulfill production, laboratory and plant operations requirements. Includes purchase specification preparation, design coordination, acceptance evaluation and technical operational support for one or more of the following: metal cleaning, plating, bonding, plastics processing and finishing equipment; welding, heat treat, refrigeration, annealing and heating equipment; and other related processes.

*FE2 Facilities Equipment Engineer – Electrical/Electronic:* Same as *FE1*, except work pertains to: conventional and micro-electronics, electronic component test, electronic control systems, communications and radio and other related systems.

*FE3 Facilities Equipment Engineer – Physical/Mechanical:* Same as *FE1*, except work pertains to: conventional and N/C machine tools; metal fastening, forming and cutting equipment; laboratory test and inspection equipment; optical and radiological equipment; reproduction and printing equipment; transportation equipment; and other related equipment.

*FO2 Facilities Plant Operations/Maintenance Engineer – General:* Perform engineering analysis; prepares: planned or preventative maintenance instructions, labor estimates and operating instructions; and provide technical consultation for all phases of the operation and maintenance of building, production and test equipment, utility systems and grounds

*FPI Facilities Planning – Operations/Program Engineer:* Technical facilities operations planners and program support planners who perform engineering analysis, planning, facilities criteria preparation and coordination for facilities expansion, modification or rearrangement to fulfill function requirements in support of new business proposals, business programs, and plant operations.

*FR1 Facilities Resource Engineer:* Performs engineering analysis, technical consultation, conceptual design, technical feasibility and cost studies for buildings, equipment, installations and systems; identifies facility impacts and needs through interpreting and evaluating new business requirements, long-range market forecasts, new technology items, current manufacturing resources, supporting services, standards, specifications, policies and procedures. Develops economic analyses and equipment and system reliability/maintainability analyses. Provides equipment and facility plans and budgeting for implementation of new and/or improved manufacturing concepts and methods.

*NS1 Safety Engineering:* Review program plans and activities, conduct engineering analyses of potentially hazardous operations, and derive appropriate safety standards and program safety plans to ensure personnel safety. Conduct engineering analyses of newly designed equipment and test situations for personnel safety from the standpoint of electrical, mechanical, and hydraulic/pneumatic/ordnance design. Conduct personnel protective clothing equipment research and laboratory testing. Prepare, maintain, and revise Protective Equipment Manual and Protective Equipment Specification Documentation. Select, interpret, and apply all applicable Company, customer, governmental, and military laws, codes, and standards via safety standards/requirements documentation. Audit safety programs to assure compliance with Company, legal, and contractual safety requirements. Review and evaluate subcontractor bid proposals for adequacy of safety.

*NE1 Environmental Engineer (SHEA):* Conduct engineering studies and analysis related to environmental issues. Evaluate engineering designs for environmental regulatory and permit compliance and protection; perform engineering analysis and certification of oil spill prevention facilities and procedures; perform chemical and mass balances, air pollution dispersion modeling, evaluation of hazardous substance tank system design, corrosion protection and monitoring systems, and material compatibility analysis.

On January 27, 1999, the final day of hearing, the parties entered into certain stipulations regarding the unit. The parties stipulated that the following classifications should be included in

any unit or voting group found appropriate: all Pc4 engineers with the exception of the five Pc4 engineers mapped into the AK job family;<sup>13</sup> F2 (architects); G3s (Facilities mechanical designers); G4s (Facilities electrical designers); G5s (Facilities structural designers); G6s (Facilities equipment designers); GJs (environment program administrators); and FYs (construction environmental specialists); the one FC (Facilities maintenance analyst); mapped into the AG Facilities Equipment Engineer job family;<sup>14</sup> and the one CH (organizational advisor) mapped into the ED Environmental Engineer/specialist job family.<sup>15</sup> The record does not reveal the parties' reasoning underlying the foregoing stipulation with respect to Turnbull, Clements, Collins, Winslow, Brown, Cruse, and Hacking, or otherwise.

In addition to the above, the parties stipulated that a number of classifications which had been at issue throughout the hearing are excluded to be from the unit. Such classifications are: AA animator; F4 Facilities electromagnetic/CRT design analyst; F8 construction project estimator; G8 radio frequency communications specialist; H2 math and modeling analyst;<sup>16</sup> K8 embedded software analyst; A6 computing business system analyst; DG business system programmer analyst; GW computing data and processing architect; HK systems architecture analyst; HM software process analyst; P6 engineering applications analyst; all CH organization advisers except the one mapped into the AK job family; all FC Facilities maintenance analyst except the one mapped into the AG job family; and FE Facilities interior designer.

The Board has long held that it will honor "concessions made in the interest of expeditious handling of representation cases." *Stanley Aviation Corporation*, 112 NLRB 461 (1955); *Hollywood Presbyterian Medical Center*, 275 NLRB 307 (1985). Accordingly, I accept the parties' stipulations as set forth above.

At hearing, Petitioner amended its petition to seek to add the petitioned-for employees to its existing unit of some 12,000 engineers via a self-determination election, rather than creating a separate unit. The Employer opposes the amendment, contending that only its separate unit is appropriate.

In *St. John's Hospital*, 307 NLRB 767 (1992), the Board observed that it "has long held that it will not entertain an incumbent's petition for a separate residual unit," citing *Budd Co.*, 154 NLRB 421, 428 (1965). Further, the Board said that "an incumbent wishing to represent employees residual to those in its existing unit must do so by adding them to the existing unit, usually by means of a self-determination election." Thus, it is clear that Petitioner's desire to add a residual group to its existing unit is appropriate, once the residual unit is determined. To that end, we will need to determine herein which employees are "professional" within the meaning of the Act, and of those, which might appropriately be grouped as a residual voting group. That there might be other unit(s) that could be appropriately created, such as "all professional

---

<sup>13</sup> These five are: William Collins, FA1; Brian Winslow, FA4; William Brown, FP1; Stanley Cruse, FP1; and Brent Hacking, FR1. The exclusion of these five Pc4s is discussed elsewhere herein.

<sup>14</sup> Alfred Turnbull.

<sup>15</sup> Brian Clements.

<sup>16</sup> Earlier, on October 13, 1998, the parties had stipulated that the H2 is included in the unit. Neither the record nor the parties' briefs address this discrepancy.

employees in SHEA and Facilities,” is not the issue. The Union is entitled to its choice of appropriate unit, including an expansion of its engineer unit, to add the remaining engineers.

The Employer contends that Petitioner can represent the requested employees only in a separate unit because a self determination election is precluded by the collective bargaining agreement and the bargain history between the parties. The recognition clause in the collective bargaining agreement states, and has so stated for many years, in pertinent part, that the Employer recognizes the Union (i.e., Petitioner herein) as the collective bargaining representative for “all persons working in the Company’s plants . . . who are classified by the Company in one of the classifications listed in Article 11 . . .” The classifications listed in Article 11 are: senior principal engineer, principal engineer, senior specialist engineer, specialist engineer, senior engineer, and engineer. Section 11.2 states in pertinent part that:

When, pursuant to provisions of Article 1, the Company classifies an individual in one of the Engineer classifications listed in this Article, 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 the performance of their assigned work, regularly apply engineering disciplines to the research, design, development, test and evaluation of Company products and who satisfy the definition of “professional employee” as stated in Section 2(12) of the National Labor Relations Act as set forth below ...

This Section shall not be construed as affecting the Company’s unilateral right to select and determine the employees to be included in each classification listed in this Article, which right shall not be subject to Article 3 [the grievance and arbitration clause].

The Employer argues that such contractual language precludes any inclusion of Facilities and SHEA engineers in the existing unit because the existing unit is limited to those engineers who the Employer chooses to classify into one of the classifications listed in Article 11; because Section 11.2 states that only engineers who work on the Employer’s “products” may be included in the unit; and because Section 11.2 gives the Employer the unilateral right to select and determine the employees to be included in each of those classifications. I disagree.

The Board has directed self determination elections among employees specifically excluded from an existing unit by agreement of the parties. See, for example, *S. S. Joachim and Anne Residence*, 314 NLRB 1191 (1994). The *Joachim* case makes it clear that the Board does not consider an agreement to exclude certain classifications from a bargaining unit, as the petitioner in *Joachim* did in an initial case, from later seeking to later add those classifications to the unit through a self determination election. The Board pointed out that the petitioner in that case never expressly promised or agreed to refrain from representing the employees at issue, citing *Briggs Indiana Corp.*, 63 NLRB 1270 (1945). In *Briggs Indiana*, the Board held that it will not entertain a petition by a union seeking to represent certain employees where the union has promised not to represent such employees during the term of its collective bargaining agreement. In *The Cessna Aircraft Company*, 123 NLRB 855 (1959), the Board held that the *Briggs Indiana* rule “will be applied only where the contract itself contains an express promise on the part of the union to refrain from seeking representation of the employees in question or to refrain from accepting them into membership; such a promise will not be implied from a mere unit exclusion, nor will the rule be applied on the basis of an alleged understanding of the parties during contract negotiations.”

The Employer contends on brief that *Cessna Aircraft* does not apply in the circumstances herein, saying that, "Whereas a clear express waiver may be necessary to enable an employer to make a claim that all rights to an election have been waived under Section 7 of the Act, there is no such rule indicating that the same is necessary in order simply to have waived use of the *Globe-Armour* process [i.e., a self-determination election]." The Employer further argues that,

A self-determination election, however, is something completely different than an election for representation in a separate bargaining unit. This is because there is no Section 7 right to a self-determination election. There is only a right to an election in an appropriate bargaining unit. The self-determination aspect of a Section 7 election is merely a procedural housekeeping device developed by the Board.

In support of its contentions, the Employer cites *NLRB v Weyerhaeuser Co.*, 276 F.2d 865, 872 (7<sup>th</sup> Cir., 1960) and *Beverly Manor*, 322 NLRB 968, 971 (1997). Neither case addresses the issue of a union's waiver of the option of seeking a self determination election.

I am unpersuaded by the Employer's argument. First, it appears the intent of the language is only to permit the Employer, in the routine administration of the contract, unilaterally to classify persons as within the Unit. Second, Petitioner has not expressly waived its right to *represent* the employees it seeks herein, and I do not find the contractual language cited by the Employer to be a bar to adding the requested employees to the existing unit should they vote in favor of inclusion. In seeking a self-determination election, Petitioner is merely asking the Board to follow its usual practice of conducting such an election where an incumbent union seeks to represent additional employees. Had the both parties' well-seasoned labor relations veterans intended a conscious waiver of a union's usual right to represent additional employees, and of the right (and Board policy) to add a residuum to the established unit, they could easily have said so, and would have. Unstated, post-hoc legal inventiveness is to be eschewed. I therefore shall order that an election be conducted among the employees in the voting group found appropriate herein to determine whether they wish to be represented by Petitioner in Petitioner's existing unit of engineers.

