

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD, REGION 19**

In the Matter of:

THE BOEING COMPANY,

Employer,

and

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

Petitioner.

Case No. 19-RC-15419

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I. STATEMENT OF THE CASE AND FACTUAL BACKGROUND

A. Statement of the Case

The Petitioner, Society of Professional Engineering Employees in Aerospace (SPEEA), originally filed a petition in Case No. 19-RC-15372 on January 3, 2011, seeking an *Armour - Globe* election in which the Employer's Field Service Representatives (FSRs) could choose to join a bargaining unit of professional employees represented by Petitioner. The Regional Director issued a Decision and Conditional Order on April 13, 2011, ruling that the FSRs did not qualify as professional employees. He conditionally dismissed the petition without deciding whether the FSRs shared a community of interest with the existing professional unit and whether the FSR Team Leads met the criteria of supervisors under the Act.

Petitioner filed a Request for Review of the Regional Director's decision on May 11, 2011, and the National Labor Relations Board denied that Request on July 7, 2011. On July 14,

2011, the Petitioner filed the instant petition seeking both an *Armour-Globe* and a *Sonotone* election to offer a choice to the FSRs and to the professionals which could enable the FSRs to join the same professional unit described as follows:

All full time & regular part time employees performing the work of Field Service Representatives within Boeing Commercial Airlines working within the United States. Petitioner seeks an *Armour-Globe* election in which members of the above voting group can choose to join the professional bargaining unit now described in Section 1.1 (a) and (e) of the Professional Collective Bargaining Agreement dated December 2, 2008.¹ If the Union prevails in the *Armour-Globe* election, Petitioner also seeks a *Sonotone* election in which the employees in the professional bargaining unit can vote for inclusion in a unit with non-professional employees.

Excluded: All other employees including guards, supervisors and managers as defined by the Act.

The parties then entered into a Stipulation dated July 27, 2011, (the Stipulation) in which they agreed in ¶6 as follows:

[T]he hearing record (transcript, exhibits, including rejected exhibits, stipulations, and positions taken on the record by the parties) from Case 19-RC-15372 as well as this Stipulation, shall constitute the full and entire record in this matter.

Accordingly, the record from the hearing conducted in Seattle, Washington from January 19, 2011 through February 3, 2011, consisting of 1800 pages of transcript and over 150 exhibits forms the primary basis for the decision in the present matter.

The Stipulation in ¶5 defines the issues in the present matter as a) whether the FSRs share a sufficient community of interest with the professional unit to allow their inclusion in a combined unit; b) the supervisory status of the team lead FSRs; and c) the order of the *Armour-Globe* and *Sonotone* elections. Boeing has stipulated that it does not oppose the direction of an election in a stand-alone unit of FSRs but challenges the Union's position that the FSRs can elect

¹ In the Stipulation dated July 27, 2011, ¶ 3 the parties corrected the phrase to Boeing Commercial Airplanes, not Airlines.

to join the professional employees in the existing unit even with their consent. Finally, Boeing claims that FSRs serving as Team Leads are supervisors under Section 2 (11) of the Act.

Rather than offering a prolonged and detailed preliminary description of the facts developed during 12 days of hearing, at this juncture SPEEA will provide a short overview of the relevant facts. Then, in discussing its arguments and the law dealing with the various issues, SPEEA will discuss the specific facts relevant to those arguments and law in detail.

B. Overview of the Facts

Boeing is a large, multi-national corporation that manufactures and sells both military and commercial airplanes. It employs tens of thousands of employees throughout the United States and numerous foreign countries. It has collective bargaining agreements with several different unions and three collective bargaining agreements with SPEEA. The existing contract most relevant to this case (Joint Exhibit 1) covers professional employees in Washington, Oregon, Utah, Florida² and California, as well as employees on travel status from locations in Washington and California. Another contract covers technical employees in those same states, except Utah. An additional contract covers employees in Wichita, Kansas.

The NLRB certified the original and largest unit described in Joint Exhibit 1 in 1946. Since that time, various groups of employees have negotiated and been covered by the same collective bargaining agreement as that group, whether or not they constitute the same bargaining unit. (The parties agree that employees in Florida, Oregon and Utah described in Sections 1.1(b), (c), and (d) of Joint Exhibit 1 constitute separate bargaining units. However, the parties disagree whether those described in 1.1(e) are part of the unit described in 1.1(a) or are a

² There are no employees currently working in this unit.

separate unit.³) In any event, however, the parties have historically negotiated one professional contract, Joint Exhibit 1, that covers all of the units listed in Section 1.1(a) through (e).

Field Service Representatives assure customer satisfaction with Boeing Commercial Airplanes (BCA) products and services through on-site, in-service problem resolution and representation. Assignments vary among operators depending on the size of the airline, its route structure, and the location of its facilities. Field assignments for FSRs include domestic -- those located within the boundaries of the 50 states -- and international, those located outside U.S. national boundaries, including Puerto Rico and other U.S. holdings. The instant petition seeks only to represent FSRs based in the United States.

Domestic FSRs perform several different functions. About 37 of them are assigned to customer (airline) bases throughout the United States (referred to as either co-located or permanent reps during the hearing). Three of them work in what is known as the Boeing Business Jet group (BBJ)⁴ and are also located in different places in the United States. Another group of FSRs (about 15) function as FSR Controllers, based in the Puget Sound area. Intro Rep's based in the Puget Sound Area (about 29, some of whom are on temporary loan to SPEEA-represented units), currently break down into two subgroups, some for planes that have yet to be delivered (specifically the 787 and 747 - 800 series), and the rest assigned to other planes in the Boeing fleet. About eight FSRs work at the Boeing Field Service Seattle Support Center (BFSSSC) located in Seattle, WA. Since they work in the United States, they qualify as

³ See the Stipulation ¶ 4.

⁴ The titles given to various groupings within Boeing are confusing, at best. SPEEA will just use the generic term "group." It is not intended to have any legal significance.

domestic FSRs even though they provide this service both to international and domestic customers.⁵

All FSRs have the same Boeing job code (GEC7) and are covered by the same three job descriptions (based on level).⁶ All FSRs except the Controllers are subject to assignment rotations into any of these various groups as well as assignment to customer bases overseas. The assignments for rotations are intended to last from 4 to 5 years, except that the manager of the BBJ group prefers his FSRs to hold that assignment for 7 years. As will be explained in detail below, all receive compensation under the same system and have common benefits. All FSRs have regular and periodic contact with some of the professionals in the SPEEA professional bargaining unit.

The FSRs assigned to a customer base provide the initial point of contact for the airline relating to technical issues. They generally have offices at an airfield and in the same building (sometimes on the same floor) as the airline engineering staff. When either the maintenance or engineering departments of the airline cannot solve a technical issue with the airplane, it will likely go to the FSR. The FSR will either solve the problem or collaborate with the service engineering group in the professional bargaining unit at Boeing.

The FSRs assigned to Boeing Business Jets perform similar functions to the co-located reps, with some differences. They are not based at a customer location because the customers are corporations and individuals who have purchased or are purchasing a Boeing commercial airliner and outfitting it for private use. However, they serve as the initial point of contact for

⁵ About four FSRs are assigned to work on special projects. The record contains no evidence related to these employees.

⁶ One FSR, with a job code of GEC6 constitutes the lone exception. With respect to this person, the parties entered into the following stipulation. —Juan Molina, M-o-l-i-n-a, is an international local hire, and is permanently assigned, or co-located at the Tulsa base. He is Job Code GEC-6. If an election is directed that includes FSRs permanently assigned or co-located at a base in the bargaining unit, he will be considered in that unit.” (Tr. p. 1794-1795).

technical issues arising with these planes. In addition, they provide technical expertise during the outfitting of the plane.

Intro Reps spend 30 to 90 days at a customer location when a customer takes delivery of a new model plane or its first Boeing plane. Intro Reps assume responsibility for identifying and resolving issues associated with any new airplane. In doing so, they will work with any co-located FSR at the base.

FSRs in the BFSSSC perform a combined co-located FSR and FSR Controller function for second-tier airlines. These airlines have purchased Boeing airplanes from another airlines rather than directly from Boeing. These FSRs work from the Duwamish site in the Puget Sound area.

Finally, FSRs assigned as Controllers work in the Boeing Operations Center (BOC) also located at the Duwamish site. The BOC operates 24 hours per day, seven days per week to deal with AOGs -- airplanes on the ground. The BOC addresses the problems primarily with AOGs that need to regain airworthy status within 24 hours. The FSR Controller often operates as the initial point of contact for the customer at the BOC when technical issues cause AOGs.

The professional employees covered by the SPEEA professional contract perform an immense variety of functions. Some do what would be commonly described as traditional engineering work, engaging in complex mathematical calculations and product design. Others perform duties as instructors, and some function like a project manager.⁷

II. ARGUMENT

The Regional Director should order an *Armour-Globe* election in which the Field Service Representatives can express their desires whether to join the principal existing professional

⁷ Union Exhibit 29, the arbitration decision in the Richard Rotruck Grievance, although decades old, illustrates the breadth of functions performed by “engineers” under the SPEEA professional contract.

bargaining unit represented by SPEEA. They share a significant community of interest with the existing unit, and they constitute a distinct and identifiable segment of the workforce. If they vote for union representation, the members of the existing professional unit should then vote whether to include non-professionals in their unit. This scenario offers the employees in the existing bargaining unit and those who wish to join it maximum freedom of choice, since both groups would have to vote in favor of the union's position before the FSRs could join the professional unit.

A. Board Law Mandates an *Armour-Globe* Election if the Voting Group Shares a Community of Interest with the Existing Unit and it Comprises an Identifiable Distinct Segment of the Workforce.

Case law concerning *Armour-Globe* elections dates back nearly to the inception of the National Labor Relations Board. The doctrine originated with *Globe Machine and Stamping Co.*, 3 NLRB 204 (1937), in which the Board permitted employees to determine whether they wished to form several separate bargaining units or a larger single unit. The Board extended this doctrine to permit a group of historically unrepresented employees to decide whether they wished to join an existing unit in *Armour and Company*, 40 NLRB 1333 (1942). The labor law community refers to elections of this type as *Armour-Globe* or self-determination elections. A history of the development of the doctrine appears in *NLRB v. Raytheon Company*, 918 F2d 249 (1st Cir. 1990).

That history recounts the decisions of the Board holding that to obtain a self-determination election the petitioner need not establish that the designated voting group would constitute an appropriate unit by itself. *Maryland Drydock Co.*, 50 NLRB 363 (1943). A petitioner need only show that the employees seeking inclusion share a community of interest

with the unit employees and that the former employees form an identifiable, distinct segment so as to constitute an appropriate voting group.” *Warner Lambert, Co.* 298 NLRB 993, 995 1990).⁸

The Board most recently updated its views regarding *Armour-Globe* elections in a two-member decision issued in 2009, *Unisys Corporation and UAW*, 354 NLRB No. 92 (2009). While that decision is not currently binding precedent in view of *New Process Steel v. NLRB*, ___ U.S. ___, 130 S.Ct. 2635 (2010), it provides insight into the Board’s recent views of this issue, particularly in light of the two-member Board’s stated principle that it decided only those cases that were uncontroversial applications of existing law. Thus, in *Unisys* the Board reaffirmed the *Warner Lambert* rule. As the FSRs meet both prongs of the test – they share a community of interest with the existing unit, and form a distinct and identifiable segment of the workforce – they qualify for a self-determination election.

