

**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-15372

PETITIONER'S POST HEARING BRIEF

TABLE OF CONTENTS

I.	STATEMENT OF THE CASE AND FACTUAL BACKGROUND	1
A.	Overview of the Facts	2
II.	ARGUMENT	5
A.	Board Law Permits 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.	6
1.	The FSRs share a community of interest with the SPEEA professional unit.	7
a.	Similarity of wage rates and wage determinations.	7
i.	Boeing uses the same method for setting wages of all salaried employees.	7
ii.	The Salary Reference Tables (SRTs) developed through the Boeing Salaried Job Classification (SJC) system show the similarity of wages between the FSRs and the professional bargaining unit	8
iii.	The FSR Controllers receive overtime and premium pay like those in the professional unit.	10
b.	Like those in the professional bargaining unit, the work hours of FSRs vary depending on their job requirements as salaried employees.	10
c.	The benefit plans offered FSRs closely resemble those available to SPEEA professional bargaining unit employees	12
d.	The SPEEA professionals and the voting group share sufficient common supervision and labor relations to have a community of interest	13
e.	Similarity in training, skills, and job functions and functional integration	15
f.	The FSRs contact bargaining unit engineers frequently and continuously	20
g.	The frequent interchange of employees from professional unit positions to FSR positions and vice versa demonstrates community of interests between those groups	22
h.	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.	25
B.	FSRs Comprise an Identifiable Distinct Segment of the Boeing Workforce.	30
C.	The GEC7 Intro Reps on Loan to Flight Test Qualify to Vote in the Election because they Reasonably Expect to Return to their FSR Positions.	34

D.	The FSRs are Professional Engineering Employees and are Entitled to Join the SPEEA Professional Bargaining Unit.	34
1.	SPEEA need not prove that these employees are engineers in order for them to be permitted a self-determination election, but only that they are professionals.	35
2.	The FSRs are professional employees	37
3.	The FSRs are engineers	48
E.	The FSRs are not Technical Employees, nor is their Work Primarily Administrative or Characterized as “Customer Relations.”	65
F.	The Team Leaders are not Supervisors as Defined by the Act.	66
1.	The team leaders to not exercise any supervisory functions.	66
2.	The team leaders are not supervisors as a matter of law.	69
G.	SPEEA Has Not Waived its Right to Represent the FSRs, nor can the Geographical Limitations of the Contract be Applied to Restrict the Rights of the FSRs to an Armour-Globe Election.	71
III.	CONCLUSION	72

TABLE OF CASES

<i>Aeronca, Inc.</i> , 221 NLRB 326 (1975)	34
<i>Armour and Company</i> , 40 NLRB 1333 (1942)	6
<i>Briggs Indiana Corporation</i> , 63 NLRB 1270 (1945).....	71
<i>Capital Cities Broadcasting Corporation</i> , 194 NLRB 1063 (1972).....	34
<i>Cessna Aircraft Company</i> , 123 NLRB 855 (1959)	71
<i>Chrysler Corporation</i> , 154 NLRB 352, 354 (1965)	35
<i>Croft Metals, Inc.</i> , 348 NLRB 717 (2006).....	69
<i>General Electric Co. (Holyoke, Mass.)</i> , 120 N.L.R.B. 199 (1958).....	35
<i>Globe Machine and Stamping Co.</i> , 3 NLRB 204 (1937)	6
<i>John Scripps Newspaper Corp.</i> , 329 NLRB No. 74 (1999)	7
<i>Kalamazoo Paper Box Corp.</i> , 136 NLRB 134 (1962).....	7

<i>Liquid Transporters</i> , 250 NLRB 1421 (1980).....	70
<i>Management Company, LLC</i> , 30-RC-6556 (2003)	36
<i>Maryland Drydock Co.</i> , 50 NLRB 363 (1943).....	6
<i>Mrs. Baird’s Bakeries, Inc.</i> , 323 NLRB 607 (1997)	34
<i>New Process Steel v. NLRB</i> , __ U.S. ___, 130 S.Ct. 2635 (2010)	7
<i>NLRB v. Raytheon Company</i> , 918 F2d 249 (1 st Cir. 1990).....	6
<i>North Shore Weeklies, Inc.</i> , 317 NLRB 1128 (1955).....	70
<i>Oakwood Healthcare, Inc.</i> , 348 NLRB 686 (2006).....	69, 70
<i>Poly-America, Inc.</i> , 328 NLRB 667 (1999).....	70
<i>Pratt & Whitney</i> , 327 N.L.R.B. 1213 (1999).....	35
<i>Public Service Company of Colorado and IBEW Local 111</i> , Case No. 27-RC-8058(2000)	30
<i>S.D.I. Operating Partners, L.P.</i> , 321 NLRB 111 (1996).....	70
<i>Shaw, Inc.</i> , 350 NLRB 354, 355-356 (2007).....	70
<i>Sheraton Universal Hotel</i> , 350 NLRB 1114 (2007).....	70
<i>Standard Oil Co.</i> , 107 NLRB 1524 fn. 8 (1954)	44
<i>Talmadge Park, Inc.</i> , 351 NLRB 1241 (2007)	70
<i>The Boeing Company</i> , 349 NLRB 957 (2007)	72
<i>The Ryan Aeronautical Co.</i> , 132 NLRB 1160, 1163 (1961)	35
<i>UMass Memorial Center and International Association of EMTs</i> , 349 NLRB 369 (2007)	71
<i>Unisys Corporation and UAW</i> , 2009 NLRB LEXIS 331 (2009).....	6
<i>Volair Contractors, Inc.</i> , 341 NLRB 673, 675 fn. 10 (2004)	70
<i>Warner Lambert, Co.</i> 298 NLRB 993, 995 (1990).....	6, 7, 31