### **Employees at Issue**

The evidence with respect to the nine classifications still at issue, all of which are Pc6, includes witness testimony, job description documents, and lists of supervisors, the individual employees reporting to them, and the educational attainments of those employees. The record does not likewise specify the work experience of the employees, or training they may have had other than formal education.

**FA project administrators:** There are approximately 52 to 57<sup>17</sup> FAs reporting to about 34 different supervisors. Nineteen such supervisors also have acknowledged unit employees reporting to them. There are three levels of FAs. The Employer contends that project administrator 3s are professional employees who should be included in the unit. The Employer does *not* contend that project administrator 1s or 2s, who are non-exempt under the FLSA, are professionals or that they should be included in the unit. FAs are mapped into the AL Facilities project administrator job family. No engineers are mapped into the AL Facilities Project Administrator job family. Petitioner contends that no FAs are professional employees.

---

<sup>17</sup> Different Employer exhibits provide different totals.

FAMO alone handles 60- to 70,000 jobs per year. The Facilities groups attached to SSG and ISDS each handle a much smaller number of jobs. Every job has a project administrator whose duty it is to assure that the job gets done. It may be a simple matter of arranging for a craftsman to place a chalkboard in a room, move an electrical outlet, or paint a wall, or it could be a very complex matter of remodeling an existing building or constructing a new building, requiring the services of engineering designers, architects, and outside contractors. Project administration is the full-time job of the FAs.

The job description documents in evidence describe the FA position at level 3 as one which: develops options, plans, and schedules to manage the implementation of complex facilities construction and modification projects, including computing and telecommunications requirements affecting a number of organizations or having potential impact on production or operations; coordinates allocation of resources to various projects, and makes recommendations to management on changes to project plans. A 4-year degree in architecture, business, or a related discipline is preferred but not required, with five to seven years' related project administration or facilities or construction management experience and demonstrated proficiency at level 2 or equivalent skills.

The record reveals that the educational background<sup>18</sup> of the FAs<sup>19</sup> at issue is as shown below:

- 1 year of college (7)
- 2 years of college (3)
- 3 years of college
- associate degree
- BA advertising
- BA business administration (3)
- BA engineering technology
- BA English
- BA music
- BA political science
- BA psychology
- BA sociology
- BA unknown subject
- BS accounting
- BS administration
- BS business administration (2)
- BS business
- BS civil engineering
- BS communications
- BS industrial management & administration
- BS structural engineering
- High school (12)
- Unknown – presumed no college degree (4)

---

<sup>18</sup> Numbers in parentheses denote the number of FAs who have, for example, only one year of college. Where no parenthetical number appears, only one FA has that particular educational level. (This is applicable in all lists of educational background herein.)

<sup>19</sup> Henceforth, every reference herein to an "FA" will mean an FA, level 3 (not to be confused with an "FA3", a category on the Pc4 payroll).

## Vocational school (2)

Typically, FAs are assigned requests for services involving modifications or additions to the physical facilities. Although such requests can entail very large projects such as the construction of a new building, the more usual requests are painting a room, installing carpet, producing layouts for equipment or furniture, or relocating people.

Jeffrey Turk is an FA in Everett. His current supervisor is Tim Tobey. Turk was assigned to the Everett site about five years ago. His initial assignment there was to serve as project manager on the construction of the 40-41 building, an engineering test facility. This is the largest project Turk has worked on. It was his full-time job for a year and a half to two years. The 40-41 building was a \$21 million project. The requirement given him by the relevant production laboratory engineers was to build a fatigue and escape slide test laboratory to support the 777 program. After meeting with those engineers to ascertain their needs, he wrote a requirements document a few hundred pages in length, in which he detailed everything required to support the testing that would be performed in the building, including hydraulics, plant error, specialized plant error, electrical needs, height and size of the building, floor finishes significant for deployment of slides, and types of power supplied to specific rooms. Included in the document were sketches drawn by Turk using Autocad.<sup>20</sup> Next, a design/build team was gathered together. It is unclear who were the members of the team. Turk said that a group of facilities engineers, including electrical, mechanical, structural, and civil, were provided to him to be team members, and he said that he was provided a construction project engineer and a construction project manager. He met with the team members three or four times a week for two or three hours at a time, for an unspecified number of weeks. The team decided that the building was too large to be designed in-house. Turk then went to what he called "our construction management team" with the requirements document, and the design job was put out to bid to architectural and engineering (A&E) firms. Turk participated along with unspecified others in choosing the successful bidder. As the design by the A&E firm progressed, Turk and his fellow team members reviewed drawings on a daily or weekly basis. In particular, Turk reviewed the submitted designs to assure that they met with the specifications that had been given to him by the production engineers who would eventually be using the laboratory. He and other team members made modifications to the drawings. The A&E firm gave the team a cost estimate, and Turk also asked for a second cost estimate, based on his own assessment that the building might well cost more than the pre-determined budget amount he had been given. The resulting cost estimates were up to \$8.5 million over the given budget. Turk and his team, along with the relevant production engineers and representatives of the A&E firm, gathered together and determined where cutbacks could be made. New, satisfactory, cost estimates were obtained. Thereafter, the construction drawings were completed and a permits person made the proper submittals to the city of Everett for permits and approvals. Once those were obtained, construction began.

Turk continued with the project as construction manager. He spent two or three hours a day every day in a trailer at the construction site. He inspected the on-going construction, reviewed drawings, and approved changes requested by the contractor after consulting other members of his team. After construction was finished, he participated in walk-throughs with facilities engineers, unspecified safety people, and the relevant production engineers. In addition, a third party testing agency tested the critical systems, such as electronics, concrete strength, and

---

<sup>20</sup> "Autocad" is a computer program which facilitates the drawings of layouts such as floorplans. It is widely used by drafters for architects and building contractors. "Cad" is an acronym for "computer-assisted drawing."

steel structure strength. Thereafter, cost accounting on the project was performed, although the record is unclear as to who performed such accounting.

Currently, Turk is assigned to the WRC/FA (Wing Responsibility Center/Final Assembly) customer service group.

Turk has a high school diploma, less than two full years of community college, and an unspecified vocational certificate. He learned the skills needed to be a project administrator through on-the-job training given by the Employer. Other projects he has worked on include remodeling a facility in Moses Lake, Washington, moving laboratory equipment from Wichita to Seattle, and, recently, a canopy for storage of chemicals and/or oil carts outdoors, at the behest of SHEA. In addition, he has purchased clocks, coat racks, cars, trucks, forklifts, snorkel lifts, band-saws, table saws, borescopes, bondscopes, and even an airplane.<sup>21</sup>

In his work, Turk does not utilize calculations beyond simple arithmetic. The procedures he follows in performing his work are the steps set forth in the Employer's acquire/modify process.<sup>22</sup>

There is also record testimony regarding FA Vicki Howe, who reports to supervisor James Sharpe. Howe is currently an FA level 3, a status she attained six or eight weeks ago. Previously, she was a lower level FA, in a non-exempt position that the Employer does not contend is professional. Her current job duties consist of receiving Facilities service request forms (FSR), visiting the customer to ascertain what is wanted, and reporting her findings to supervisor Sharpe's group as a whole. The group meets on Wednesdays, in part to discuss FSRs and what needs to be done. Howe does not make any final decisions in this regard, although she makes some recommendations, based on her long work experience in the building (building 24-60). She is very familiar with the locations of such things as utility trenches, and can make suggestions based on her knowledge. She uses Autocad to verify her own observations of the building's utilities and layout. She has a high school education, and has been doing this work for about 7 years. There is no evidence that her responsibilities increased in any way when she was promoted to FA level 3. There are also two Pc2 FAs, not involved in these proceedings, in Sharpe's group.

**F6 Facilities planners:** There are approximately 77 F6s reporting to approximately 19 supervisors. Six such supervisors also have acknowledged unit employees reporting to them. There are three levels of F6s. The Employer contends that Facilities planners 2 and 3 are professional employees who should be included in the unit. The Employer does not contend that Facilities planners 1 should be included. F6s who are at that first level are non-exempt under the FLSA, while the 2 and 3 level positions are exempt. All F6s are mapped into the AK Facilities Planner job family. Petitioner contends that no F6s are professional employees. Thus, both parties agree on the exclusion of the level 1s.

---

<sup>21</sup> Turk testified that he bought a two-wheel Courier airplane specifically requested by a Boeing pilot. Turk did not say whether it was a full-size airplane or a radio-controlled model.

<sup>22</sup> "Acquire/modify" is a fully documented process used in FAMO to acquire and/or modify assets. All acquisition and modification activities in FAMO follow the steps set forth in the acquire/modify process, regardless of which employees are performing them.

Essentially, F6s plan, including scheduling and cost estimating, significant changes in production and office areas, such as construction of new buildings or additions to older buildings, or the move of whole functions to different areas of the plant or to different office space.

The job description documents in evidence describe the F6 position at level 2 as one which: determines the company's current and future facility requirements and develops plans and budgets to meet those requirements; develops options and schedules for major projects, recommends solutions to management, gains consensus from affected parties, and initiates project plan implementation. With respect to qualifications for the position, a 4-year degree in architecture, business, or a related discipline is preferred, but not required. Required knowledge includes "Government regulatory agency and Boeing space-planning standards, . . . a basic understanding of planning principles and practices, and [understanding] the economic implications of planning decisions."

The F6 position at the third level is described as one which: determines optimal locations for major facilities and creates master facility plans, integrating information from a variety of sources; analyzes customer requirements to develop both long-range strategic plans and recommendations to senior management; interacts with Government agencies to determine terms of environmental impact statements and to ensure company compliance with regulations. A 4-year degree is preferred but not required. Five to seven years' planning or facilities management experience, or equivalent education and experience, is required.