1. Neither the non-professional status of the FSRs nor the law concerning multi-location units preclude an *Armour-Globe* election among the FSRs.

In determining whether two groups of employees share a community of interest, the Board traditionally considers a number of factors -- similarity of wage rates and wage determinations, similar hours of work, similar employment benefits, common supervision, and similar training skills and job functions. Additionally, if the employees seeking representation frequently contact unit employees for work purposes; if their positions interchange with represented employees; and if their work functionally integrates with that performed in the bargaining unit resulting in a product or service, those factors also militate for a finding of community of interest. The Board also considers the geographic proximity among employees, and their history of collective bargaining. See *John P. Scripps Newspaper Corp.* 329 NLRB

⁸ Boeing misstates the holding of *Warner Lambert* on page 56 of its post hearing brief, in 19-RC-15372, asserting that the case requires a showing that the voting group constitute, by itself, an appropriate bargaining unit. **Neither *Warner Lambert* nor any other law so holds.** Boeing apparently confuses the concept of an identifiable **segment**, for voting purposes, with an identifiable (potential) bargaining unit. The concepts are different.

854 (1999) citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). Importantly, the Board also takes into account the desires of the employees as expressed in the Petitioner's petition as a relevant consideration. *International Bedding Company*, 356 NLRB No. 168 (2011), citing *Marks Oxygen Co.* 147 NLRB 228, 230 (1964).

a. Despite their non-professional status, the FSRs share a community of interest with the professional bargaining unit employees.

This Regional Director's recent determination that the FSRs do not qualify as professionals because they do not meet the fourth criterion in Section 2(12)(a) of the NLRA does not prevent a finding that a strong community of interests unite the FSRs and the employees in the SPEEA professional unit. The Board's decision in *Lockheed Aircraft Corporation*, 202 NLRB 1140 (1973) supports this conclusion. The facts of *Lockheed* strongly resemble the present case. Lockheed manufactured airplanes and airplane parts at the facility in question, and the case concerns two classifications of non-professional employees seeking to join a unit containing professional engineers employed in the aircraft industry through an *Armour-Globe* election.

In *Lockheed*, the Regional Director determined that Section 9(b)(1) of the Act precluded non-professional coordinators and analysts from electing to join a unit containing professional engineering employees, despite his finding that the non-professionals shared a substantial community of interests with the engineering unit employees. *Id* at 1140. The Board reversed the holding that Section 9(b)(1) of the Act posed a statutory impediment to an *Armour-Globe* election, reasoning that the "substantial community of interest" between the two non-professional classifications and the engineering unit employees coupled with the historical

exclusion from the unit of the two non-professional groups required a self determination election in which the non-professionals could vote to join the engineering unit.⁹ *Id*

Accordingly, the Regional Director here, like his counterpart in *Lockheed*, must assess whether the proposed non-professional voting group shares a community of interests with the professionals independently of the difference in their professional status. *Lockheed* establishes (the seemingly self-evident point) that non-professionals can share a “substantial community of interest” with engineers despite that difference.

In finding a community of interest between the non-professionals and the engineering department in *Lockheed*, the Regional Director, as affirmed by the Board, pointed to a number of factors also present in the instant case. In an appendix to its decision, the Board included excerpts from the Regional Director’s finding of a substantial community of interests between the non-professional employees and the engineering department. *Id* at fn. 3. As cited by the Board, the Regional Director relied on the following facts: the non-professional employees accumulated data for use by certain members of the engineering department by referring to handbooks, manuals and other resources provided by the employer. *Id* at 1141. While the work of the non-professionals did not require “an engineering degree or a professional background, and none had a college degree in engineering,” their employment records indicate that they took courses sponsored by the employer related to engineering. *Id*. An examination of promotions revealed interchange by way of a line of progression from the non-professional classifications to the engineering department; the engineers and the non-professionals seeking to join the unit shared common supervision in some but not all cases; the already represented employees and the

⁹Sec 9(b)(1) provides in pertinent part that the Board “shall not decide” that a combined unit of professional and nonprofessional employees is appropriate “unless a majority of such professional employees vote for inclusion in such unit.”

Since the unit already contained a mixture of non-professionals with the professional engineers in the unit, the Regional Director in *Lockheed* did not order a *Sonotone* election in addition to the *Armour-Globe* election.

voting group enjoyed frequent contacts with one another and collaborated to provide a needed service; and the employer paid all of pertinent employees on a salaried rather than hourly basis. *Id* at 1141-1143. The community of interest analysis which follows will demonstrate that the FSRs and the employees in the SPEEA professional unit share numerous similar commonalities in the terms and conditions of their employment which militate strongly for a finding of community of interests.

b. The law concerning multi-location bargaining units does not apply in this case.

In its previous brief to the Regional Director, Boeing contended that the law concerning multi-location bargaining units requires SPEEA to “meet a threshold significantly more restrictive than the basic community of interest standard.”¹⁰ The law concerning multi-location units has no relevance here.

First, as noted above and discussed further below, the existing SPEEA professional unit already includes employees working in numerous locations both throughout the state of Washington and in outposts around the United States. *Infra*, Section II(A)(2)(h)(1). The professional unit is not a single location unit to begin with and does not remotely resemble the single plant or single store units at issue in the cases cited by Boeing. (See e.g. *New Britain Transportation*, 330 NLRB 397 (1999)) The geographic distribution of the FSRs replicates that of the existing professional unit.

The Regional Director in Region 31 recently affirmed the long standing multi-location character of the bargaining unit in *The Boeing Company*, 31-UC-311 (August 5, 2011) Attachment A. He held, “It is undisputed that the parties have had a long term multi-location

¹⁰ Brief to RD in 19-RC-15372 pages 57-59

bargaining relationship covering Edwards/Palmdale and the Washington State units for over 40 years.” *Id* p. 18.

Second, even if the Petition filed by the Union in this case attempted to alter the character of the existing unit from single location to multi-location, the presumption favoring units in single facilities would not apply. As the Board recently pointed out,

When a union petitions for a multi-location bargaining unit, the presumption in favor of a single facility unit has no applicability. *See NLRB v. Carson Cable TV*, 795 F.2d 879, 887 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322, 322 fn. 1 (1992). Instead, the Board applies its traditional community-of-interest analysis.

Sleepy’s Inc., 355 NLRB No. 21 (2010) Accordingly, the Regional Director should apply the traditional community of interest analysis here, since SPEEA has petitioned for a voting group of FSRs in various locations throughout the United States.

2. The FSRs share a sufficient community of interest with the professional unit for inclusion in that unit.

The FSRs and the employees in the existing SPEEA professional unit share a sufficient community of interest to require an *Armour-Globe* election in this case. Indeed, careful analysis demonstrates a community of interest here even more potent than that which prompted the Board to order an *Armour-Globe* election in the *Lockheed* case, *supra*.

a) Similarity of wage rates and wage determinations.

(1) Boeing uses the same method for setting wages of all salaried employees.

Boeing pays the members of the professional bargaining unit and all of the FSRs on a salaried basis. It determines the pay of its salaried employees by applying the same Salaried Job Classification (SJC) System for both the salaried employees in the SPEEA professional bargaining unit and non-represented salaried employees like the FSRs. (Union Exhibit 9, page 8)

This identity of wage determinations by itself strongly favors a community of interest finding and parallels one of the factors mentioned in *Lockheed*, supra. at 143.

Under the SJC system, Boeing develops a job code for each group of employees based upon similarities of purpose, (Occupation and then Discipline), the tasks performed, (Job Family) and accountability (Level). (Union Exhibit 9, page 6) Boeing has assigned all BCA FSRs the job code GEC7. (See Employer Exhibit 132) The G indicates that the occupation is product support. (Tr. p. 1544, Plunkett) In this respect, the FSRs share their job purpose with ten occupations in the professional bargaining unit listed in Joint Exhibit 1, Appendix B, page 70, the occupation codes for which are also G. The E signifies Field Service. *Id.* The C7 further defines the job family or the tasks performed by FSRs. *Id.*

The job levels designate the degree of accountability of the employee within the job family. Level 3 indicates that the employee holds a career or journey person status. (Union Exhibit 9, page 24, and Tr. p. 1549, Plunkett) A Level 4 employee has achieved recognition as an expert or specialist. *Id.* Level 5 shows that the employee is regarded even more highly as a consultant in his job. (Union Exhibit 9, page 24, and Tr. p. 1550, Plunkett)

The salary ranges of the various classifications result from accurate job codes, since Boeing creates Salary Reference Tables (SRT) which define salary ranges based upon the accurate placement of jobs within the SJC. (Union Exhibit 9, page 56) As Boeing points out, ~~Proper~~ job classification is crucial to the effectiveness of pay within Salary Reference Tables (SRTs). Salary Reference Tables are constructed based on the assumption that people are properly classified for the work they are doing.” *Id.*

The SRTs for the SPEEA professional bargaining unit (Employer Exhibit 131) and for the FSRs (Employer Exhibit 132) illustrate the similarity between the wage ranges for the two

groups of employees. Boeing breaks up SRTs into four regions nationwide based upon the cost of labor in the labor market in those regions. (Tr. p. 1550, Plunkett) The region common to both the SPEEA Professional Unit and the FSRs is designated Puget Sound on Employer Exhibit 131, and as SeaTac WA, Seattle WA, and Tukwila WA on Exhibit 132. For a Level 3 employee in Puget Sound, the bargaining unit SRT reflects several salary ranges depending upon the job title. The lowest of those ranges at Level 3 has a \$56,000 minimum, an \$80,000 midpoint, and an SRT high of \$99,000 as exemplified by the Maintenance Program Engineer, the Retrofit & Repair Engineer, the Customer Support Engineer, the Flight Technical Data Engineer, and the Support Planning & Management Engineer. (Employer Exhibit 131, pages 4 and 5) The Level 3 FSR in Tukwila shown on Employer Exhibit 132 has a salary range of \$52,000 minimum, \$74,000 midpoint and an SRT high of \$93,000. The ranges evince a high degree of overlap, so that a Level 3 FSR may well make as much or more money than a Level 3 employee in the bargaining unit. Also, the minimums in the two ranges vary by only \$4,000 per year, a factor of only 7%, while the midpoints differ by \$6,000, a factor of 8% and the SRT Highs vary by \$6,000, a factor of 6%. These minor discrepancies support a finding of a community of interest between the FSRs and the bargaining unit.