Women and Infants' Hospital of Rhode Island, 333 NLRB 479 (2001)71

TABLE OF STATUTES

Section 2 (11) of the Act2

Section 2(12)(a) of the Act34

**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-15372

I. STATEMENT OF THE CASE AND FACTUAL BACKGROUND

The Petitioner, Society of Professional Engineering Employees in Aerospace (SPEEA), filed a petition seeking representation in the following bargaining unit:

Those 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) of the Professional Collective Bargaining Agreement dated December 2, 2008.¹

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

A hearing was conducted in Seattle, Washington from January 19, 2011 through February 3, 2011. The record consists of 1800 pages of transcript and over 150 exhibits.

¹ Based on the testimony during the hearing, the phrase should be Boeing Commercial Airplanes, not Airlines.

The Employer, The Boeing Company (Boeing), has raised several issues. It has stated that it is willing to stipulate to an election covering the approximately 100 Field Service Representatives (FSRs) who would make up the unit requested by SPEEA, but only as a standalone bargaining unit. It claims that use of the *Armour-Globe* process is improper in this case for several reasons. It also argues that the FSRs are not professional employees and therefore cannot be included in the professional bargaining unit. Finally, it claims that FSRs serving as Team Leaders are supervisors under Section 2 (11) of the Act.

Rather than go through a detailed preliminary description of the facts developed during 12 days of hearing, at this juncture SPEEA will give an overview of the relevant facts. Then, in discussing the arguments made by Boeing and the law dealing with the various issues, specific facts relevant to those arguments and law will be discussed in detail.

A. Overview of the Facts

Boeing is a large, multi-national corporation that manufactures and sells, among other things, commercial airplanes.² It employs tens of thousands of employees throughout the United States and numerous foreign countries. Boeing has collective bargaining agreements with several different unions and three collective bargaining agreements with SPEEA. One of the latter contracts covers professional employees (Joint Exhibit 1) in Washington, Oregon, Utah, Florida³ and California. Another contract covers technical employees in those same states, except Utah. There is also a contract covering employees in Wichita, Kansas.

The unit covered by Joint Exhibit 1 was certified in 1946. Since that time various groups of employees have been added to the unit, some after they had been recognized as a separate bargaining unit. One group of employees, those in Facilities and Safety, Health and

² Boeing also has a defense division that is not relevant to this dispute.

³ There are no employees currently working in this unit.

Environmental Affairs organizations, were added to the primary professional unit set forth in Section 1.1 (a) of the agreement pursuant to an *Armour-Globe* election in 1999.⁴ Historically, the parties negotiate one professional contract, now Joint Exhibit 1, that covers all of the units listed in Section 1.1.

The role of Field Service Representatives is to assure customer satisfaction with all 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, which are those located within the boundaries of the 50 states, and international, which are those located outside U.S. national boundaries, including Puerto Rico and other U.S. holdings. The petition in this matter seeks only to represent FSRs that are based in the United States, because the Board does not have jurisdiction over the internationally based ones.

Domestic FSRs perform several different functions. Many (about 36) of them are assigned to customer (airline) bases throughout the United States (referred to as either co-located or permanent reps during the hearing). Two of them work in what is known as the Boeing Business Jet group⁵ and are also located in different places in the United States. Another group of FSRs (about 14) is functioning as FSR Controllers, based in the Puget Sound area. There are a group known as Intro Rep's (about 22, some of whom are on temporary loan to SPEEA represented units), which is currently broken 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. There are also about six FSRs assigned at the Seattle Support Center

⁴ This group is listed in Section 1.1 (e) of the collective bargaining agreement and the parties disagree about the significance of that separate listing. This issue will also be discussed in detail later in this brief.

⁵ 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.

located in Seattle, WA. They perform a combined co-located FSR and FSR Controller function for what are known as second-tier airlines. These are airlines that have purchased Boeing airplanes from another airline rather than directly from Boeing. They are considered domestic FSRs even though they provide this service both to international and domestic customers.⁶

All FSRs have the same Boeing job code (GEC7) and are covered by the same three job descriptions (based on level).⁷ All FSRs are subject to assignment into any of these various groups as well as assignment to customer bases overseas. The assignments to all groups 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 are compensated 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 are generally the initial point of contact for the airline relating to technical issues. They have offices at an airfield and generally in the same building (sometimes on the same floor) as the airline engineering staff. When a technical issue arises with the airplane that cannot be solved by either the maintenance or engineering departments of the airline, it will likely go to the FSR. The FSR will either solve the problem or move it up to the service engineering group at Boeing.