The record reveals that the educational background of the F6s is as shown below:

- 1 year of college (10)
- 2 years of college (5)
- 3 years of college (6)
- associate degree (3)
- BA architecture (2)
- BA business administration (5)
- BA business
- BA communications
- BA communications engineering
- BA criminology
- BA economics
- BA education
- BA finance
- BA general architecture
- BA geography
- BA history
- BA journalism
- BA political science
- BA psychology
- BA unknown subject
- BS administration
- BS business administration (3)
- BS business (2)
- BS civil engineering & construction tech
- BS general biology
- BS geography
- BS industrial/production tech
- BS other engineering
- BS theology

high school (3)  
MA political science  
MA public administration  
MBA business; BS other engineering  
MS business administration  
MS economics  
MS physical education  
Unknown  
Vocational school (4)

Rod Alonzo is a F6 planner who reports to Steven Sahlinger in BCAG in Renton. Alonzo was previously employed as a FA project administrator. Alonzo spends most of his time doing feasibility studies. He gave the example of a desire on the part of the Employer to increase production capacity. Alonzo's task would be to determine what would be required to accomplish the increased production, in terms of additional space needed, cost estimates, schedule estimates, and any issues and concerns affecting the manufacturing organization involved. He is currently involved with the phase-out of the 737-300, -400, and -500 airplanes, which will result in vacant space in some buildings and the disposition of the capital equipment and tools associated with those airplanes. On the 737 project, F6 Mary Woodriff identified all the square footage in the 4-20 and 4-21 buildings that would become vacant, and provided lists of capital equipment and tooling residing in those areas. F6 Bruce Viseth performed similar tasks in the 4-81 and 4-82 buildings. Woodriff's and Viseth's duties included using Autocad to access layouts of the affected areas to calculate the square footage; working with the customer's management to determine whether they were going to give up the space and when; walking through the area to locate each piece of equipment and tooling on the layout, and writing each on a list. Woodriff and Viseth then passed on the information to Alonzo to incorporate in his feasibility study. Alonzo spends about 80 percent of his time working on feasibility studies. Other planners in his group spend 30 to 40 percent of their time supporting him on feasibility studies, and up to 95 percent of their remaining time doing space planning, primarily a matter of moving organization X to space Y.

The F6s do not do any engineering work themselves. They consult with engineers as needed, such as to determine whether the heating and ventilation system in a building will be adequate if the building is expanded.

Alonzo previously worked as an FA project administrator. He said that all F6s he knows were previously FAs; that it is a natural progression to move from the FA position into the F6 position. As an FA, he was responsible for following a project from start to finish, determining through meetings with the affected organization the requirements of the project, getting the design done by engineers, getting bids from contractors, assuring that the contractor performed as specified.

Alonzo distinguished the two positions in that the F6 sets up the framework for a project, while the FA implements it. He testified that neither job requires more than a high school education. He said that FAs receive on-the-job training, and are sent to classes in using Autocad and other computer software, as well as classes in negotiation, project management, and public speaking. He said that FAs have some discretion in dealing with their customers as to what can and cannot be done, and in scheduling moving furniture and so on into new space. F6s have discretion in choosing whom else to involve in a project, setting schedules, and holding meetings.

**FD Facilities permits administrators:** There are approximately seven FDs, reporting to six different supervisors. Four such supervisors also have Pc4 employees reporting to them. There are two levels of FDs; the Employer does not contend that those at level 1 are professional employees who should be included in the unit. Petitioner contends that no FDs are professional employees. Thus, only the level 2s are in dispute.

The job description documents in evidence describe the FD position at level 2 as one which: serves as a focal point between the Employer and community/government agencies to resolve construction, environmental, and building code issues; and analyzes proposed projects for potential code violations and presents alternatives. A 4-year degree in construction or an engineering-related discipline is preferred, along with 2 to 3 years' experience at level 1.

The record reveals the educational background of the FD2s at issue as shown below:

- MA public administration; BA construction engineering
- BA architecture
- BA Liberal arts
- 2 years of college (2)
- BS general architecture
- BA physical education

Supervisor William Moor, who has a plant engineering group at Kent Space Center (ISDS), testified regarding the one FD in his group, John Murdoch. It is Murdoch's duty to obtain any necessary building permits from the city of Kent. To do so, he must put together a permit request package containing all documents required by the city. He obtains the documents from the engineers, verifies that he has everything he needs, and submits the package to the city. He does not do any designs or calculations. He has two years of college. Moor testified that Gary Taller, an FD reporting to supervisor Arthur Whitson performs the same work as Murdoch. Taller has a bachelor of arts in physical education.

Another supervisor, Jewell Mitchell, testified in regard to a FA4 Facilities Plant Engineer (Pc4), Leonard Astemborski, in her group who functions as a permit administrator. He receives permit requests, reviews the job package to assure that all needed documentation is present, and submits the package to the applicable local governmental agency to obtain the necessary permits. He does not do any design or other engineering work. When he is on vacation, Dirk Fieldcamp, an F6 who reports to Brian Bowden, substitutes for him. Astemborski is mapped into the AJ (Facilities plant engineer) job family. All the FDs are in the AL (Facilities project administrator) job family. Although there arose at hearing a question as to whether Astemborski is a professional employee, neither party took any position on that issue at the conclusion of the hearing or on brief.

**G9 construction administrators:** There are 42 or 43 G9s, reporting to about 10 different supervisors. All G9s are in the AL Facilities Project Administrator job family. There are three levels in the position, and the Employer contends that G9s at all three levels are professional employees who should be included in the unit. Petitioner contends that no G9s are professional employees.

The job description documents in evidence describe the G9 position at level 1 as one which: assists in the development of technical design plans and oversees completion of routine, small-scale construction projects; monitors progress, evaluates the quality of work and materials, and provides technical design consultation; evaluates compliance with applicable safety

regulations and adherence to customer and contract requirements; assists in design reviews and supports the selection of contractors, coordinates changes in the scope of work, and recommends contract adjustments; supports adherence to schedules and budgets, test and inspection requirements, and project completion; maintains historical files and project status databases.

The G9 position at level 2 is described as being one which: serves as focal point in the development of technical design plans and oversees construction activities of large complex building projects; prioritizes and integrates the project activities of outside contractors and testing firms; insures compliance with contract specifications and with company and government regulations, accommodates changes to the scope of work, and approves contract adjustments; assists in the selection of design and construction contractors and directs their activities, conducts design reviews to evaluate the work of contractors, develops corrective action plans, prepares status reports for management visibility, and administers budgets and schedules.

The G9 position at level 3 is described as one which: develops technical design plans and overall construction management plans for technically complex, major projects and establishes priorities for all aspects of design and construction; ensures that contract requirements, schedules, and budgets are met by directing and coordinating the work of other construction administrators, contractors, and customer representatives, and provides training and guidance to less experienced construction administrators; makes recommendations for the selection of outside contractors, conducts design reviews, ensures constructibility, and resolves problems; oversees facility expansions, ensures compliance with applicable regulations and requirements, evaluates the progress and quality of building design and construction, and ensures project completion; leads contract negotiations for change orders a resolution of disputes; ensures that historical files and project status databases are maintained.<sup>23</sup>

A 4-year degree in engineering, construction management, architecture, or a related discipline is preferred, with increasing experience as the level rises.

The record reveals that the educational background of the G9s is approximately<sup>24</sup>as follows:

- 1 year of college (2)
- 2 years of college
- 3 years of college (3)
- associates degree (3)
- BA business administration
- BA drafting/design technology
- BA history
- BA public administration
- BA sociology
- BS business administration
- BS chemical engineering
- BS civil engineering (13)
- BS civil engineering/ construction technology (2)

---

<sup>23</sup> There is a natural progression from level 1 to 2 to 3. The lack of a degree does not limit one to a level 1 status. Thus, any person starting at level 1 could progress to level 3.

<sup>24</sup> The totals of the listings of educational backgrounds, derived from the Employer Exhibits 40 and 41, do not match up perfectly with the totals of the classifications, derived from Employer Exhibit 63.

BS industrial/production technology  
BS mechanical engineering  
BS structural engineering  
high school (5)  
MS engineering  
MS mechanical engineering  
Unknown – presumed no college degree  
Vocational school

Supervisor Jewell Mitchell's group does project management of construction projects. She gave two examples of major projects done by her group: a structural upgrade of a factory building in Everett, and structural reinforcing of piers supporting a runway at La Guardia Airport in New York City. The factory building in Everett is the building in which 747s are assembled, and is known as "the largest building in the world." The upgrade project involves removing part of the structural steel and replacing it with heavier steel and installing seismic dampers down each main column throughout the building. The La Guardia project involves the concrete piers supporting a portion of a runway which extends over water. The piers are being reinforced so that the runway will support the 747-600 load limits. A third project is the removal and relocation of the equipment used by the Boeing interiors organization, which completes the interior portions of airplanes.

There are nine G9 construction administrators in Mitchell's group. The two highest level G9s are Stan Marriott and Edward Shirley. They are responsible for major projects, which means they have overall responsibility for the actual construction work. Marriott has the Everett structural upgrade job. He is assisted on the project by Sharon Culbertson, a lower grade level G9. Shirley is working on a project called "F.A.I.T.,"<sup>25</sup> on which he is being assisted by Janet Rosette and Kathleen Hale, who are both lower grade level G9s. There is no specific evidence in the record regarding the other 4 G9s who work for Mitchell, other than their names and educational level. They are: Robert Bechtloff, Donald Dauenhauer, Mark Gosnold, and Kevin Hanefield.

The G9s spend 50 to 60 percent of their time out in the field. They work closely with the job superintendents and foremen employed by outside contractors who are the Employer's "construction partners," i.e., the Austin Company and General Construction. In performing their work, they use knowledge of construction principles and the physical and chemical properties of materials. They do not do design work, which is done by supervisor Max Pahmeier's group or by the outside contractors. They need to be able to read plans and understand the specifications. Mitchell estimated that it would require 8 to 12 years of work experience to learn enough to be a G9. Two of Mitchell's employees, Culbertson and Hale, each have 18 years or more experience in construction. Mitchell said that the Employer provides numerous training classes for all "NSP"<sup>26</sup> employees. She said that she tries to get each of her employees into one class a month, and a class can last from one to five days.

Mitchell gave as an example the type of calculations G9s might need to make when a crane is being used. She said that they will verify that the crane has sufficient capacity to lift the

---

<sup>25</sup> Undefined in the record.

<sup>26</sup> "NSP" refers to "new salaried payroll", which is the payroll designation which includes the Pc6 employees at issue herein.

load they're working with, in particular, the angle the boom needs to be at in order to lift a specific weight. There are printed tables which provide or assist in providing the determination. Mitchell did not name any of her G9s who had actually performed such calculations. She said that her employees had recently attended a seminar given by the Employer in which they learned about the load-lifting capabilities of various cranes, and the calculations associated with using cranes. She also testified otherwise about complex calculations relevant to various aspects of construction, but it does not appear that the G9s necessarily actually perform such calculations, as she also said that Pahmeier's group primarily does such calculations, and there are various books of tables which provide the results of calculations.

***GK safety/health/environmental technical consultants:*** The parties stipulated at hearing that GKs are professional employees within the meaning of the Act. There are nine GKs, reporting to at least six different supervisors.