An examination of Level 4 and 5 employees yields similar results. Comparison of the bargaining unit classifications listed above at Level 4 shows a yearly minimum of \$77,000, a midpoint of \$110,000 and a SRT high of \$138,000. FSRs in the Puget Sound area at Level 4 earn a minimum of \$69,000, and have a midpoint of \$98,000 and an SRT High of \$123,000. Again, a Level 4 FSR may make the same or much more than a Level 4 employee in the bargaining unit, and the ranges at the points of comparison differ by approximately 12%. The high degree of overlap in these pay ranges creates the inference that many FSRs make the same

or more than their colleagues in the bargaining unit. At these pay levels, the pay distinctions qualify as highly similar, strongly supporting the community of interest between the bargaining unit employees and the FSRs.

(2) The FSR Controllers receive overtime and premium pay like employees in the professional unit.

For purposes of overtime and premium pay, the FSRs assigned as FSR Controllers receive the same treatment as the bargaining unit professionals. Both groups receive \$6.50 plus straight time for all hours over 40 in a week and shift differentials for second, third and weekend shifts. (Tr. p. 314, Rund and 1311, Bennett) Boeing pays both bargaining unit professionals and Controllers salary for their straight time.

b) The hours of FSRs, like those of bargaining unit employees, vary depending on their job requirements as salaried employees.

All of the employees at issue, bargaining unit members and FSRs, have varying work schedules depending on the needs of their particular jobs and the customers they serve. Accordingly, the FSRs and those in the bargaining unit have similar hours of work.

For example, FSR Ross Hirsch testified that at his Alliance Ft. Worth field location, he works nine days every two weeks and nine hours each day beginning at 7:30 a.m. His colleague in that office, Gene Fales, works later to expand the hours during which FSRs are available to the customer. (Tr. p. 996-997, Hirsch) Generally, FSRs on assignment coordinate with the customer to establish their schedules in accordance with customer needs. (Tr. p. 230, Didonato) Paul Creighton testified that he set his hours of work at 7:00 a.m. to 4:00 p.m. to conform his hours to those of the airline engineers where he works in Minneapolis. (Tr. p. 1654, Creighton). While these work hours apply generally, consistent with the customer focus of the position,

Boeing expects the FSRs to work any and all hours necessary to resolve a customer issue. (Tr. p. 160, Didonato)

The FSRs in the Boeing Field Service Seattle Support Center (BFSSSC) staff their Seattle-based office 24 hours a day at five days a week, to match up with the time zones of the customers that they're supporting all over the world. (Tr. p. 105, Didonato) FSRs with the assignment of Intro Rep perform their work as the customer requires it, so that they work long days -- usually at least 12 hours per day and more than five days a week. (Tr. p. 33, Didonato) Andrew Somers testified that he typically works twelve to sixteen hours per day, seven days a week for three months when he is on an Intro Rep assignment, because the planes fly seven days a week. (Tr. p. 1493, Somers) The FSRs assigned as BBJ Reps are similarly expected to be available at all times. (Tr. p. 357, Koperek)

FSRs assigned as controllers in the Boeing Operations Center (BOC) work schedules designed to cover 24-hours, 365 days a year to respond to urgent requests from customers. (Tr. p. 276, Rund) They often contact assigned Field Service Representatives on off hours in the middle of the night to obtain assistance from them in resolving problems, demonstrating that FSRs assigned to the BOC and the various field locations may work at all hours of the day and night. (Tr. p. 1302, Bennett) FSR Controllers work a variety of shifts alongside their SPEEA professional bargaining unit colleagues in the BOC to produce the continuous coverage they supply. (Tr. p. 281-282, Rund)

Likewise, the parties stipulated that the current bargaining unit members work a variety of schedules, including compressed schedules (i.e., 5-8's, 4-10's, 3-12's) and on-call should a customer require assistance. (Board Exhibit 3, page 4, ¶ 15) The same stipulation also provides

that unrepresented employees work a similar variety of schedules, and that the work week is the same for both represented and unrepresented employees. *Id.*

According to Rich Plunkett, the Union's Director of Strategic Development, some professional bargaining unit employees work the varying schedules of FSRs. (Tr. p. 1244, Plunkett) The professional contract contains numerous schedule alternatives, including shifts designed to provide 24 hour per day coverage. (Joint Exhibit 1, Section 11.5, pages 25-27). Under the contract, Boeing may assign professional employees to such shifts to meet operational requirements. (Joint Exhibit 1, Section 11.5(d), pages 26-27).

Accordingly, the FSRs and the existing bargaining unit employees all work a variety of schedules to meet the needs of Boeing and its customers. They share a community of interest in this regard.

c) The benefit plans offered FSRs closely resemble those available to SPEEA professional bargaining unit employees

The FSRs and SPEEA professional bargaining unit employees share a community of interest regarding their fringe benefits. According to the stipulation in Board Exhibit 3(d), all employees have access to a variety of health care plans, company-subsidized early retiree medical plans, dental plans, short term disability plans, long term disability plans, life insurance plans, and accidental death and dismemberment and business travel accident insurance plans. Additionally, Boeing provides defined benefit pension plans to its union and nonunion employees as well as 401k saving plans. (*Id.*, page 3) In some of these plans, both union and nonunion employees participate. *Id.* The differences in the separate plans are not so significant as to preclude a finding of community of interest between the existing bargaining unit and the proposed voting group. On the contrary, overall these plans provide a potent basis for a finding

of community of interest. The Regional Director acknowledged the similarity in benefits in his Decision and Conditional Order at page 6-7.

d) The SPEEA professionals and the voting group share sufficient common supervision and labor relations to have a community of interest

A wide variety of complex supervisory relationships characterizes both the existing bargaining unit and the voting group. For at least one group of FSRs, the FSR Controllers, their direct supervisors also directly supervise a number of professional employees in the bargaining unit working in the BOC. A total of 17 bargaining unit engineers including 16 stress or service engineers and one bargaining unit structures engineer work side by side with 15 FSR Controllers under the direction of one of four shift managers in the BOC. (Tr. p. 278, 284, 308, 310, Rund) These four shift managers provide coverage to supervise all employees at the BOC, including those in the SPEEA Professional unit and the unrepresented FSR Controllers. (Tr. p. 314-317, Rund)

Most of the other Field Service Representatives work under Mike Didonato, Director of Field Service, either in Seattle at the Boeing Field Service Seattle Service Center (BFSSSC) or at customer locations in Seattle and throughout the country. (Tr. p. 27-28, and 35, Didonato, and Employer Exhibit 28) Mr. Didonato also supervises the core Intro Reps who provide introductory support to customers purchasing Boeing commercial aircraft which is new to them. (Tr. p. 27-28, Didonato) Mr. Didonato reported to Mr. Peter Weertman at the time of the hearing, who was the first common supervisor on the organizational chart over both FSRs and SPEEA professional bargaining unit employees, since Mr. Weertman supervises approximately 1,000 engineers in addition to the FSRs. (Tr. p. 449, Weertman).

Mr. David Bizar supervises another group of Intro Reps who will introduce customers to the 787 and 747-8 aircraft after Boeing delivers those new aircraft. (Tr. p. 412, 415). However, the dotted line on Union Exhibit 25 demonstrates the financial support for these Intro Reps flowing from the Field Service Organization under Mr. Didonato. Only eleven Intro Reps currently report to Mr. Bizar, since another 16 are on loan to SPEEA bargaining unit positions. (Tr. p. 250, McKinney, and Employer Exhibit 27, yellow area.) Eight of those loaned employees currently report to SPEEA professional bargaining unit supervisors, because they perform the professional bargaining unit position of test and evaluation engineer. *Id.*

Finally, the Boeing Business Jet FSRs report to Mr. William Koperek. *Id.* Mr. Koperek supervises only three domestic BBJ FSRs, one in Dallas, Texas and one in Ventura, California and the third currently on loan to flight test 787 in Tukwila Washington. (Tr. p. 345 & 365-366 Koperek) Those FSRs have a common supervisor with SPEEA professional bargaining unit employees at the level of Mr. Jim Albaugh, President of Boeing Commercial Airplanes. Nevertheless, Mr. Didonato testified that the funding for the BBJ FSRs comes from Mr. Didonato's budget and that Mr. Koperek "connects with our team and we consider him part of the leadership team even though I don't perform his salary management or his performance management." (Tr. p. 57-58, Didonato)

Thus, the FSRs have common supervision with SPEEA professional bargaining unit employees at varying levels of management. The largest group of FSRs report to Mr. Weertman, who also supervises approximately 1,000 bargaining unit professionals, at the third level of management, above the Regional Directors and Mr. Didonato. A significant group of 15 FSRs report to common supervision at the first level.

An examination of Employer Exhibit 134, the so-called Pivot Chart, demonstrates that professionals within the SPEEA bargaining unit share **even more distant** levels of initial common supervision with each other. For example, on the first page of that exhibit in the second column from the right, supervisor Michael Douglas Brunner appears. He supervises only one individual. His ascending supervisory chain, in order, includes Johnson, Schirmer, Thompson, Weertman, Floyd, Mancini and Albaugh. Supervisor Ward Edward Barcafer, whose name appears a few boxes down on the same page, supervises three employees, and he reports to Appell, Ettwein, Fudge, Cornish, Fancher, Shanahan and Albaugh. Thus, for the employees supervised by Brunner and Barcafer respectively, common supervision occurs for the first time at the **eighth level** of supervision. **The parties have a long record of successful collective bargaining despite the lack of common lower level supervision *within* the existing unit.** Boeing is a very large corporation with extensive levels of supervision.

Furthermore, the labor relations generalists who support the various Boeing supervisors are structured to correspond to the supervisory hierarchy. (Tr. p. 1767 – 1770) Therefore, a common human resources generalist would support the shift managers in the Boeing Operations Center who supervise SPEEA bargaining unit employees and the FSR Controllers. Human resources generalists for the other FSRs support supervisors common to the professional bargaining unit at levels corresponding to those common supervisors. Accordingly, human resources support also buttresses the Union's claim for a finding of community of interest.

If lack of common first level supervision among most of the FSRs or between the FSRs and much of the bargaining unit were held to impair a finding of community of interest, such communities could rarely exist at large employers like Boeing. The Board has recognized in a previous case, *The Boeing Company*, 337 NLRB 152, 153 (2001) that factors such as a highly

integrated workforce, similarity in training and job functions and comparable terms and conditions of employment offset even a complete lack of common supervision and geographic proximity. The Regional Director of Region 31 found a community of interest between the Edwards/Palmdale engineers and their counterparts in Washington State despite the lack of day to day common supervision between those groups. *The Boeing Company* Case 31-UC-311 supra pp. 18-19. The common supervision between the FSRs and the existing bargaining unit here, combined with numerous other factors weighing heavily for a community of interest finding, and should impel the Regional Director to order an *Armour-Globe* election.

e) Similarity in training, skills, and job functions and functional integration

(1) The FSRs and professional bargaining unit members have similar training

The record shows that the FSRs possess similar training to the bargaining unit employees. The Regional Director acknowledged that 38 of the 92 FSRs listed on Employer Exhibit 27 are “~~de~~greed engineers.” (Decision, p. 3, *passim*; fn. 7; p. 29) The record provides no information on the educational background of 15 of those 92, because those FSRs did not enter any data regarding that background when they filled out the employee profile forms in Exhibits 111-118. The employer witness regarding these profiles testified that no conclusion can be drawn from profiles in which the employee entered no data regarding their educational background. (Tr. p. 858, McKinney) Thus, of the 77 FSRs on whom the record shows data, 38, or nearly half, possess engineering degrees.