Two, Howard Boles and Harold Reed, report to supervisor Daniel Johnson, and work in SSG in the 33-08 building in Bellevue. Johnson has no acknowledged unit employees reporting to him. The record does not reveal the specific job duties of Boles and Reed. Robert Burgess reports to supervisor Andro Wipplinger in the 18-42 building in Kent. Burgess has a Ph.D. in physical chemistry. There is no evidence with respect to his job duties. Other employees who report to Wipplinger in the 18-42 building are GJs. One NE1 environmental engineer, Keith Monsey, reports to Wipplinger, but he is located in building 2-41 at Plant 2. Roger Hussong is listed on Employer's exhibit number 63 as a GK contended by the Employer to be in the unit. There is no record evidence with respect to Hussong.

Kevin Jacobsen reports to supervisor Thomas O'Keefe in BCAG in building 4-04 in Renton. O'Keefe also supervises six GS safety and health administrators but does not supervise any acknowledged unit employees. Jacobsen specializes in ergonomics. He responds to requests to examine problems such as an office employee who is experiencing symptoms from repetitive motion. In that situation, Jacobsen observes the person, and then makes recommendations for changes such as raising or lowering the computer monitor or the keyboard, or a different chair or footrest. He does not make any such changes himself, nor does he prepare any designs for changes. There is no evidence that Jacobsen regularly works alongside any engineers.

Paul Johansen reports to supervisor Stephen Tochko in SSG in the 18-236 building in Kent. All other employees in Tochko's group are FY construction environmental specialists or GJ environmental program administrators, who are stipulated to be included in the unit. Johansen serves as project manager of the Western Processing Superfund Site in Kent. Witness Lawrence Knecht, an FY in Tochko's group, explained the Superfund Site:

It's . . . a federally mandated cleanup by the federal government. It's a site where materials were spilled . . . and contaminated the ground and the groundwater, and it has to be cleaned up by the people that originally owned the contaminants. . . . [It's] a flat fourteen acres that we're in the process of capping right now. . . . We are putting on what they call a retro-style cap, which is layers of sands and gravels, plastic sheeting and drainage, you know, geotextile materials with -- topped off with topsoil, and then seeded over with grass. . . . [W]e have spent the last twelve years taking soils out and cleaning up groundwaters, and have successfully petitioned the government to go into a containment mode, to where we have a wall around the site, underground wall around the site, we put this cap on, and we very slowly draw out water to where nothing emanates from the site any longer. . . .The entrepreneur, homespun-type

of chemical engineers that recycled spent solvents, solvents that were contaminated with . . . different materials, mostly from The Boeing Company, and he would filter them and resell them, I guess, as low-grade solvents. And in any case, his ponds and tanks leaked and the water percolated down, the contaminants percolated down to the shallow groundwater. And I think it was back in the middle '80s that they shut the site down.

Johansen is also the trustee's authorized representative at the Superfund Site, which means that he acts on behalf of the approximately 200 non-Boeing "potentially responsible parties" who compose 23 percent of the Western Processing Trust Fund 2. The Employer is the other 77 percent. Knecht works at the Superfund Site as an environmental construction specialist, and he described Johansen as the "lead" on the project. Johansen is responsible for all technical decisions at the site. He has a master of science in chemical engineering. Johansen has extensive experience and technical expertise with waste treatment plants.

The record evidence with respect to Bruce Pickett and Alexander Chee is discussed elsewhere below in conjunction with the HZ radiation health protection administrators.

Denis Bourcier has a Ph.D. He is supervised by Michael McCoy, and has a desk in the laboratory in Kent where several GT scientific data analysts work. A laboratory employee testified that recently Bourcier has been working directly for Jim Johnstone (second level supervision), and is not regularly present in the laboratory, although he does attend their staff meetings. He occasionally performs unspecified work in connection with water pollution issues. There is no evidence that Bourcier regularly works side-by-side with any acknowledged unit employees, or, indeed, any specific evidence with respect to his regular duties. Bourcier is classified as an "associate technical fellow," meaning he has a high degree of expertise, but record evidence regarding him is minimal.

The educational background of the GKs is as follows:

- BS business administration
- BA psychology
- MS unknown subject
- MS chemical engineering; MBA
- MS physical science; BS nuclear engineering
- Unknown (2)
- PhD unknown
- PhD physical chemistry

**GM physician assistants:** There are three GM physician assistants employed in the medical department in clinics in Renton and Auburn. They report to physicians in the clinics. The parties agree that GMs are professional employees.

The job description documents in evidence describe the GM position as one which: provides clinical evaluation and treatment for injuries and illnesses occurring at the worksite; performs preplacement and OSHA-required examinations; assists with job placement of employees with impairments or disabilities; clinically evaluates employee health status and prescribes medicine and treatment.

The position requires a bachelor's degree in a health science or nursing discipline and a physician assistant or nurse practitioner certificate. Among the three GMs employed, one has an MS in human factors engineering, one has a BA in biological science, and one has a BA in clinical health sciences.

Mark Bowers, a GM in Renton, testified that he spends his days seeing patients. He is allowed by law to diagnose and treat any injury or illness that comes into the clinic. He said that one becomes a physician assistant by obtaining a two-year post graduate degree and state licensing.

**GS safety & health administrators:** There are 94 to 97 GSs, reporting to approximately 27 different supervisors. Five such supervisors also have acknowledged unit employees reporting to them. At hearing, the parties stipulated that GSs are professional employees within the meaning of the Act, but Petitioner contends that they should not be included in the unit.

Mark Tose is a safety and health manager (second level supervisor) in Everett. Two first level supervisors, Bruce Hall and Vincent Martinis, report to him. In addition to Hall's and Martinis' groups, there is a group of employees who report directly to Tose. No acknowledged unit employees report to Tose, Hall, or Martinis. The only employees involved herein who report to Tose, Hall, or Martinis are GS safety and health administrators.

Hall's group consists of seven GSs. Their primary focus is industrial hygiene. They measure airborne concentration levels of certain types of contaminants, evaluate employee exposure potentials, and make recommendations for protective equipment and designs to keep employees safe from those hazards. They put sampling devices on employees who are performing chemical processes and collect scientific data. They participate in analysis of the data and in the development of operational requirements for the factory. Their works brings them into regular contact with hourly employees on the production floor. In addition, they have contacts with Pc4 and Pc6 employees in the environmental group regarding any changes in the ventilation

system. Some of Hall's employees are chiefly involved in documentation and procedures required by government regulations.

Martinis' group does the federally required record keeping on illnesses and injuries, and works on "design-in safety," which is the incorporation of safety into new processes on the factory floor. There are four GSs in Martinis' group. One spends about 85 percent of her time on office safety and ergonomics. The others are involved in design-in safety on the factory floor. They participate in design reviews and compare proposed designs to regulatory requirements. Tose gave as an example an occasion in the past when the operations organization wanted to change the way 767 wings were attached to the center wing tank and painted, and wanted to move the process to a different building. The plan raised an issue regarding ventilation of the space, and further an ergonomic issue, in that it called for employees to work lying on their backs. The plan was modified to provide for raising and lowering the wing to solve the ergonomic problem, and the ventilation flow was redesigned. GSs do not do any design work themselves; they merely make suggestions to engineers.

Tose directly supervises nine GSs who are involved in safety administration. They work on the factory floor to ensure that the operations there comply with governmental regulations. They also participate in the development of policies and programs for compliance with the regulations. Tose testified that the GSs spend up to 50 percent of their time in contact with Pc4 engineers, but his testimony in this regard was vague.

Leslie Weige is a second level safety and health manager (SHEA) for the 737/757 programs in Renton. Two groups report to him: an industrial hygiene group supervised by Thomas O'Keefe, and a safety group. The supervisory position of the safety group was vacant at the time of the hearing, and Weige was serving as that group's first-level supervisor. O'Keefe has seven employees, including six GSs and one GK safety/health/environmental technical consultant Kevin Jacobsen.

Weige's group is involved with the development, coordination, and implementation of safety and health programs, including ergonomics. Ergonomics involves body motion and how that motion is applied at work, and what types of repetitive motion can result in cumulative trauma. With respect to ergonomics, his group does hazard analysis in the workplace, looking for awkward positions, excessive force, and repetitive motions. Based on the hazard analysis, a technical report is issued which contains recommendations for changes in tooling,<sup>27</sup> tools, or the process. Weige's employees also conduct investigations when there has been an injury, and make recommendations to prevent similar injuries in the future. For example, an employee who was working on one of the control surfaces of an airplane lost a finger when another employee doing a test inside the cockpit inadvertently caused the control surface to move. Weige's employees involvement was in designing a method to lock out, block, or tag the cockpit controls so that the control surface could not be moved from the cockpit while being worked on. Weige's employees do not design lock-out or block devices, but make recommendations and provide information to engineers. Weige's employees are also involved in recommending fall protection devices and safety measures for entry into confined spaces.

---

<sup>27</sup> "Tooling" is the structure that an employee stands on to reach the part of the airplane they are working on; "tools" are things like rivet guns and screwdrivers.

Among the 94 to 97 GSs, 27 have college degrees in health/hygiene/nutrition, and 8 more have degrees in environmental health. Nine have engineering degrees. The balance have no degrees, or degrees with minimal apparent relevance to the position.

***GT scientific data analysts:*** There are approximately 20 GTs. They report to six different supervisors. The GT classification is a kind of “catch-all” designation for several different job functions. Among the GTs, the parties agree that the two toxicologists mapped into the DX Toxicologist job family, the epidemiologist mapped into the DG Epidemiologist job family, and the audiologist mapped into the EL Health Services Administrator job family are professional employees. The remaining GTs, whose professional status is at issue, are: one mapped into the DY Radiation Safety Specialist job family (GT radiation safety specialist, herein); two mapped into the EB job family (GT program management specialists, herein); 12 mapped into the DZ job family (chemists, herein); and two mapped into the EA job family (GT support specialists, herein).

The toxicologists, Daniel Guth and Jeanne Morimoto, report to supervisor Karen Morris-Fine, who also supervises four chemists and the two GT program management specialists. Toxicology is the study of the effects of chemicals on biological systems. Guth and Morimoto have similar duties. They do health hazard evaluations on specific products. They also respond to questions regarding the toxicity of chemicals or products. In performing these duties, they research and review information. In performing a health hazard evaluation, typically they contact the manufacturer to obtain a complete listing of the ingredients in the product, then they do a complete toxicological review of each ingredient, which generally involves researching information about the chemical. Then they summarize the information for each individual chemical, summarize the key effects or key toxicity concerns for the entire product, and deliver a written report to the safety office that requested the evaluation. They do not do any testing or examination of the actual chemical; their research is confined to the literature regarding the chemical. An example of a response to a question raised was that of an engineer on the production side who wanted to know about a new insulation material proposed by the FAA. The toxicologists contacted several manufacturers of the insulation product, the resin used to bond the fibers and the bag into which the insulation material is placed to make a “blanket.” The toxicologists got information from the manufacturers on the composition of substances, and on their testing of thermal decomposition. They looked at what products would form if the insulation was heated to very high temperatures, then did research on the toxicity of those chemicals, summarized what they learned, and sent the information to the engineer. Guth and Morimoto generally work alone, with virtually no supervision.

The epidemiologist is Laurence Wechsler, who is the only person, among those involved herein, in the DG epidemiologist job family. Wechsler is supervised by Dr. James Muhm, who does not supervise any other employees involved herein. Muhm is a physician in the Employer’s medical department. Wechsler has a master of science in environmental health, and has completed a PhD in epidemiology except for his thesis. Epidemiology is the study of determinants and distribution of disease in human populations. Wechsler is the only epidemiologist employed by the Employer in the Puget Sound region. Wechsler’s duties concern four major areas: research on occupational health issues; surveillance, that is, looking at injury and illness data of various types within the company and analyzing the data to determine trends for the purpose of focusing prevention and mitigation activities; cluster investigations, in which Wechsler looks at seemingly statistically abnormal groupings of illness to see if there is a common cause, such as cancer, and a possible at-work carcinogen causing the illness; and

literature reviews of controversial health topics. For the most part, Wechsler works alone with minimal supervision.

The audiologist is Glenn Spatola. He is the only employee involved herein who is mapped into the EL Health Services Administrator job family. An audiologist identifies, assesses, and manages disorders of the auditory or hearing, and of the body's balance systems and other neurosystems. Spatola is the only audiologist employed by the Employer in the Puget Sound region. He works in the 2-45 building, which is the Medical Clinic at Plant 2. He reports to supervisor James McCunney, manager of audiometric and vision testing. McCunney reports ultimately to the medical director, Fred Tilton. McCunney does not supervise any acknowledged unit employees. The Employer has a hearing conservation program, and Spatola is responsible for any issue regarding hearing testing or hearing problems for the employees enrolled in the program. Technicians reporting to McCunney administer actual hearing tests to employees; they consult Spatola on such matters as whether a retest is needed, or whether the employee needs further evaluation by a physician. In his daily work, Spatola has regular contacts with physicians and nurses. There is no evidence that he has such contacts with any acknowledged unit employees.

The GT radiation safety specialist is Richard Edwards, who is supervised by Garey Pierce, who also supervises one GK Safety/Health/Environmental Consultant employee, Bruce Pickett. Other employees in the DY Radiation Safety Specialist job family are HZs. Edwards has one year of college. Edwards is discussed elsewhere below, in conjunction with HZs RHP Administrators.

Linda Taylor and Mary Sroufe are the GT program management specialists. Taylor is responsible for administering the company-wide program for compliance with the Toxic Substances Control Act (TSCA). The TSCA regulates chemical imports and exports. It includes an inventory or list of chemicals allowed in commerce in the United States. Taylor receives notifications of products which are to be exported. She uses the material safety data sheet for that product to get a list of ingredients, which she then checks against the TSCA inventory to determine whether notification is necessary. Likewise, chemicals imported from other countries must be certified at Customs as to whether they are compliant with TSCA. If the chemical is for production use, then Taylor must contact the manufacturer to get a full disclosure of the chemical ingredients in the substance, and then verify that each ingredient is listed on the TSCA inventory. Then she prepares a certification letter, which includes classifying the substance according to the tariff schedule. Taylor is also responsible for communicating with the various Employer sites regarding any changes in the regulations. During the past year, Taylor worked with company attorneys and other persons knowledgeable about TSCA to define the policies and practices that the Employer will require for compliance with TSCA. Mary Sroufe acquires proprietary information on chemical products from the vendors of those products; that is, the disclosure of the chemical composition of materials. She also researches literature for the toxicologists. Both Taylor and Sroufe deal with data, not with any chemical substances themselves. Taylor has a bachelor of science in general biology, and Sroufe has a bachelor of arts in general biology.

The GT support specialists are Richard Berry and Carol Brunton. Berry is supervised by Daniel Johnson, who also supervises two GK safety/health/environmental technical consultants, four GS safety and health administrators, and two CH organization advisors. Johnson's group works in the 33-08 building in Bellevue. Berry has three years of college in business. There is no testimony or other evidence regarding Berry's job duties. There is no evidence regarding Brunton.

Of the chemists, four report to supervisor Charles Keller in building 4-83 in Renton. Keller also supervises two Pc4 FA4 Plant Engineers, who work in the 4-04 building in Renton. There is no evidence with respect to the work of the two Pc4 engineers. Five chemists report to supervisor James McCoy in building 18-62 in Kent. McCoy also supervises one Pc4 FA4 Plant Engineer, who works in the 9-51 building at the Developmental Center, five NE1 Pc4 engineers, who also work in the 9-51 building, and three NE1s who work in the 18-42 building in Kent. Four chemists report to supervisor Karen Morris-Fine; three work in the 18-21 building in Kent, one works in the 33-08 building in Bellevue. The education background of the chemists is as follows:

- BS chemistry (5)
- BS general biology
- BS organic chemistry
- BS physical science
- MS chemistry
- MS environmental health; BS chemistry
- PhD chemistry
- vocational school

Chemists spend virtually 100 percent of their time in a laboratory. A Pc4, Teresa Dunn, who is mapped into the ED Environmental Engineer/Scientist job family, works in the laboratory supervised by McCoy in Kent, where she is the lead employee and performs administrative functions and quality control. She was appointed to the lead position recently when the prior lead, a GK safety/health/environmental technical consultant, left the team. There are approximately 100 different pieces of testing apparatus in the laboratory. The example given in the record is a computerized machine which performs spectrum analysis. The samples must be prepared for analysis, by sifting, distillation, vaporization, or other means, so that a laser light may be directed through it to produce a spectrum. The machine then produces a computer read-out of the spectrum. The customer who has submitted a sample may have requested a certain type of test, or may have requested that the sample be tested for a certain substance, such as cyanide, and then the laboratory analyst decides which test to use. Some samples arrive with no specific designation as to the test to be used or the substance to be tested for, and the analyst must determine the "*constituency*" of the sample through broad spectrum testing. The samples arrive in the laboratory in the form of liquids or solids, such as vials of dirt, bottles of water, or pieces of metal. To perform their work, the chemists need to understand chemistry and the procedures for performing the analyses. They receive training on the operation of specific machines through arrangements with the machine vendor.

A chemist testified that, for example, in using one of the machines in the laboratory:

I have to -- there's some judgment calls here. I see a peak, a spectra, a peak of a spectra. It's an algorithm, basically, of what the machine is seeing. It's a picture. I have to pick if I'm going to use one background correction point or two background correction points. The reason I would choose maybe one, because maybe the peak tails off or maybe there's another peak very close to it that absorbs it, very close to the correction point that I want to use. So I can't use that. Another is what wavelength is more sensitive than another wavelength. I have to make that decision whether to use the less sensitive one because it's got less interferences. And so there's some judgment calls there. . . .

I don't just press a button and the answer comes out. I do more than that. I have to use my judgment; I have to think about what I'm doing. I have to plan how to -- plan my day, plan what analyses to do first and what's important and what's not important, and use judgment all day and every day.

***HZ radiation health protection administrators:*** There are approximately 11 HZs reporting to two supervisors, John Swanson and Garey Pierce. Neither Swanson nor Pierce has any acknowledged unit employees reporting to him. Pierce has GT scientific data analyst Richard Edwards and GK safety/health/environmental technical consultant Bruce Pickett in his group. Swanson's employees all work in the 7-34 building in Tukwila. Pierce's employees also work in the 7-34 building, except for two HZs who work in the 15-10 building at Plant 2. There are two levels of HZs, both at issue with respect to professional status. All HZs are mapped into the DY Radiation Safety Specialist job family. The only other employee in the DY job family is one GT, Richard Edwards.

The job description documents in evidence describe the HZ position at level 1 as one which: reviews and evaluates proposed and existing ionizing or non-ionizing radiation projects and processes; communicates with management to ensure compliance with administrative and engineering control requirements; develops and presents radiation protection training to employees and contributes to the enhancement of products and radiation facilities. A bachelor's degree in physical or biological science is preferred, along with four to six years' experience in radiation health physics.

The HZ position at level 2 is described as being one which: leads and independently administers radiation protection programs using project management skills; guides the development and implementation of radiation protection programs and projects; formulates radiation protection policy with senior management;<sup>28</sup> resolves compliance issues; collaborates with customers to improve radiation processes. An advanced degree in engineering, or physical or biological science, is preferred, along with six to eight years' experience.

The record reveals the educational background of the HZs as shown below:

- 2 years of college
- Associate degree in radiological technology
- BA mathematics
- BA physics
- BS and grad studies in medical science
- BS chiropractic medicine
- BS physics
- BS physics; BS history
- MA botany
- MA education; BA physics
- no degree

Swanson's group deals with company-wide issues regarding radiation protection, while Pierce's group deals with maintaining the programs in the Puget Sound area. Swanson's group includes five HZs: Howard Wallace, Susan Young, George Henman, Jerry Bowles, and Ron

---

<sup>28</sup> No party contends that HZs are managerial employees, nor does the record support any conclusion that they are.

Shultz. Pierce's group includes six HZs: David Argento, Sherry Bravinder, Charles Croft, Marjorine Dowd, Barbara Michieli, and Bertrand Nelson. Pierce also supervises Richard Edwards, a GT, and Bruce Pickett, a GK. Another GK, Alexander Chee, is associated with the HZs; indeed until about early November, 1998, Chee was an HZ himself. Chee shares a cubicle with Wallace in the 7-34 building, but the record does not reveal who supervises Chee.

HZ Howard Wallace testified regarding his own job duties and those of other HZs. Wallace's duties are somewhat different from those of the other HZs. Wallace described his job as consisting of three components. He spends about 40 percent of his time assessing the radiation protection program; about 50 percent of his time coordinating the radiation safety technical committee; and the other 10 percent in miscellaneous tasks.

The assessment function involves auditing radiation safety at various locations. HZs Susan Young and Steve Henman also perform this function. The assessment function entails reviewing pertinent regulations, visiting the facility to talk to radiation safety employees<sup>29</sup> on-site to determine how their program is organized, talking to employees who use radiation sources, looking at the sources to determine what protective measures are in place, looking at site records to determine if regulatory and company requirements are being met, and then writing a report. Wallace testified that the assessment function requires a broad understanding of how the sources of radiation function and what they produce, of measuring devices, and of control devices. He gave as an example an occasion on which he visited a site that was using a neutron source, where the employees had a dosimetry device which they wore to measure radiation; however, he found that it wasn't the type of dosimetry that measures neutrons, but rather it measured different types of radiation which their source wasn't producing, so it was not an effective control measure. He said that a person without a college education could do the assessment function, as much of the required knowledge comes through experience, and Employer-offered short courses on radiation safety.