Additionally, the profiles show that approximately 15 of the FSRs who did enter data on their profiles have a Bachelor or Master’s of Science degree in a field described by their titles as relating to their job duties as FSRs. Accordingly, 53 have Bachelor or Master of Science degrees

with titles including at least one of the following words or phrases: engineering, aeronautics, aviation, aircraft, information or design technology, design & graphics technology, electronic technology, and physics. Attachment B to this brief is a series of charts derived from Exhibits 111 to 118 enumerating the educational background of every FSR reflected on Employer Exhibit 27. The Board in the *Lockheed* case found a substantial community of interest between engineers and two groups of non-professionals without any engineering degrees at all. *Lockheed* supra. at 1141. Here, the substantial portion of the voting group with engineering and other technical degrees militates strongly for a community of interest finding.

Additionally, the profiles demonstrate that, similar to the facts in *Lockheed*, the FSRs take numerous courses sponsored by the employer relating to engineering which form a part of their training. In *Lockheed*, the Board pointed out that the non-professionals took courses in subjects such as value engineering, system engineering, human factors engineering, value engineering drawing and engineering report writing. *Lockheed* supra at 1141-1142. The courses taken by the FSRs, as derived from Exhibits 111 through 118, include the following: Service Bulletin Engineering, Engineering & Product Integrity, Manufacturing Engineering Fundamentals, Tool Engineering Concepts, Engineering View, Boeing Production System (BPS) Basics Engineering, Airplane Configuration Engineer (ACE) Processes, Product Engineering Process & Application, Introduction to Engineering Material Review Board, MRB Engineering Elec., Maintenance Engineering Validation Training, Engineering Quick Change Basics (WEBSPOT), Engineering Quick Change for Quality (WEBSPOT), Engineering Standards/General Overview, Engineering Standards/Material Standards, Engineering Standards/Drafting Standards, Engineering Standards/Design & Drafting Overview, Engineering Standards/Subject Index, Engineering Process and Engineering Standards/Executive Perspective.

Also, the following classes are all for ~~engineers~~: IPM Training for Service Engineers Mod1, Ergonomics Awareness -Designers & Engineers (CA), Ergonomics Awareness - Designers & Engrs (nonCA), SE Sales Overview - Engineer Training, Service Engineering Export Compliance, Structural Repair for Engineer, Flammability for Design Engineers, Intellectual Property for Engineers - web based (TR010904), IPM Training for Service Engineers - Mod1, Service Engineering - Airplane On Ground Support, Service Engineering - Fleet Team Diges, Service Engineering - Airplane On Ground Support, Service Engineering - Service Related Problems, Special IP Topics for Engineers, Service Engineering BOECOM Message Responses, Structural Repair For Airline Engineers, Service Engineering Airworthiness Concern Coord, Service Engineering BOECOM Message Responses, Service Engineering Business Writing Skills, PI-4455 Overview - BCA Engineering Export Processes, Service Engineering Primary Activity Flow BPI-866, Service Engineering Customer Communication Trng, Business Process Concepts For Customer Engineers, Service Engineering - On Site Technical Assistance, Service Engineering Airworthiness Concern Coord, Composites Overview for Engineers (TR008597), Service Engineering Service Letters, Service Engineering Airline Customer Letters, PDM Basic Navigation For Engineering, BCAG Engineering Supervisor Workshop, Repair Philosophy for UPR Engineers, The MRB Engineer and the DER/AR, Engineering Work Groups - Effective Leads, DCAC - NCM Design Engineer, Shallow BOM For Design Engineers and Lead Engineer Seminar - Commercial. (Employer Exhibits 111-118)

Accordingly, the FSRs' educational background and training meshes closely with that of the professional employees in the bargaining unit, and the Regional Director should order an *Armour-Globe* election consistent with that factor.

(2) The FSRs jobs are highly functionally integrated with those of the professional bargaining unit.

To qualify as professional employees, the law required the FSRs to prove that they meet all criteria of Section 2(12)(a) of the Act. However, to advance their case for a community of interest with the professional bargaining unit, the FSRs can meet a far less strenuous standard. They enhance their case for community of interest by showing that their job duties require similar skills and duties that functionally integrate with those performed in the existing professional unit. The Regional Director and the NLRB in *Lockheed* found a significant community of interest between non-professionals and engineers based upon the considerable skills of the non-professional employees and their integrated functions with the professionals, despite the fact that the coordinators and analysts in that case did not claim to be professional employees.

In deciding that the FSRs do not satisfy all criteria for professional employees in the Decision and Conditional Order, the Regional Director nevertheless acknowledged the close relationship between the work performed by the FSRs and the professional bargaining unit and the considerable skill that the former bring to their positions, notwithstanding his rejection of their claim to professional status. For example, he found that FSR Hirsch applied engineering knowledge in performing his work and that the employer did not discourage or prohibit this input into the service engineering process, even though the employer did not *require* that high level of performance. (Decision page 32) Likewise, the Regional Director recognized that ~~the~~ FSRs play a critical role in addressing often difficult and complex issues,” while rejecting their claim of knowledge of an advanced type required by Section 2(12)(a)(iv) of the Act. (Decision page 36)

The Regional Director’s acknowledgment of the FSRs’ critical role and their ability to assist in the handling of difficult and complex issues substantially advances the FSRs’ case for

community of interest with the professional bargaining unit employees and demonstrates that the FSRs can successfully engage in collective bargaining with them even without attaining that status. The Regional Director's characterization of FSRs on pages 35 and 36 of his Decision and Conditional Order as technical advisors, frequently collaborating with engineers and playing a critical role in addressing often difficult and complex issues, makes out a robust case that the FSRs have skills and duties that contribute to a functionally integrated process that helps establish a substantial community of interest with the professional employees. Like the Boeing FSRs, the *Lockheed* non-professionals worked closely with those in the engineering unit, accumulating and submitting data "for use by certain members of the engineering department." *Lockheed* supra at 1141.

Similarly, the Regional Director found that the FSRs did not qualify as professionals because they acted (just) as a "conduit of information," as shown by their use of tools accessible through computers designed to "send and receive information, to facilitate research, and access information." (Decision page 33) While this finding led the Regional Director to deny professional status, it compels the conclusion that FSR duties functionally integrate with the engineers for whom they gather information and with whom they communicate through the common computer system. In *Lockheed*, the Regional Director found, and the Board affirmed, a finding of community of interest partially based upon the reference by the non-professionals to an "engineering cost handbook, parts lists, time standards manuals, tool estimating and schedule manuals, and other related sources," to gather information ultimately transmitted to engineers. While the technology available in 1973 did not include computerized manuals, the parallels between the physical manuals referenced in *Lockheed* and the computer assisted information

sources used by the FSRs today and mentioned at page 33 of the Regional Director's Decision is inescapable.

Additionally, while the Regional Director did not credit the testimony of the two witnesses from the SPEEA Professional Unit as proving the professional status of the FSRs, that testimony forcefully supports a community of interest finding based upon the integrated functions of the two groups in solving the problems of customers. At least two current professional bargaining unit witnesses attested to the similarity of their own job functions with those of the FSRs in their joint efforts to help customers solve knotty technical problems. Dominique Fontana, Airline Support Account Manager /Airline Support Engineer, (ASAM/ASE) noted that Union Exhibit 4, a Boeing PowerPoint presentation about what ASAM/ASEs do every day, describes her position as an ~~in~~-house" FSR. (Union Exhibit 4, p. 6, Tr. 1155, Fontana)¹¹ She testified that she and the FSRs do all of the functions on page 6 of the exhibit which describes the duties of her position. Fontana explained that the functions of the FSRs and the ASAM/ASEs coincide, with the ASAM/ASEs operating in-house at Boeing while the FSRs generally work on-site with the customer. She stated,

-- we do exactly the same thing. The Boeing FSR and the Airline Support Engineer, we both try to ensure safety stays number one. We are an in-service house single point of contact. We act as a proactive advocate by continuously voicing the customers' concerns and striving for a win-win. We both do those same jobs, so to be an extension, he is with the customer, or the -- the Field Service Rep is with the customer and I am in Duwamish working with the Service Engineers, so we have to make sure we are linked together whenever we are solving an issue.

(Tr. p. 1156, Fontana). See also Union Exhibit 4, p. 4, for the vision statement of customer support: ~~To~~ be recognized by the industry for our **integrated**, and effective customer support."

¹¹ The Regional Director in his Decision and Conditional Order recognized that the ASAM/ASE classification ~~is~~ perhaps best described as the FSRs counterpart within the Employer's engineering support structure. (Decision page 13 fn. 31)

Page 5 shows that part of the mission statement is: ~~We~~ will ensure that fully **integrated** and timely solutions are provided to our customers.” [Emphasis added.]

Fontana also testified that she works ~~with~~ a variety of organizations including the Field Service Representatives, and when we come up with a coordinated solution to an issue, we want to make sure it is integrated with all of the players that are impacted by the issue at hand, so whether it be the Spares organization, Warranty, Design, Service Engineering, we kind of resolve the issue as a team, and part of the team, of course, is our contact with the Field Service Representative.” (Tr. p. 1154, Fontana) Fontana also related her experience shadowing a Field Service Representative for two weeks as part of her training for her position as ASAM/ASE in the First Base Training Program. (Tr. p. 1177, Fontana) She stated that all ASAM/ASEs train with FSRs. (Tr. p. 1271, Fontana) Fontana gave numerous examples of the close daily and direct working relationship between the ASEs and the FSRs. (Tr. p. 1252-1253, 1166 and 1176) Boeing does not dispute this relationship. (Tr. p. 1716, 1719-1720)

Further, the testimony of Dave Topping, Deputy Fleet Chief, provided example after example of FSRs applying their considerable technical skills to contribute to solutions even after a problem had been moved up to Mr. Topping's level. He testified concerning both the joint participation of bargaining unit engineers and FSRs in technical review meetings (TRMs) with customer engineers and representatives as well as executive review meetings (ERMs) with executives from the customer airlines. (Tr. p. 1369 – 1372)

Mr. Topping described how, during a particular technical review meeting, the FSR presented the technical reasons for the customer's concerns, and confirmed that the information allowed the team to develop an appropriate response. (Tr. p. 1370-71) In another instance, the FSR was attempting to teach reliability engineers how to use all of the data on the 777 airplane

and, while doing so, found a relevant non-flight deck effect maintenance message that had been overlooked by the airline engineers. This action prevented a possible component failure that could have led to the loss of the plane. (Tr. p. 1774-75)

Topping forcefully demonstrated the high degree of skill required of FSRs by pointing to their significant contributions in the solution of complex concrete problems in conjunction with their professional bargaining unit colleagues. For example, he testified that the engineers are “leaning toward the Field Service Rep’s recommendation,” to apply corrosive inhibiting compound on some electrical connectors on the retractable landing light as part of the production processes to make them more durable. (Tr. p. 1367) He recounted an FSR bringing to his attention a problem on the 737 NG that had not been recognized by him or his bargaining unit colleagues and that caused a safety concern -- specifically, that the 737 NG’s auxiliary power unit fuel flow divider solenoid valve that operates the auxiliary power unit has a defect that possibly could prohibit the auxiliary power unit from providing an electrical generation source while in flight. (Tr. p. 1373, Topping) The incident illustrates the coordinated functions of FSRs with their engineering colleagues to make progress toward resolving this issue.