Wallace is unique among the HZs with respect to his participation in and leadership of the radiation safety technical committee, many of whose other members are managers. The purpose of the committee is to coordinate radiation safety programs among the three entities involved in the recent merger of Boeing with McDonnell-Douglas and North American Rockwell.

Among the miscellaneous duties he performs are training and monitoring of field radiographies. HZs conduct training classes for employees who use radiation sources in their work. Field radiographies are x-ray or gamma radiograph operations conducted outside shielded enclosures, as when production employees have an in-situ airplane part x-rayed to check for cracks or faults. Monitoring such radiographies involves taking an instrument out to take readings of radiation levels.

Jerry Bowles has expertise with respect to lasers. He provides consulting services on use of lasers, and reviews safety systems in laser labs. He ensures that laser beams used in the manufacturing process are kept in a confined environment, and helps to design safety systems to protect employees.

Ron Shultz also works with lasers, and has expertise regarding radio frequencies. His task is to ensure that radiation levels of radio frequencies are at acceptable levels; if they exceed

---

<sup>29</sup> The record does not establish the identity or job classification of such employees.

company guidelines, he consults on what control measures need to be put in place to minimize hazards.

Pierce's group is responsible for the periodic monitoring of laboratories containing radioactive materials to check for any leakage from radioactive sources and laboratory analysis of the tests; monitoring of x-ray laboratories periodically; and monitoring, on request, potential non-ionizing radiation hazards, such as lasers or radio frequencies; and the record-keeping associated with those activities.

Charles Croft serves as an advisor on radiation-generating equipment. For example, if a vendor is going to supply a vault, Croft checks the vendor's shielding calculations or perhaps does the initial calculations to determine the appropriate shielding for the vault. In so doing, Croft must determine the frequency spectrum that the radiation source is emitting, and determine the shielding characteristics of the materials that are used as shielding for that particular spectrum of radiation. He can then predict what the radiation levels would be on the other side of the shielding from the radiation source. An understanding of the mechanisms by which radiation interacts with matter is required.

Sherry Bravinder is a certified health physicist<sup>30</sup> who works in the accelerator facility. Bertrand Nelson also works in the accelerator facility,<sup>31</sup> as does David Argento. They do radiation monitoring, and are concerned with the safe operation of the facility and protecting the employees who work there. Argento also calibrates radiation detection instruments.

Barbara Michieli works with optical frequencies (visible light), including welding sources. She evaluates optical frequency hazards and recommends protective measures for them. To do this, she must use a photometer to measure the frequency and intensity of radiation emitted by the source; compare it against standards established for that type of radiation; and if necessary determine what could be done to reduce hazards to within acceptable limits. Her work does not require mathematics beyond the high school level, but she needs to know what parts of the body are affected by light, such as the cornea of the eye.

Marjorie Dowd monitors laboratories that use or have radioactive materials and those with x-ray generating equipment. In a laboratory where radioactive materials are present, she uses a small piece of cloth to wipe surface areas, then submits the cloth to another laboratory for an in-depth analysis to determine whether the cloth has any radioactive matter on it, an indication that the radioactive matter in the laboratory has escaped containment. She also does a quick check with a Geiger counter. In addition, she verifies that the laboratory personnel have had adequate safety training, and checks for necessary signs and postings and for protective measures. In monitoring such laboratories, she follows a checklist.

The laboratory that analyzes the pieces of cloth and other such submissions is associated with the HZs' offices in the 7-34 building. Richard Edwards, the GT who reports to Pierce, runs the laboratory. The laboratory is devoted solely to analyzing radiation samples. To that end,

---

<sup>30</sup> A certified health physicist has passed certain examinations given by the National Health Physics Society.

<sup>31</sup> There are a number of accelerators in the 15-10 building. The accelerator facility, under ISDS, is involved in radiation effects testing, primarily the effects on electronic parts. Such tests are conducted by scientific personnel and other employees, including accelerator operators.

Edwards uses a liquid "*simulation*" counter and a low-background alpha/beta counter. Edwards also calibrates field instrumentation for ionizing types of radiation (that is, radiation energetic enough to knock an electron out of an atom). Edwards does not have a college degree. He was a reactor chemist in the U.S. Navy.

Bruce Pickett, the GK who reports to Pierce, is involved with the company's license application. There is only one radioactive materials license in the Puget Sound area, and it is the responsibility of second-level supervisor Lawrence Proud, the radiation safety officer. The license is updated periodically. Pickett engages in correspondence with the relevant governmental agencies regarding the license. Pickett also has an oversight function regarding the administration of radioactive materials programs, including ensuring that unspecified surveys are completed.

The record reveals only minimal evidence regarding Alexander Chee, who is a GK safety/health/environmental technical consultant mapped into the DW Industrial Hygiene and Safety job family. As has been said, he was an HZ until about early November 1998, and he continues to share a cubicle with Wallace. However, the record does not specify his supervisor or his specific job duties. He has a Ph.D. in health physics and acts as a consultant to the HZs.

### **Conclusions as to Professional Status**

Section 2(12) of the Act defines a "professional employee" 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 apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
- (b) any employee, who (i) has completed the course of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

With respect to the FA project administrators, F6 Facilities planners, FD permit administrators, G9 construction administrators, and HZ radiation health protection administrators, professional status issues hinge largely, although not entirely, on whether the work of the employees involved meets the requirement of Section 2(12)(iv). In support of its contentions in this regard, the Employer relies heavily on *AVCO Corp./Textron Lycoming Division*, 313 NLRB 1357 (1994). The Employer argues that the Board held in *AVCO* that where a simple majority of the employees at issue hold the relevant college degree, a rebuttable presumption of professional status exists. My reading of *AVCO* does not reveal such a precise holding, since the "simple majority" phrase is never used. Rather, various phrases, such as "primarily" or "majority" are used. Moreover, these terms were largely dicta, since in fact the "vast majority" of the employees in question were found to have the relevant degree. (*AVCO*, at p. 1358). In *AVCO*, the professional status of certain engineers was at issue. In making its findings, the Board said:

In *Western Electric Co.*, 126 NLRB 1346 (1960), the Board developed a test for determining professional status that remains valid. The Board concluded that Section 2(12)(a) "defines a professional employee in terms of the work he performs," not in terms of individual qualifications. *Id.* at 1348. Thus, if an employee performs work of a predominantly intellectual and varied character, involving the consistent exercise of discretion and judgment, and 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, then that employee qualifies as a professional.

In addition, although educational background does not control, the Board examines educational background "for the purpose of deciding whether the work of the group satisfies the 'knowledge of an advanced type' requirement of Section 2(12)(a)." *Id.* at 1348-1349 and fn. 6, quoting Sec. 2(12)(b). If a group of employees consists *primarily* of individuals with professional degrees, the Board may presume that the work requires "knowledge of an advanced type." *Id.* at 1349. Conversely, if few in the group possess the appropriate degree, it logically follows that the work does not require the use of advanced knowledge. *Id.*; see also *Binghamton Press Co.*, 226 NLRB 808 (1976). In applying the "actual work performed" test in conjunction with the presumption that a group of individuals with degrees performs work that requires knowledge of an advanced type, the Board has consistently found that employees with professional engineering degrees working in specialized fields of engineering qualify as professionals.

By contrast, in those cases where the Board has found engineers not to qualify as professionals, they generally performed routine work and in virtually every case did not have college engineering degrees. The cases cited by the Employer in support of the Regional Director's findings fall into this category and do not support its contention that the engineers at issue here do not qualify as professionals. In *A.A. Matthews Associates*, 200 NLRB 250 (1972), for example, 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 contrast to these cases, the vast majority of the engineers in the instant case have bachelor's degrees in specialized fields of engineering and all work in jobs requiring the consistent exercise of discretion and judgment in nonstandardized, predominantly intellectual work. Applying the relevant standard here, we conclude that the engineers are professionals within the meaning of the Act, and therefore should be excluded from the unit.

Critically, in the *Western Electric* case cited by the Board in *AVCO*, the Board specifically rejected adopting a formula approach to determinations of professional status.

Further, in weighing the significance of the educational background of the employees at issue, it is instructive to keep in mind the Board's analysis, in *The Express-News Corp.*, 223 NLRB 627 (1976), of the professional status of journalists:

However, though the work of journalists may be challenging and diverse, the critical issue . . . is whether the work of these journalists meets the requirements of clause (iv) of paragraph (a) of Section 2(12). In our opinion it does not. While knowledge of the type described in that clause might be desirable for a journalist to have, it is clear that his work generally does not require it. . . . Clause (iv) specifically distinguishes knowledge acquired from a general education from that required for professional work. In our view, the general college education . . . does not satisfy the standard of Section 2(12)(a)(iv). . . .

We do not suggest that Section 2(12) of the Act mandates that "knowledge of an advanced type" be acquired by all professionals in the unit through training in an institution of higher learning. Rather, this advanced knowledge must be customarily received by a prolonged course of specialized intellectual instruction and study in an institution of higher learning. . . . The diverse and broad backgrounds of journalists lead to the conclusion that the knowledge required by and the work of the journalists is not that customarily acquired through specialized training in journalism or communications, but instead is predominantly that acquired through a varied and broad education. . . . our [dissenting] college, having found the work in question to be professional, argues that it is irrelevant whether the person performing the work received his training in an institution of higher learning or through experience. We do not agree because the Board, as the language . . . [in] *Western Electric* [cited earlier] clearly shows, has considered it relevant whether the group of employees in question is predominantly composed of employees with degrees in the field to which the profession is devoted. Secondly, before the work can be found to be "professional," it must pass muster with the narrow requirements of Section 2(12) that the knowledge of an advanced type be customarily acquired through specialized study. It would appear undisputed by all, including our colleague, that journalists have different and broad backgrounds and are called upon to perform varied functions and shoulder many responsibilities. In our judgment, it is this diversity of background and function that leads to the conclusion that journalists are not required to have knowledge of an advanced type customarily acquired through specialized training in an institution of higher learning. Situations elucidated in this record--such as a sportswriter with a B.A. in history--serve to belie the contention that all journalists, to properly perform their job, require knowledge of an advanced type customarily acquired through specialized training in journalism and communications.