Other examples in which FSRs directly contributed to finding a solution or avoiding a safety issue by acting in conjunction with bargaining unit personnel include the investigation of a non-flight deck effect maintenance message. In that situation, an FSR played an integral role in insuring the safety of an aircraft by urging the airline engineers to inspect retaining bolts holding a flaperon in place. (Tr. p. 1376) The FSR had discovered that an Airworthiness Directive Service Bulletin required inspection of the bolts, a fact that had escaped the notice of the airline engineers. (Tr. p. 1375) During the process, the FSRs worked directly with bargaining unit and airline engineers to insure safe operation of the aircraft.

Another group of FSRs helped identify solutions to a problem concerning repair of lenses on wingtip lights by pointing out that the sealant around the lenses was eroding (Tr. p. 1377, Topping). They communicated the problem to Boeing engineers and worked with them, ~~pro~~proposing a great number of solutions that have helped us improve the situation.” (Tr. p. 1377-1378, Topping) According to Topping, the FSRs then worked with a vendor to develop clear protection to cover these light lenses so that the sealant around the lenses would not be exposed to the wind stream. (Tr. p. 1378)

On a Boeing 777 tire pressure indicating system problem, the pertinent FSR worked together with program engineering design development, service engineering, and fleet support engineering. (Tr. p. 1379, Topping) That group of engineers made a collective recommendation to tighten the torque on some connectors to resolve the issue. The FSR, however, made the ~~brilliant~~brilliant” observation that the torque reacted to varying weather conditions, and suggested instead that safety wiring should hold the connectors in place. (Tr. p. 1379-1380, Topping) The group adopted the FSRs suggestion as the ~~final~~final engineering recommendation.” (Tr. p. 1380, Topping)

Topping also related the combined efforts of FSRs and bargaining unit employees to solve problems relating to the failure of cargo hold blowout panels and the delamination of potable water tanks. (Tr. p. 1380 – 1382, Topping) In each of these cases the FSRs acted as direct contributors to finding the fix. In the former situation, they proposed changing the thickness of the panel material and in the latter helped in the development of a float valve. (Tr. p. 1380 – 1382)

The fact that the FSRs work directly with customers does not distinguish them from the employees in the professional unit. Former customer engineer Rich Plunkett testified that he

worked directly with Boeing customers to coordinate incorporation of buyer furnished equipment into a Boeing aircraft, to facilitate changes in aircraft equipment during the manufacturing process, and to effectuate the desires of the customer regarding the installation of features on the interior of the aircraft. (Tr. p. 1221, Plunkett) This work compares closely with the work of BBJ FSRs who assist the wealthy or corporate customers who own Boeing Business Jets with the VIP Modifications to the interior of the aircraft. (Tr. p. 369, Koperek) To develop and enhance customer relationships, the Customer Engineers provided entertainment for the customers in the form of, for example, dinners and skiing trips paid for by Boeing. (Tr. p. 1223, Plunkett) These aspects of the jobs of Customer Engineers analogize to the Christmas lunch with the FSRs and the engineering department of the airline customer of Boeing at Alliance Ft. Worth. (Tr. p. 959, R. Hirsch)

Boeing composed a chart showing the intimate relationships between the Field Service Representatives and the professionals in the bargaining unit forming a team to provide comprehensive customer support. (Union Exhibit 24, last page) The Regional Director should not permit Boeing to now deny the integral part played by the FSRs in this process.¹²

As the Regional Director of Region 31 recently pointed out, the Board has held that the degree of integration of operations is a key criterion in determining community of interest issues. *The Boeing Company* 31-UC-311 *supra* p. 22. Any employer argument that the work of the existing bargaining unit also integrates with non represented employees at Boeing other than FSRs must fail, since the Act does not require a petitioning union to request the most appropriate unit, but only **an** appropriate unit, so that employees enjoy the fullest freedom to exercise the rights guaranteed by the Act. *Id* and *Bartlett Collins Co.*, 334 NLRB 484 (2110).

¹² The staff engineers in the Boeing Operations Center work under the same Local Work Instructions as the FSR Controllers, showing functional integration. (Employer Exhibit 30)

The above-referenced evidence conclusively demonstrates the similar joint role played by FSRs and bargaining unit employees in serving the customers to keep Boeing commercial aircraft in the air. Boeing does not dispute that the maintenance of Boeing aircraft involves a team effort, and that the FSRs form an integral part of that team. This inseparable link strongly militates toward a finding of a community of interest between the FSRs and the professional unit.

f) The FSRs contact professional bargaining unit employees frequently and continuously

The witnesses who addressed the subject unanimously agreed that the FSRs have daily essential contacts with members of the professional bargaining unit. The record contains such overwhelming evidence of frequent and important contacts that the Union will not present a prolonged argument on the subject. Even the evidence introduced by Boeing eliminates all doubt that communication with professional bargaining unit employees constitutes a major portion of the jobs of the FSRs and the Customer Support Engineers with whom they continuously collaborate.

Thus, the employer offered into evidence its Exhibit 13, which lists the groups of engineers included within the Customer Support Engineering organization and with which it requires the FSRs to become familiar. (Employer Exhibit 13) The FSRs have at least occasional contact with most or all of the categories of Customer Support Engineers listed on pages 1 and 2 of Employer Exhibit 13 under the heading “Primary Elements.” (Tr. p. 955 – 971, R. Hirsch). They have at least daily contact with the ASAM/ASEs through a 20 to 30 minute telephone conference as well as through regular additional contacts as problems arise on an as-needed basis. (Tr. p. 941, R. Hirsch) They also contact the Service Engineers in the Functional Groups by phone once or twice per week and through the submission of service requests three to four times per week. (Tr. p. 962-963, R. Hirsch) Additionally, if a customer receives an answer from

one of the service engineers in the Functional Group that he does not agree with or understand, the FSR will get involved. (Tr. p. 964, R. Hirsch) Employer Exhibit 13 acknowledges that the Customer Support Engineers have as their main function the provision of ~~technical~~ engineering support to our customers **usually through the FSRs.**” (Employer Exhibit 13, page 2, emphasis added)

FSRs also have regular and frequent contacts with other employees in the professional unit including deputy fleet chiefs and service bulletin engineers. (Tr. p. 964-967, R. Hirsch) Currently, FSRs assist the latter engineers with validation of service bulletins and in the future the FSRs will actually perform those validations. (Tr. p. 966-967, R. Hirsch)

FSR Ross Hirsch stressed the importance of collaboration between the professional bargaining unit employees and the FSRs in solving customer problems. (Tr. p. 880, 887 R. Hirsch). As he pointed out,

A. Solving an engineering problem is never a lone thing. It’s always better to have a collaborative effort and a team effort to solve the problem. We have more minds on it and you usually come up with a better solution, a team, rather than by yourself.

Q Why is that?

A Creativity springs from team effort and you just have a collective knowledge and experience in a team as opposed to one individual.

(Tr. p. 887, R. Hirsch)

FSRs assigned as Controllers sit three to four feet from the bargaining unit structures engineers with whom they work. (Tr. p. 1312, Bennett) This proximity makes it much easier for the Controllers to collaborate when they have questions or need to talk about something. *Id.*

Indeed, Boeing lists as one of the competencies of an FSR in the FSR job description, ~~collaboration.~~” (Employer Exhibit 21, page 2, Exhibit 22, page 2, and Exhibit 23, page 2) A

significant portion of the collaboration required of FSRs involves contacts with professional bargaining unit employees. Since this collaboration and the contacts which it entails constitute an integral part of the FSRs' jobs, the Regional Director should find that the proposed voting group shares a community of interest with the existing professional bargaining unit.¹³

g) The frequent interchange of employees from professional unit positions to FSR positions and *vice versa* demonstrates community of interest between those groups

The record demonstrates that employees in the professional unit interchange with FSRs on a regular and frequent basis both temporarily and permanently. Furthermore, since the entire contingent of domestic FSRs consists of approximately 90 to 100 employees, a high percentage of FSRs participate in this interchange at any given time. That fact favors a finding of community of interests between those employees.

Initially, eight FSRs who have as their permanent assignment 787 Intro Reps temporarily served at the time of the hearing in the professional bargaining unit as Test and Evaluation Engineers. While eight engineers represent only a small percentage of the 14,000 professional bargaining unit members, it shifts a rather significant percentage of the 92 FSRs listed on Employer Exhibit 27 into the bargaining unit for a substantial, if temporary, period of time. Those FSRs appear in the yellow highlighted area of Employer Exhibit 27 and in Board Exhibit 3(a). According to Board Exhibit 3, ¶4 those employees ~~are~~ temporarily assigned to codes other than GEC7 but will be returning to the GEC7 assignments upon completion of their temporary assignment.” One of those Intro Reps, Robert Hess, testified that in approximately 2006 he began his ~~temporary~~ assignment in the professional bargaining unit and that he expects to

¹³ Boeing witnesses emphasized essentially identical contact between the FSRs and unrepresented engineers in Long Beach. While this may be true, this doesn't detract from their community of interest with the existing professional bargaining unit. Furthermore, singling out the Long Beach Engineers to include in the voting group with the FSRs would be inconsistent with the requirement of a distinct identifiable segment of the workforce.

return to his position as an Intro Rep roughly five years later, when the 787 is (belatedly) certified later this year. (Tr. p. 1063, Hess)

Mr. Hess had served temporarily in the professional bargaining unit from an FSR position previously, as well. He testified that after completing his First Base training as an FSR in 2001, he served temporarily as an Airline Support Engineer (Ms. Fontana's ~~in~~ "house rep" classification) in Renton, Washington for a couple of months. (Tr. p. 1061, Hess) After that, he did some temporary field service assignments in Alliance Ft. Worth, Tulsa, and Indianapolis before receiving his first permanent assignment as an FSR in Pittsburgh.

The record is replete with evidence that professionals in the SPEEA bargaining unit also perform temporary assignments as FSRs. Mike Didonato testified that he did two temporary assignments in Pittsburgh as an FSR for 30 days each in the early 1990s while in the permanent position of ASAM/ASE. (Tr. p. 212, Didonato) During those temporary assignments, Didonato backfilled for an FSR on medical leave in a one person base. *Id.* He further testified that historically, ASEs have temporarily backfilled for FSRs and *vice versa*, since both have detailed knowledge of the customers at a particular field base. (Tr. p. 214 – 215) Additionally, according to Didonato, while Boeing looks for less expensive alternatives in backfilling for FSRs when the need arises, as a last resort management calls upon Airline Support Engineering to backfill for FSRs. (Tr. p. 215-217) Union Exhibit 26, a Local Work Instruction (LWI) explaining Field Service Procedures, shows the hierarchy of priorities for backfills as described by Mr. Didonato, with Airline Support appearing fifth on the list of options. Boeing's Customer Support Engineering charging instructions also contain provisions for charging the overhead resulting from such temporary backfill assignments for FSRs (Union Exhibit 14, page 15) Union Exhibit 27, the minimum list of backfill assignments from 2006 to 2011, shows that despite their

nominally low priority, professional bargaining unit backfills for FSRs occur with some frequency. Seventy two percent of the backfills on this list come from the professional bargaining unit.

Finally, the evidence shows that FSRs and bargaining unit professionals move back and forth between **permanent** assignments in the two groups as well. Union Exhibit 29 shows that among all 226 FSRs, foreign and domestic, 32.7% previously held positions in the professional unit. Among domestic FSRs, 21.2% previously held such positions. While the Union seeks to represent only domestic FSRs, personnel rotate assignments every 4 to 5 years. (Employer Exhibit 20) Additionally, foreign and domestic FSRs do the same thing. (Tr. p. 1039, R. Hirsch) This exchange of permanent assignments again demonstrates the similarity between the FSR positions and those in the professional unit.

The evidence of the union witnesses at the hearing also sheds light on this point. Robert Hess worked in the SPEEA professional unit as a Tool Design Engineer and a Support Equipment Design Engineer before accepting a position in Field Service. (Tr. p. 1060-1061, 1065) As is noted above, he now fills the professional bargaining unit position of Flight Test Engineer, and will return to Field Service upon the completion of this temporary assignment. Accordingly, Mr. Hess has moved freely on several occasions between the two relevant groups.

Paul Creighton testified that he had two positions in the SPEEA professional bargaining unit prior to working as a Field Service Representative, Service Engineer and Sales Support Engineer. (Tr. p. 1653) He now serves as a Level 5 Team Lead Field Service Representative in Minneapolis. (Tr. p. 1653-1654) Thus, he has successfully made the permanent transition from the SPEEA professional unit to Field Service. He exemplifies the high degree of interchange between those two groups which supports a finding of community of interest between them.

As the Regional Director of Region 31 point out in the recently decided UC case, the degree of employee interchange and communication is a particularly important factor in reaching unit determinations. *The Boeing Company*, 31-UC-311 *supra* p. 20. Additionally the Regional Director in that case regarded the high degree of communication and interaction among the employees involved contributes to the satisfaction of the interchange criterion. Accordingly, the record here strongly supports pervasive interchange between the FSRs and the bargaining unit and compels a finding of community of interests.

h) Neither the geographic makeup of the proposed voting group nor the history of collective bargaining diminishes the strong community of interest between the FSRs and the SPEEA bargaining unit.

(1) The geographic makeup of the proposed voting group resembles the diversity of the existing professional unit and supports the community of interest between the two groups.

In opposing the *Armour-Globe* election sought by the Union, Boeing relies heavily on its characterization of the professional bargaining unit as contained within narrow and well-defined geographic limits, in contrast to the geographic spread of the proposed addition to the unit. The facts, however, are contrary to Boeing's suggested conclusion.

The professional bargaining agreement provides for expansive geographic coverage. Initially, §1.1(a) includes ~~all~~ persons working in the Company's plants in the [entire] State of Washington . . ." (Joint Exhibit 1, page 1). Union Exhibit 11 depicts the sites of Company facilities where SPEEA professionals work (Tr. p. 1558, Plunkett), and shows that SPEEA professionals work in locations in Washington as far from Puget Sound as Spokane, roughly 300 miles away. (Tr. p. 1557, Plunkett) Thus, even within the State of Washington, the bargaining unit exhibits a high degree of geographic diversity.

Second, the unit description in Section 1.1(a) expressly includes ~~persons~~ who are on travel status from such plants” Union Exhibits 21 and 22 show the numbers and locations of professional bargaining unit employees on domestic temporary assignment (DTA) as of April 15, 2010, and October 15, 2010, respectively. On the former date, 71 bargaining unit employees served on DTA in seven states extending from the West Coast to the East. (Union Exhibit 21) On the latter date, 132 SPEEA professionals worked on DTA in ten states from Hawaii to Maryland and South Carolina. Again, this component of the bargaining unit contributes significantly to its geographic breadth. It demonstrates the mobility of the bargaining unit workforce, subject to temporary assignment in numerous domestic locales at any given time, and evidences the ability of the unit to maintain cohesion even at geographic distance.

Finally, the bargaining unit consists of ~~those~~ persons assigned (other than on travel status) at Edwards AFB, California or Palmdale, California” Joint Exhibit 1, Section 1.1(a). The bargaining unit history of those employees appears in Board Exhibit 3(b) attached to the Stipulation entered into evidence on the final day of the hearing and in the Region 31 RD decision, Attachment A. Boeing began assigning engineering employees to Edwards Air Force Base in the mid 1970s on travel status and then in early 1976 informed those employees that it would permanently assign them to that facility. SPEEA then organized the employees to maintain their representation, and Boeing agreed voluntarily to recognize them as part of the unit now described in Section 1.1(a). (Board Exhibit 3(b)) Likewise, in 1989, Boeing agreed voluntarily to recognize the employees at the Boeing facilities in Palmdale, California. In Board Exhibit 3(c), the NLRB remanded a UC Petition filed by Boeing to the Regional Director in Region 31 on April 30, 2007 to gather more evidence concerning the Edwards/Palmdale employees. According to Board Exhibit 3, ¶12, the UC petition remains pending. However, the

Regional Director of Region 31 issued his decision on August 5, 2011, and dismissed the UC Petition, including in the SPEEA professional unit the disputed engineers in Edwards/Palmdale.

In doing so, he noted as follows:

Edwards/Palmdale employees and the employees working in the Washington State bargaining units are located in different states and more than 1,100 miles apart. Moreover, Edwards/Palmdale is in close proximity to several of the Employer-Petitioner's facilities that do not have employees included in the Union's bargaining units. I note, however, that geographical distance between facilities is not unusual for a nationwide corporate organization that has many locations throughout the United States and in foreign countries. Further, it appears from the record that employees can use the Employer-Petitioner's WebEx system for presentations and group meetings regardless of their immediate location.

The Boeing Company, supra p. 21 This comment applies with equal vigor here.

Adding to the geographic diversity of the unit, on February 23, 1999, the Regional Director in Region 19 issued a Decision and Direction of Election in which he ordered an *Armour-Globe* self-determination election for the Facilities and Safety, Health and Environmental Affairs (SHEA) engineers, who then voted to join the SPEEA professional unit. (Union Exhibit 28 and Board Exhibit 3, ¶10) In that Decision, the Regional Director noted the parties' agreement to include relevant engineers in the Puget Sound Region, defined as the Puget Sound area, Spokane, Washington, and Portland, Oregon. The Puget Sound area included –employer facilities roughly from Everett in the north to Auburn in the south¹⁴ and many locations in between, most notably Seattle, Renton, and Bellevue.” (Union Exhibit 28, p. 4) Joint Exhibit 1, Section 1.1(e) describes the group certified in the 1999 proceeding, and the parties currently dispute whether that group forms a part of the unit described in 1.1(a) or a separate unit. (Board Exhibit 3, ¶11) In either event, they bargain together with the employees

¹⁴ These towns are roughly 55 miles separated.

represented in Section 1.1(a) and work under the same collective bargaining agreement, Joint Exhibit 1. They contribute to the eclectic geography of the bargained-for employees.

Similarly, Joint Exhibit 1 covers employees or potential employees in Weber and Davis Counties, Utah; in Florida; and in Oregon as specified in Sections 1.1(b), (c) and (d) of Joint Exhibit 1. The representation of the Utah employees began in 1963 and was reaffirmed in 2008. (Board Exhibit 3, ¶7) The Florida representation commenced in 1972, but no employees populate that location currently. (Board Exhibit 3, ¶8) The Petitioner started representing the Portland, Oregon employees (other than those described in Section 1.1(e)) in 1987. (Board Exhibit 3, ¶9) The parties effectively have treated them as a single unit by bargaining for them and providing them with similar conditions of employment under a single collective bargaining agreement.

Further, within the professional bargaining unit, supervisors commonly do not work in the same locale as their immediate subordinates. (Tr. p. 1773, McKinney) Widely varied work locations do not constrain a modern global corporation like Boeing in the conduct of its business. The employees in the bargaining unit described in Section 1.1(a) as well as all of the employees covered by Joint Exhibit 1 have historically worked in numerous far-flung locations and have moved regularly to and from broadly dispersed work sites, with supervisors working out of yet additional locations. If the domestic FSRs choose to join that unit, they will not appreciably change its character in that respect. Employer's Exhibit 27 lists 92 FSRs who would comprise the voting group. That exhibit identifies as the "Work State" the state of Washington for 55 or 60% of them.¹⁵ Additionally, 4 (4%) of them have as their "Work City" Palmdale California,

¹⁵ Two of the co located FSRs work at the Alaska Airlines base at SeaTac Airport in Seattle. (Tr. 35, Didonato)

one of the work sites in the bargaining unit. Accordingly, 64% of the FSRs work geographically within the boundaries already specified in the professional bargaining unit.