Nor do we find professional status for journalists because some professions (e.g., lawyers) have allowed people to enter the profession through an apprenticeship. It is only logical--as in the case of lawyers--that a person could join the profession only after the completion of a long apprenticeship. Here, the Employer has hired as journalists persons with neither advanced academic training in journalism nor its equivalent in experience. Under our colleague's analysis, these persons, though their academic backgrounds or

experience were limited or unrelated to journalism, would instantly become professionals within the meaning of the Act. This result would be contrary to the narrow limits imposed by Congress in enacting Section 2(12) of the Act. The statute requires a prolonged course--or equivalent experience--of specialized instruction. As journalists are not required to have attained knowledge of an advanced type through an advanced degree or completion of an extensive period of apprenticeship prior to becoming journalists, their work is not "professional" within the meaning of Section 2(12). . . . Section 2(12) was meant to apply to small and narrow classes of employees. We find it inconsistent with the narrowness of the statute to permit any advanced background (rather than one in journalism or communications) to support a finding that all journalists are "professionals." . . . we fully recognize that in determining the "professional" status of employees we must examine both the nature of the work performed and the background of the employees involved. . . . Should an employer impose academic or experience requirements that are unnecessary to accomplish the work in question, the work may remain outside the definition of "professional" work. Here, as noted above, many individuals with limited academic training in journalism or limited journalistic experience perform well their newsroom functions. This fact supports our view that the work of these journalists is not "professional" within the meaning of the Act because it can be competently accomplished without requiring advanced degrees in journalism or equivalent experience.

As it stated in *Express-News*, the Board recognizes that some professions have allowed people to enter the profession through an apprenticeship; examples can be found in cases such as *Hertka & Knowles*, 192 NLRB 923 (1971), where the Board found employees who were performing the same work as licensed, degreed architects to be professional employees, where the employees at issue had some architectural education and several years' experience. In *General Electric Company*, 89 NLRB 726 (1950), the Board found that planning, wage rate, methods, and time-study employees who had specialized knowledge and experience acquired through a prolonged apprentice course operated by the Employer, which included several years of training in the operation of machine tools and a number of night school courses in mathematics and related subjects, were professional employees. Here, the record reflects that the Employer provides numerous classes for its employees; one supervisor testified that she tries to get each of the employees in her group into at least one class a month, and classes generally last from one to five days. However, while the Employer provided detailed specific evidence regarding the formal educational attainments of all of the individual employees at issue, there is no similarly detailed specific evidence with respect to the amount of other training employees have received, nor any specific evidence as to the years of relevant experience possessed by the employees, nor that there is a "program" which must be completed prior to attaining a particular status. Thus, claims by the Employer that where a majority of the employees in a classification may lack the relevant college degrees, such individuals have other education, specialized training, and experience which has provided them with the requisite advanced knowledge, are unsupported by the record.

### **"Professional" Status of Specific Classifications**

***FA project administrators:*** Much of the work of FAs consists of routine matters such as arranging for a craftsperson to paint a room or install carpet. The large projects described by FA

Turk are the exception rather than the rule. Overall, the record does not demonstrate that FAs meet the definition of a professional employee. While their work may be intellectual rather than manual or mechanical, it is nevertheless largely routine and it is work of a character such that the result accomplished can be measured in relation to time. Some degree of discretion and judgment is involved in performing the FAs' job duties, but the work does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction in an institution of higher learning. While about 20 of the 50-some FAs have college degrees, their degrees are not in any particular subject, and several are in wholly unrelated subjects, such as music, English, political science, or psychology. Of the 20 with college degrees, at best 10 of them possess a degree with arguable relevance to project administration, such as business administration or civil engineering. The Employer argues that their other specialized training and experience are a substitute for specialized college education. However, as stated above, the record lacks specific evidence in support of such contention with respect to all but one of the 52 or more FAs.

Cases cited by the Employer in support of its contention that FAs are professionals are readily distinguishable from the instant case. In both *Fisher-Friedman Associates*, 192 NLRB 925 (1971) and *Hertka & Knowles*, supra, the Board found employees who were performing the same work as licensed, degreed architects to be professional employees. Such employees were working interchangeably with licensed, degreed architects in architectural firms performing the traditional work of architects, none of which circumstances are present here with respect to the FAs.

I conclude that FA project administrators are not professional employees, as they do not meet the definition of professional employees as set forth in the Act. Therefore, they are excluded from the unit, and it is unnecessary to make any determination herein with respect to any community of interest they might otherwise have with unit employees, inasmuch as they are excluded from the unit as non-professionals.

**F6 Facilities planners:** The testimony of Employer witness Rod Alonzo establishes that the F6 planner position is the natural progression from the FA project administrator position. I note that he said that neither job requires more than a high school education. The work of the F6s is intellectual rather than manual or mechanical, and does require some exercise of discretion and judgment. The record does not establish whether it can be quantified in relation to time. However, clearly the work of the F6s does not require "knowledge of an advanced type." While most of the 77 F6s have college degrees, their degrees are not in any specific field, but, as with the FA project administrators, vary widely, including criminology, geography, journalism, history, biology, and theology; about 45 of them have an educational background with no direct relationship to their work. The record does not support a conclusion that the experience acquired while serving in the FA position, or the five to seven years' planning or facilities management experience *required* by the Employer, establishes that the work requires knowledge of an "advanced" type. It is clear from the many Board cases in which the issue is addressed, as well as Section 2(12)(iv) itself, that not all knowledge acquired over a long period of time is of an "advanced" type, as the Act specifically says that such knowledge is "*customarily* acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning" [emphasis added.] There is no evidence that the knowledge required by the F6s to perform their work is customarily acquired in such manner.

In *General Electric Company*, 120 NLRB 199 (1958), cited by the Employer, the Board found that planning, wage rate, methods, and time-study were professional employees, based on

its findings regarding similar employees in the earlier *General Electric* case, *supra*. The record herein does not establish that the F6s have any equivalent or similar specialized knowledge, or that their job duties are identical to those of the *General Electric* employees, who analyzed trends, made studies of operational planning and time standards, engaged in research on establishing manufacturing facilities and layouts, and formulated future layouts. In *American Locomotive Company*, 92 NLRB 115 (1950), cited by the Employer, the Board found operational planners whose work required an engineering degree or considerable practical experience, to be professionals. In the same case, the Board found time study engineers to be professional employees, where those employees lacked college degrees but were performing work which required an engineering degree or several years' experience, and their work did not differ significantly from that performed by similar employees in the 1950 *General Electric Company* case, *supra*. The time-study engineers at issue observed operations in the production area and, after applying fatigue allowances and other standard modifying data, arrived at the amount of time to be allowed for various individual operations, work significantly different from that of the F6s at issue herein. Similarly, the F6s herein are not performing the same work as that performed by the estimators found by the Board to be professionals in *Guy F. Atkinson Co.*, 83 NLRB 1004 (1949), and cited by the Employer. Thus, these cases provide only weak analogies to the F6 situation.

I conclude, therefore, that the F6 Facilities planners are not professional employees within the meaning of the Act. It is thus unnecessary for me to make any determination with respect to any community of interest they might otherwise have with unit employees, as they are excluded from the unit as non-professionals.

***FD Facilities permits administrators:*** The work of the FDs is a routine process of gathering specific documents into a package and submitting the package to the local governmental permitting agency. While the FD may need to exercise some discretion and judgment in interpreting governmental regulations, clearly, the choice of documents is driven by the requirements of the permitting agency, and not at the discretion of the FD. Further, the record does not establish that any specialized knowledge of regulatory codes which the FDs utilize in the performance of their work is of an advanced type customarily acquired by any prolonged course of study in an institution of higher learning, or that their work requires any other such knowledge of an advanced type. In this regard, I note that while the job description documents in evidence state that a four-year degree in construction or an engineering-related discipline is *preferred*, only three of the seven FDs have such degrees; the others have degrees in liberal arts or physical education, or no degree at all. In this regard, the FDs are distinguishable from the commercial and governmental service engineers found professional by the Board in *Potomac Electric Power Company*, 99 NLRB 219 (1952), cited by the Employer. Such engineers in *Potomac Electric* were *required* to have a bachelor of science degree in engineering.

Leonard Astemborski, a Pc4 FA4 Facilities A&E/Plant Engineer who reports to supervisor Jewell Mitchell, performs the same work as the FDs. The parties stipulated that all Pc4s are professional employees within the meaning of the Act. However, Astemborski is not performing the duties of a Pc4 engineer. In these circumstances, the fact that the parties stipulated to the professional status of all Pc4s, and one Pc4 is performing the same duties as FDs, does not support a conclusion that FDs are professional employees; rather, it calls into question the professional status of the one Pc4.<sup>32</sup>

---

<sup>32</sup> The parties were aware at hearing of the issue of Astemborski's professional status as a corollary to the issue of the professional status of the FDs. Neither party specifically took a position regarding Astemborski.

The record does not establish that FDs meet the Act's definition of professional employees, and I conclude that they are not professionals. They clearly operate on the "para-" level. Therefore, they are excluded from the unit. In addition, inasmuch as Astemborski is performing the work of an FD and does not have any additional engineering duties, I conclude that he is not a professional employee and is also excluded from the unit.

**G9 construction administrators:** The G9s perform an overseeing and quality assurance function on behalf of the Employer on construction projects. They do not direct the work of the craftspersons on the jobsite, nor do they perform any architectural or engineering design work. Their work requires knowledge of construction principles and the physical and chemical properties of materials, and they must be able to read building plans and understand the specifications. Such knowledge is generally acquired by them through on-the-job experience and attendance at training classes offered by the Employer. The record does not establish that such knowledge is *customarily* acquired through any "prolonged course of specialized intellectual instruction and study in an institution of higher learning." In this regard, I note that of 43 G9s, 20 have college degrees in relevant areas, but 16 lack *any* four-year degree and 2 more have totally unrelated degrees.<sup>33</sup> I conclude, therefore, that although the work of the G9s is complex, varied, and highly technical, and requires the exercise of discretion and judgment, it does not require the type of knowledge which is a distinguishing characteristic of professional employees, and G9s are not professional employees. Thus, they are excluded from the unit.

**GT scientific data analysts:** As has been said, the parties agree that the GTs who are the toxicologists, epidemiologist, and audiologist are professional employees. The GTs whose professional status remains at issue are the 12 chemists, two GT program management specialists, two GT support specialists, and one GT radiation safety specialist.

Among the 12 chemists, all but three have college degrees in chemistry, and two of those three have degrees in biology and physical science, respectively. All chemists perform the same work. The nature of their work as described in the record and the educational background of the chemists as a group establish that their job requires the type of advanced knowledge within the scope of Section 2(12)(iv) of the Act. The crux of the issue with respect to the professional status of the chemists is whether they must consistently exercise discretion and judgment in performing their work. They use computerized machines to test samples based on requests to perform a specified test for a specified substance, following established procedures. Many of the tests they perform are repetitive and routine. However, a GT testified that the performance of tests requires more than simply pressing a button; that he must make certain decisions in the process.