This distribution of FSRs is highly reminiscent of the wide smattering of states represented in Union Exhibits 21 and 22, depicting the locations of the bargaining unit professionals on Domestic Temporary Assignments at two points in time. DTA assignments can last up to 2 years. (Tr. p. 1199, Rommel) FSR field assignments typically last only approximately 4 to 5 years. (Employer Exhibit 20, page 1)

Company Exhibit 79 shows that professional bargaining unit members will accompany FSRs as part of an enhanced entry-into-service and on-site team to introduce to customers the new 787 airplanes when they are in production. This team will work on site with the customer for approximately 90 days. (Tr. p. 499) The bargaining unit members will include design engineers, customer support engineers and fleet support engineers. (Tr. 525-526 and Company Exhibit 79 pp. 4-2, 4-12 through 4-14)

All of the FSRs have their operational headquarters in Seattle. They return to Seattle for approximately one week per year to visit the professionals in the bargaining unit with whom they interact and their management. (Tr. p. 111-112, Didonato) Boeing has named this activity ~~“business week.”~~ FSRs assigned as Intro Reps return to Seattle after coming back off an assignment for approximately two months. (Tr. p. 1460, Somers)

Furthermore, Boeing has taken the position from the very outset of the hearing that it would not oppose an election among the domestic field service representatives as a stand-alone unit. (Tr. p. 8, Hankins Opening Statement) Thus, it does not challenge the proposition that geographically diverse employees may share a community of interest. Rather, Boeing contends, contrary to the overwhelming weight of the evidence, that well-defined geographic limitations

constitute the “geographic glue” holding the existing unit together and that addition of the FSRs to the unit would contravene that essential feature. (Tr. p. 14-15, Hankins Opening Statement)

On the contrary, the collective bargaining history portrays consistent flexibility in the geographic scope of the unit, not the cramped, stifled geography argued by Boeing. The parties agreed to expand the unit geographically at least twice, once to include the professionals at Edwards Air Force Base and again to include similar employees at Palmdale, California. Temporary assignments encompass vast areas of the country. The parties have included within the collective bargaining agreement, at various times, professionals in Florida, Utah and Oregon even when they were not members of a single bargaining unit. The bargaining unit embraces employees throughout the state of Washington and broadly across the large Puget Sound region. Physical distance has not prevented successful collective bargaining in achieving Joint Exhibit 1 and its predecessor agreements. It should not bar the FSRs from the opportunity to choose to join the collective bargaining unit with which they share a robust community of interest.¹⁶

Boeing focuses on its geographic proximity argument despite the global scope of its own operations, and the advanced communications techniques it employs to overcome the distances among its personnel. For example, the record shows that Boeing has established the Boeing Communication System, facilitating its communications with customers and employees, as well as teleconferences and other computer tools. (Tr. 31-32, Didonato) The Regional Director should not give great weight to the geographic proximity criterion in light of vast technological

¹⁶ Boeing contends that SPEEA acknowledged the strict geographical limitations to the professional unit in 2005 negotiations when the Union proposed and then withdrew language expressly including telecommuting employees in the recognition clause of the Professional contract. (Tr. p. 14, Hankins Opening Statement, Union Exhibits 5 and 6 and Employer Exhibit 102) The evidence contradicts this position. First, the bargaining proposal itself states that SPEEA offered it to “clarify” bargaining unit definitions. (Employer Exhibit 102, page 1, Article 1, first bullet) Second, after discussion, the Company read into the record its position that it could not find any virtual employees not already represented by SPEEA, and that it remained willing to review the situation in the future. (Tr. 1191, Rommel, and Union Exhibit 6) Thus, the parties reached no resolution of the issue and no conclusion may be drawn from it.

advances practically nullifying the isolation previously occasioned by physical separation and the parties' own recognition that geographical proximity does not define this bargaining unit.

(2) The history of collective bargaining does not preclude an *Armour-Globe* election.

Boeing contends that since engineers have comprised the SPEEA professional unit in the past, the composition of the unit cannot change now. However, Boeing points to no reasons why the parties cannot engage in successful collective bargaining after the FSRs join the existing unit, given the overwhelming community of interest between the FSRs and the professional bargaining unit employees.¹⁷ The employer can point to no conflicts between the existing unit and the proposed voting group which would inhibit the exercise of full collective bargaining rights by all parties. Likewise, the proposed voting group includes all domestic BCA FSRs, so Boeing cannot contend that the Union has omitted some employees to fractionalize a cohesive group of employees, seeking to represent some but not all of them.

Instead, Boeing appears to rely on considerations that are irrelevant to the community of interest determination.¹⁸ For example, on page 62 of its previous brief to the Regional Director, Boeing asserts that, ~~adding~~ the FSRs to the Engineering Unit does not conform to any administrative divisions of the Company.” However, as it points out on page 3 of the same brief, **engineers work in more than one of the major business units of the Company** (thereby spanning ~~administrative divisions~~) and FSRs work in one of those units -- Boeing Commercial Airplanes. Thus, adding the FSRs to the unit would not change the character of the very large professional bargaining unit which straddles numerous administrative boundaries within Boeing.

¹⁷ The existing unit in *Lockheed, supra*, included both professionals and non-professionals. However, in that case, the Regional Director and the Board did not rely upon that fact in concluding that the non-professionals and the mixed engineering unit shared a community of interest. The employer's argument would seem to preclude **any** expansion of **any** bargaining unit through an *Armour-Globe* election.

¹⁸ In this section, the Union assumes that Boeing will repeat arguments made previously in this case.

Likewise, Boeing claims on page 81 of its post hearing brief that to establish a community of interest, the Union must show that there are common conditions of employment unique to the FSRs and the engineers in the bargaining unit. They cite four multi-location unit cases, *Hilander Foods*, 348 NLRB 1200 (2006); *Turner Industries Group*, 349 NLRB 428 (2007); *Laboratory Corporation of America Holdings*, 341 NLRB 1079 (2004); *Stormont-Vail Healthcare*, 340 NLRB 1205 (2003) in purported support of that proposition.¹⁹ However, those cases concern the propriety of single store or plant units as opposed to multi-location units, a question inapposite to the one now before the Regional Director. They impose no requirement of unique common conditions of employment as a pre-condition to a self-determination election; none even involved an *Armour-Globe* petition.

Boeing also argued previously that the FSRs cannot join the SPEEA professional unit because their hiring and staffing practices, job requirements and duties, annual salary rate adjustments, and training differ from those of the engineers (Post Hearing Brief, pp. 76 - 83). Even assuming *arguendo* that Boeing's points were accurate (which they are not), they do not rise to the level of difference or importance to vitiate a finding of community of interest based upon the well established factors discussed above. At least with respect to the annual salary rate adjustments, the FSRs do not qualify precisely **because** they are not covered under the collective bargaining agreement. Once again, if one accepts the employer's argument, no self-determination election would ever take place as to a bargaining unit that had achieved better terms and conditions of employment than its unrepresented brethren.

These weak considerations should not distract attention from the close relationship between the engineers in the bargaining unit and the FSRs and the opportunity this case presents

¹⁹ Boeing also relied on at least three of these four cases in the recently decided UC case in Region 31. The Regional Director there found the cases —at only distinguishable, but also inapposite.” *The Boeing Company* supra 31-UC-311 at 22. The same comment applies with equal force here.

for both groups to express their own desires regarding whether and how they should organize for union representation. By their very nature, all *Armour-Globe* elections change the history of collective bargaining. By definition, the Board conducts such an election only when a group of **historically unrepresented employees** seek admission into an already existing bargaining unit. Therefore, in each such case, the Regional Director must decide whether the representational rights of the new voting group outweigh the disturbance of the status quo. In this case, the strong community of interests between the previously represented unit and the historically unrepresented one justify holding an *Armour-Globe* election.

The required *Sonotone* component of the election process in this situation makes the case for permitting employee choice even stronger. Under the circumstances present here, both the currently represented and unrepresented employees will have an opportunity to express their preferences regarding FSR entry into the established bargaining unit. For the FSRs to join the unit, both groups must consent. The Regional Director should not frustrate this potential for self-determination by both of the involved groups of Boeing employees. This procedure effectuates an important community of interest factor, namely, the desires of the involved employees. The Board recently reaffirmed the relevance of this consideration in *International Bedding, supra*. The Regional Director should allow it to operate here.

B. FSRs Comprise an Identifiable Distinct Segment of the Boeing Workforce.

Since the FSRs share a community of interest with the professional bargaining unit, the Regional Director must next determine under *Warner Lambert* whether the FSRs comprise an identifiable, distinct segment of the workforce. An examination of the evidence shows that it does.

Boeing has defined all of the groups of BCA Field Service Representatives with the same job classification, the same job code, the same skill management code, and the same set of Local

Work Instructions. Additionally, Boeing can call upon all FSRs except Controllers to take on Field Service Assignments, and on-site assignments typically rotate every 4 to 5 years. (Employer Exhibit 20) Petitioner has included in the voting group all domestic FSRs, a group that Boeing has made distinct and identifiable through its own classification systems.

Additionally, Boeing has conceded that the FSRs comprise an identifiable and distinct segment. On page 56 of its Post Hearing Brief in 19-RC-15372, Boeing states, “Neither party contests that the domestic FSRs are an appropriate voting group for purposes of an *Armour-Globe* self determination election.” Furthermore, in the Stipulation, paragraph 5(a), Boeing stated that it, “does not oppose the direction of election in a stand-alone unit of FSRs.” An appropriate stand-alone unit also constitutes a distinct and identifiable voting group.

C. SPEEA has not Relinquished its Right to Represent the FSRs in the Professional Unit through an *Armour-Globe* Election by agreeing to some of the contract language in Joint Exhibit 1

SPEEA has not waived its right to represent the FSRs in the Professional unit by agreeing to contract language appearing in Joint Exhibit 1. As the Regional Director of Region 19 pointed out in his Decision and Direction of Election in the facilities case (Union Exhibit 28), any waiver of the right to represent employees must expressly promise to refrain from seeking representation of the employees in question. (Union Exhibit 28 pages 11-12) The Regional Director relied upon the holdings in *Briggs Indiana Corporation*, 63 NLRB 1270 (1945) and *Cessna Aircraft Company*, 123 NLRB 855 (1959) to arrive at that conclusion. He specifically applied the principles of those cases in the context of a petition seeking an *Armour-Globe* election. *Id.*

The NLRB recently reaffirmed the requirement of a specific express waiver in the context of an *Armour-Globe* election in *UMass Memorial Center and International Association of EMTs*, 349 NLRB 369 (2007). In that case the Board ordered an *Armour-Globe* election

despite a recognition clause which expressly excluded from the bargaining unit the classification then sought by petitioner as the voting group. In so ruling, the Board found *Women and Infants' Hospital of Rhode Island*, 333 NLRB 479 (2001), another *Armour-Globe* election case, to be controlling. Thus, the Regional Director of Region 19 correctly anticipated in his 1999 ruling that the specific and express waiver doctrine extends to *Armour-Globe* elections.

Further, the employer cannot succeed in any argument that by agreeing to specific geographic limitations in the recognition clause of Joint Exhibit 1 (Section 1.1 page 1), or by agreeing to a list of classifications in Appendix B of the contract (Joint Exhibit 1, page 70) and a definition of the work they do in Section 22.1(a) of the contract, (*Id.*, page 40), the Petitioner waived its right to seek representation of the FSRs through an *Armour-Globe* election. In the Facilities case, *supra*, at 11, the Regional Director expressly considered whether the language now appearing in Section 22.1 of the contract waived the Union's right to seek an *Armour-Globe* election and he rejected Boeing's argument.²⁰ He should do the same here.

D. The Team Leads are not Supervisors as Defined by the Act.

Before getting to the law related to supervisors under the Act, it is important to review the facts: the crucial evidence of what team leads do and do **not** do.

1. The team leads do not exercise any supervisory functions.

The starting point of this analysis is Employer Exhibits 4 and 5. The description of the team lead in Employer Exhibit 4 simply says that he "is responsible for the activity at that base." Employer Exhibit 5 says that the team lead "provides leadership" for Boeing personnel at a base. It notes, however, that "the team leader is not considered to have any direct reports." In fact, "All Field Service personnel at the base report administratively and functionally to the RD." The

²⁰ The language now in Section 22.1(a) of the agreement appeared in Section 11.2 of the contract under consideration in 1999. (Union Exhibit 28, page 11)

more specific bullet points listed under the heading of "Responsibilities" all focus on general work management. The only thing listed there that could arguably fall within the definition of a supervisor under the Act is that the team leads are supposed to establish and manage local work schedules.

The testimony of Boeing witnesses is consistent with these documents. There is no official title of "team leader" for the GEC7 job. (Tr. p. 265, McKinney) When Boeing witnesses were asked about the line of promotion for FSRs, not a single one of them mentioned becoming a team lead. (Tr. p. 167, 224, Didonato; Tr. p. 324, Rund; Tr. p. 395, Koperek; Tr. p. 548-549, Bizar; Tr. p. 741, Standbridge) Not all team leaders are even at Level 5 of the GEC7 job classification. (Tr. p. 206, Didonato; Employer Exhibit 27) As Mr. Koperek described, a person becomes a Level 5 FSR because of his "technical expertise, not because they're a leader of a team." (Tr. p. 390)

Team leads cannot discipline or recommend discipline (Tr. p. 225-226, Didonato; Tr. p. 551, Bizar) They have no authority to hire, transfer, suspend, lay off, recall from layoff, promote, discharge, reward, or adjust grievances. Nor do they have any authority to effectively recommend any of these. (Tr. p. 554-555, Bizar)

Because of this uncontroverted evidence, Boeing relies essentially exclusively on the allegation that team leads schedule employees and assign work. Therefore, SPEEA will turn to the evidence related to those functions.

Employer Exhibit 5, listing these functions, does not contain any reference to anything that looks like independent judgment and discretion. Therefore, the document does not support a finding of supervisory status, as the law that will be discussed below explains. The only Boeing witnesses to shed any light on the exact nature of the scheduling and work assignment were Mr.

Didonato, Mr. Standbridge and Mr. Bizar. Both Mr. Didonato and Mr. Standbridge explained that FSRs will work with the rest of the team to figure out who will work what hours so that there is someone present at the time the customer wants them present. (Tr. p. 70, 230, Didonato; Tr. p. 579-80, 741, Standbridge) While Mr. Standbridge (Regional Director) testified that the normal way to assign work is to assign an FSR to a model or models of an airplane, he also explained that the team leads will call him and discuss an FSR's experience and background, as well as strengths and weaknesses, and then Mr. Standbridge will approve any particular work assignments. (Tr. p. 578-79, 746-47, Standbridge) Mr. Bizar testified that all an Intro Rep team lead will do is become knowledgeable about the schedule of the airplane being introduced and then make "an even distribution" of the work." (Tr. p. 501-502, Bizar) When specifically asked whether they had the responsibility to assign work he stated, "I think that the work responsibility is already known by the reps. They merely organize who will be at the airplane at one time." (Tr. p. 504) He further explained with respect to assigning work, "I think the work is predefined by our organization and they would assign a person per airplane for the day, but the work statement is essentially the same." (Tr. p. 555) When asked about the responsibility of co-located reps to assign work, he stated, "The work is already predefined in most cases per our operating procedures. I think there probably is some element to assigning, we'd like you to do this today and you do this today and you do this today. It's all within the normal definition of what a field service rep does." (Tr. p. 558) This testimony represents the total extent of any explanation from Boeing of what it really means for team leads to "schedule or assign" work.

Ross Hirsch testified that when he got to his current base, he sat down with his team lead and they jointly decided that the work would be done on a first-come first-served basis. In other

words, whoever got the e-mail first or the customer engineer contacted first would deal with that project. (Tr. p. 874)

The only team lead to testify was Paul Creighton. He testified that there really is no assignment of work as a team lead because, as with Mr. Hirsch, whoever is available takes on the project. (Tr. p. 1649) Even the work assignment to the Field Service Associate (clerical person) involves no discretion or judgment. If it is non-technical in nature, it goes to the clerical person, over whom he has no supervisory authority. *Id.* Notably, he testified that team leads did not get any additional pay or any benefits that are not already given to all the FSRs. (Tr. p. 1690)²¹

The only other argument made by Boeing beyond the claims of scheduling and assignment of work was that team leads evaluate other FSRs, specifically those new FSRs going through First Base Training. The Union will demonstrate below that this claim does not support a conclusion that team leaders are statutory supervisors as a legal matter; first, though, it will address the fact that record does not support any factual claim that such evaluations have anything to do with the pay, benefits or status of new FSRs.

Returning to Mr. Creighton's testimony, he expressly denied doing **any** evaluations of **any** FSRs. (Tr. p. 1690) Even the Boeing witnesses established that, whatever team leads do with respect to new FSRs, it is not an evaluation that is used for any real purpose. Mr. Didonato said team leads could make recommendations about whether they thought the person would be suitable to be an FSR, but he never sees these, and he does not know whether or how often such comments may be made.

²¹ Mr. Plunkett explained that there are team leaders within the professionals covered by the professional CBA and that their functions are essentially the same as described by the witnesses with respect to FSR team leads. (Tr. p. 1239-40)

Aside from Mr. Creighton, any such comments that are made go to several other management personnel who are responsible for making any decisions about whether to keep and FSR. (Tr. p 226-227.) One of those is Regional Director Standbridge.

Mr. Standbridge gave a more detailed explanation of what a team leads will do to “evaluate” new FSRs, and what weight it is given.²² When describing whether the team leads determine whether the new FSR “passes” First Base training, he stated, “It’s made partly by the Team Leader. He’s the one who does the primary on site assessment and then that will be reviewed by -- there’s an RD who’s assigned to the First Base Training Program and then also we would engage the management in Field Service Operations in Seattle.” (Tr. p. 619) When asked about whether team leads evaluate FSRs, his response was a very qualified one: “Well, that’s really maybe the part where what I said about when I evaluate an FSR, one of the things I will do is ask the Team Leader how is this person doing?” (Tr. p. 747-748) Those recommendations are not relied on by management in making decisions about whether to promote an FSR to a higher level. (Tr. p. 749-750)

A final fact completes the picture of how little “leading” team leads do, in the labor relations sense. According to Employer Exhibit 27, there are two bases where there is only one FSR and that person is a team lead—Miami, FL and Elk Grove IL. It is a legitimate question to ask how a person can perform the so-called supervisory functions alleged by Boeing when there are no persons to schedule or evaluate. This fact just emphasizes the fallacy in the claim that team leads are supervisors.

2. The team leads are not supervisors as a matter of law.

²² He also mentioned that team leads train new FSRs by working through a “ifed syllabus”. This is merely an introduction to being an FSR. (Tr. p. 618.)

The lead case for analyzing whether team leads are supervisors under the Act is *Croft Metals, Inc.*, 348 NLRB 717 (2006), decided in conjunction with *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). The key principles set forth in that case, as they relate to the facts set forth above, begin with placing the burden of proving supervisory status on the party asserting such status. *Croft, supra*, at 721. The standard to be met is proof by a preponderance of the evidence. *Id.* In order to meet the legal criterion of assigning work, the individual's authority requires the designation of significant overall duties to an employee. "Responsibly directing" work requires the exercise of independent judgment and the alleged supervisor must be accountable for the overall performance of the task. To be accountable, the person must also have the authority to take corrective action, if necessary. Both of these functions – assigning and responsibly directing work -- must be accomplished using independent judgment which requires that the person act free from control of others and form an opinion or evaluation by discerning and comparing data. The judgment must involve a degree of discretion that rises above routine or clerical. *Id.* In *Croft*, the Board found that team leaders were not supervisors. The Board pointed out that the team leaders worked side-by-side with, and did the same kind of work as, those they allegedly supervised. *Id.* As in this case, the employer witnesses in *Croft* described the action of assigning work as routine when describing the alleged judgment used by team leaders. *Id.* at 722.

Cases decided after *Croft* support the conclusion that FSR team leads are not supervisors. In *Talmdge Park, Inc.*, 351 NLRB 1241 (2007), the Board relied in part on the fact that the alleged supervisor and her coworkers decided among themselves who would perform what tasks, just as the evidence shows team leads do with their FSRs. In *Shaw, Inc.*, 350 NLRB 354, 355-356 (2007), the Board held that work assignment based upon an employee's known skills that are

essentially self-evident does not constitute the exercise of independent judgment.²³ *Oakwood* itself held that work assignments made on the basis of equalizing workloads does not involve the exercise of independent judgment. *Oakwood, supra*, at 693.

Team leads also do not meet any of the normal secondary indicia of supervisory status. They are not considered supervisors by the other FSRs. *See Poly-America, Inc.*, 328 NLRB 667 (1999). They do not receive a higher rate of pay or better benefits than the other FSRs. *Liquid Transporters*, 250 NLRB 1421 (1980); *Sheraton Universal Hotel*, 350 NLRB 1114 (2007); *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1955). Doing evaluations is also a secondary criterion. –Section 2(11) does not include "evaluate" in its enumeration of supervisory functions. Thus, when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor. *See Elmhurst Extended Care Facilities*, 329 NLRB No. 55 (1999).” *Harborside Healthcare, Inc.*, 330 N.L.R.B. 1334 (2000). Also, –the possession of secondary indicia of supervisory status is not dispositive in the absence of evidence indicating the existence of any of the primary indicia of such status, *Dillows Electric Supply*, 311 NLRB 878 fn. 2 (1993).” *Id.* at 1335.

Combining this law with the facts in this case, it is clear that team leads are not supervisors under the Act. The only Regional Director to testify said that he approved work assignments and schedules before they were made. The testimony of Mr. Standbridge and of Mr. Bizar showed that the assignments and scheduling were purely routine, made to conform to the airlines’ schedules and do not involve any exercise of independent discretion as defined by the law. The only team lead to testify confirmed this, as did Ross Hirsch. To the extent that one can

²³ For this point, the Board cited *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004) and *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996).

call what team leads do concerning new FSRs an evaluation, the evidence is clear that it is only one bit of information that is used by the persons with the authority to make decisions. Team leads in this case do not meet any of the statutory criteria to be supervisors and they should be included in the voting group.

III. Conclusion

For the reasons set forth above, the Regional Director should conclude that the FSRs should be permitted to vote in an *Armour-Globe* self-determination election to state their preference for being included in the existing professional unit represented by SPEEA. If that vote is in the affirmative, it should be followed by a *Sonotone* election among the existing unit, to determine if the professional employees wish the FSRs to be admitted into their bargaining unit. It would defy logic to proceed with the *Sonotone* election before knowing whether the FSRs desire SPEEA's representation in the professional unit, since the *Sonotone* election, with approximately 14,000 potential voters, will entail a monumental effort for the parties and the Region. The Union must succeed in both elections to gain representation rights, so both elections pose threshold issues. The Regional Director correctly prescribed the proper order of the two elections in the Decision and Conditional Order, page 36-37. He should adhere to that position.

Dated this 11th day of August.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2011, I electronically filed the PETITIONER'S BRIEF through the National Labor Relations Board website system and I hereby certify that I have served the document to the following as indicated:

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