In *Aurora Gasoline Company*, 128 NLRB 37 (1960), the Board found chemists to be professional employees where they were required to have at least a bachelor of science degree in chemistry, and spent the major portion of their time investigating and analyzing the content of unknown materials and in developing quality tests, and relied heavily on their own discretion and judgment in the performance of their duties. In *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975), the Board found a chemist to be professional where the employee performed complex chemical tests and analyses, and conducted original research to find new procedures which would be used in the laboratory, work which required the exercise of discretion and judgment. In *St.*

---

<sup>33</sup> Five more appear to have degrees with hopefully questionable relevance: industrial/production technology, business administration, public administration and chemical engineering.

*Elizabeth's Hospital of Boston*, 220 NLRB 325 (1975), the Board found chemists to be professionals where they performed 20 to 30 different types of tests a day, using independent judgment and specialized skills to spot faults and make improvements in procedures to correct them.

While the chemists herein do not do all of the things done by the chemists in the cited cases, they exercise the same skills and have similar educational backgrounds, and the record supports a conclusion that they are not significantly different from such chemists. Therefore, I find that the GT chemists are professional employees within the meaning of Section 2(12) of the Act.

The two GT program management specialists, Taylor and Sroufe, both have bachelor's degrees in biology. Their work is intellectual and varied in character, in that the research they do requires more than routine mental effort, and they must exercise discretion and judgment in the process of determining the chemical components of substances. Further, their work cannot be quantified in relation to time. Their educational level and the nature of their work support a conclusion that the work requires knowledge of an advanced type. I conclude, therefore, that the GT program management specialists are professional employees within the meaning of the Act.

There is no record evidence with respect to the work of the GT support specialists, Berry and Brunton. I am, therefore, unable to make any finding with respect to their professional status.

The record reflects that the work of Edwards, the GT radiation safety specialist, is similar to that of the chemists, and that, while he lacks a college degree, he has prior experience as a reactor chemist in the Navy. The Board has found an employee who lacks a college degree but who performs the same work as professional employees to likewise be professional. See, e.g., *Hertza & Knowles*, supra. Inasmuch as I have found above that the chemists are professionals, I conclude that Edwards is a professional employee.

***HZ radiation health protection administrators:*** The record demonstrates that the HZs are performing work which is intellectual and varied in character and requires consistent use of discretion and judgment. However, the record does not establish that the work of the HZs requires the type of advanced knowledge described in Section 2(12)(iv) of the Act. Four of the 11 HZs have bachelor's degrees in physics; others have degrees in such subjects as chiropractic medicine and botany, and three have no college degrees. Testimony establishes that they acquire the necessary knowledge through on-the-job experience and training provided by the Employer, although there is no specific evidence with respect to the extent of such experience and training. In this regard, they are distinguishable from the nuclear physicist found to be professional by the Board in *Sutter Community Hospitals of Sacramento*, 227 NLRB 181 (1976), who was *required* to have a bachelor's degree in physics, chemistry, or biology, and at least four years' relevant practical or teaching experience. These individuals are not nuclear physicists or nuclear engineers, or even necessarily physicists. I conclude that they are not professional employees within the meaning of the Act, and they are excluded from the unit.

### **Conclusions as to Unit Inclusion**

Above, I have found the FA project administrators, F6 Facilities planners, FD Facilities permits administrators, G9 construction administrators, and HZ radiation health protection administrators to be non-professional employees and thereby excluded from the unit without the necessity for any further consideration of any community of interest they might share with unit

employees. There remains at issue the unit placement of the employees stipulated or otherwise agreed to by the parties to be professional employees: GK safety/health/environmental technical consultants, GM physician's assistants, GS safety and health administrators, and certain GTs, that is, the toxicologists, epidemiologist, and audiologist, as well as the GTs found above to be professional.

As has been said, the existing unit represented by Petitioner includes all engineers engaged in production work, and the residual group sought by Petitioner includes all remaining employees employed by the Employer in the Puget Sound area who perform engineering work. Petitioner seeks to limit its unit to those employees who are engaged in engineering work. The Employer contends that the unit should include non-engineering professional employees in Facilities and SHEA who are engaged in "scientific or technical" work. In the past, the Board has found separate units of engineering employees to be appropriate. See, for example, *Westinghouse Electric Corporation*, 80 NLRB 591 (1948); *Omni-Dunfey Hotels, Inc.*, 283 NLRB 475 (1987). The issue here is whether other employees share a strong enough community of interest with the engineering employees to compel their inclusion in the unit.

***GK safety/health/environmental technical consultants:*** With the exception of Paul Johansen, none of the GKs regularly work side-by-side with any acknowledged unit employees. GKs do not interchange with such unit employees. At least four GKs do not share supervision with any such unit employees, and the record is silent with respect to the supervision of two GKs. The GKs as a group do not have skills or education similar to that of the acknowledged unit employees. Johansen, however, does work side-by-side on a regular basis with unit employees and shares supervision with them. Further, he is the lead for certain unit employees, and his work is functionally integrated with theirs. He has an advanced degree in chemical engineering and thus shares skills and background with acknowledged unit employees. For these reasons, I conclude that Johansen shares a community of interest with unit employees such that he is included in the unit,<sup>34</sup> but that the remaining GKs do not share such community of interest and are excluded.

***GM physician assistants:*** The GMs do not work side-by-side with unit employees, nor do they share supervision with any of them. Their work is not functionally integrated with that of unit employees, and they do not interchange with unit employees. The GMs are similar to the industrial nurse in *Loral Electronics Systems*, 200 NLRB 1019 (1972), found by the Board to lack any community of interest with a unit of engineers. Likewise, I conclude that the interests of the GMs are dissimilar from those of the unit, and find they are excluded.

***GS safety & health administrators:*** While GSs may often come in contact with acknowledged unit employees, and make recommendations to engineers regarding safety designs, they do not perform the same work as the engineers. They do not interchange with acknowledged unit employees, and only a small number of GSs have the same supervision as acknowledged unit employees. GSs do not share skills or educational background with the acknowledged unit employees. In these circumstances, I conclude that GSs do not share a community of interest with the unit employees such that they are included in the unit, and they are excluded.

---

<sup>34</sup> My inclusion of only one of several incumbents in a classification is consistent with the parties' stipulation to include only one CH and one FC, even though there are many other employees in those classifications, and the omission from the stipulation of certain Pc4 engineers.

**GT scientific data analysts:** The record establishes that GTs do not work side-by-side with acknowledged unit employees, or interchange with them, or share direct supervision with them. GTs do not have skills and training similar to those of the engineering employees who are acknowledged unit employees. In these circumstances, I conclude that none of the GTs shares a community of interest with unit employees such that they are included in the unit, and they are excluded.

**Certain Pc4 engineers:** On January 27, 1999, the parties excluded five Pc4 engineers (Collins, Winslow, Brown, Cruse, and Hacking) from their stipulation as to unit inclusions, but did not specifically stipulate to the exclusion of those five. I note that all five are mapped into the AK Facilities Planner job family, and Petitioner has stated that it is not seeking any employees in that job family. There is no record evidence with respect to the job duties of these five Pc4 engineers.

It is the Board's well-established policy with respect to residual units that such units must include all unrepresented employees of the type sought in the petition. Elsewhere herein, I have found a Pc4 engineer, Leonard Astemborski, to be a non-professional employee excluded from the unit, on the basis of his job duties.<sup>35</sup> However, there is no record evidence which would similarly support the exclusion of Collins, Winslow, Brown, Cruse, and Hacking.<sup>36</sup> I shall, therefore, permit them to vote subject to challenge.

**Certain FY construction environmental specialist:** There is one FY in the AK Facilities Planner job family, Steven Kipisz. The issue with respect to certain Pc4 engineers in the AK job family is described above. The record does not address any similar issue with respect to Kipisz, although FYs are otherwise stipulated to be included in the unit. Because of the issue raised with respect to the Pc4s in the AK job family, and because Kipisz appears to be similarly situated, I shall permit him to vote subject to challenge.

### **Summary and Voting Group**

In summary, in accordance with the stipulations of the parties, and my findings above, the voting group will include all Pc4 engineers in Facilities and SHEA who have been mapped into the AG, AJ, and ED job families, all F2s, G3s, G4s, G5s, G6s, GJs, and FYs, in those job families, one CH (Brian Clements) in the ED job family, one FC (Alfred Turnbull) in the AG job family, and one GK (Paul Johansen) in the DW job family. In addition, I shall permit the following employees to vote subject to challenge: the five Pc4 engineers in the AK job family (William Collins, Brian Winslow, William Brown, Stanley Cruse, and Brent Hacking), and the one FY (Steven Kipisz) in the AK job family.

---

<sup>35</sup> This circumstances does not apply to Teresa Dunn, the Pc4 who is the lead employee in the laboratory under supervisor McCoy. Dunn enjoys job duties wholly within the laboratory, works closely with GTs and not with other Pc4s, and her work differs from that of other Pc4s, with whom she does not interchange. However, I also note that Dunn is mapped into the ED job family, unlike the chemists she works with, and that she shares direct supervision with other Pc4s. Furthermore, even if Dunn is performing the same work as the chemists, she is a professional employee, as I have found herein that the chemists are professionals. Unlike with respect to Astemborski, there is no suggestion or contention in the record or the parties' briefs that Dunn is not a professional employee.

<sup>36</sup> The Parties' Stipulation does not recite that these five individuals should be in, or out of, the unit.

The voting group shall be: All professional engineering employees employed by the Employer in its Facilities and Safety, Health and Environmental Affairs (SHEA) organizations in the greater Puget Sound region of Washington, and Portland, Oregon; but excluding all other professional employees employed in Facilities and SHEA, all guards and supervisors as defined by the Act, and all other employees.

If a majority of the employees in this voting group vote “YES,” they will be taken to have indicated their desire to be included in the existing unit of all employees who are classified by the Company as senior principal engineers, principal engineers, senior specialist engineers, specialist engineers, senior engineers, and engineers represented by Petitioner. If not, they will be taken to have indicated their desire to remain unrepresented.

There are approximately 345 employees in the voting group.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by SEATTLE PROFESSIONAL ENGINEERING EMPLOYEES ASSOCIATION.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759

(1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before May 12, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 19, 1999.

**DATED** at Seattle, Washington, this 5<sup>th</sup> day of May, 1999.

/s/ PAUL EGGERT

---

Paul Eggert, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

177-9325  
177-9350  
177-9375  
440-1760-9940  
355-2220-6000