The two FSRs assigned to Boeing Business Jets perform similar functions to the co-located reps, with some differences. First, they are not based at a customer location because the customers are corporations and individuals who have purchased or are purchasing a Boeing

⁶ There are also about four FSRs assigned to work on special projects. There is essentially no evidence in the record related to these employees.

⁷ There is one exception, with a job code of GEC6. 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 FSR’s permanently assigned or co-located at a base in the bargaining unit, he will be considered in that unit.” (Tr. p. 1794-1795).

commercial airliner and outfitting it for private use. However, they will serve as the initial point of contact for technical issues arising with these planes. In addition, they will provide technical expertise during the outfitting of the plane.

The basic job of an Intro Rep is to 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 will be responsible for identifying and resolving issues that are associated with any new airplane. In doing so, they will work with a co-located FSR if there is one at the base.

Finally, FSRs assigned as Controllers work in the Boeing Operations Center (BOC) located at the Duwamish site in Puget Sound area. The BOC is designed as a 24/7 operation to deal with what is known as AOGs -- airplanes on ground. The BOC deals primarily with AOGs that need to get off the ground within 24 hours. The FSR Controller is often the initial point of contact for the customer at the BOC when technical issues are causing the plane to be AOG.

The professional employees covered by the SPEEA professional contract perform an immense variety of functions. Some do what most people think of as traditional engineering work, engaging in complex mathematical calculations and product design. Others are instructors, and some function like a traditional project manager.⁸

II. ARGUMENT

After a lengthy hearing, this case comes down, as indeed most representation cases do, to a few simple questions, with simple answers. The Field Service Representatives are entitled to a self-determination vote to decide if they should join in the existing professional bargaining unit represented by SPEEA. They are professional employees sharing a significant community of interest with the existing unit, representing a distinct and identifiable segment of the workforce.

⁸ 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.

SPEEA has never waived its right to represent them, and it is up to the Board, in deference to the employees and not the parties, to determine whether the geographical location of the petitioned-for additions to the unit is consistent with their inclusion.

A. Board Law Permits 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).

The Board most recently updated its views regarding *Armour-Globe* elections in a two member decision issued in 2009, *Unisys Corporation and UAW*, 2009 NLRB LEXIS 331 (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, in effect, 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 should be permitted a self-determination election.

1. The FSRs share a community of interest with the SPEEA professional unit.

In determining whether two groups of employees share a community of interest, the Board 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. Finally, the Board considers the geographic proximity of employees and their history of collective bargaining in assessing this criterion for inclusion in the unit. See *John Scripps Newspaper Corp.*, 329 NLRB No. 74 (1999) citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). The Union will examine each of these criteria below.

a. Similarity of wage rates and wage determinations.

i. Boeing uses the same method for setting wages of all salaried employees.

Boeing determines wages of its salaried employees by applying the same Salaried Job Classification System (SJC) for both the salaried employees in the SPEEA professional

bargaining unit and non represented salaried employees. (Union Exhibit 9, page 8). This identity of wage determinations by itself strongly favors a community of interest finding.

ii. The Salary Reference Tables (SRTs) developed through the Boeing Salaried Job Classification (SJC) system show the similarity of wages between the FSRs and the professional bargaining unit

Under the SJC, Boeing develops a job code for each group employees of 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 virtually all 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 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 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) provide a basis for determining the close 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 Sea Tac 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 also, 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 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.

iii. The FSR Controllers receive overtime and premium pay like those in the professional unit.

For purposes of overtime and premium pay, the FSRs assigned as FSR Controller receive the same treatment as the bargaining unit professionals. They 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) These facts buttress the similarity between the FSRs and the bargaining unit regarding compensation.

b. Like those in the professional bargaining unit, the work hours of FSRs vary depending on their job requirements as salaried employees.

All of the employees at issue in this case, including those in the SPEEA professional bargaining unit and the 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, 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 illustrated this principle when he testified that he set his hours of work at 7 a.m. to 4 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, which demonstrates 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) Various 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 members of the SPEEA professional bargaining unit work variegated schedules. The parties stipulated that the 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 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 non union employees as well as 401k saving plans. (*Id.*, page 3) In some of these plans, both union and non union 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.

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, 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 reports to Mr. Peter Weertman, who is 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.* Those currently reporting to Mr. Bizar have a common supervisor with professional bargaining unit employees at the level of Lou Mancini, Vice President of Commercial Aviation Services. (Employer Exhibit 28)

Finally, the Boeing Business Jet FSRs report to Mr. William Koperek. *Id.* Mr. Koperek supervises only two domestic BBJ FSRs, one in Dallas, Texas and the other in Ventura, California. (Tr. p. 345, 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 engineers 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.

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

The issues of similarity in training, skills and job functions and the functional integration between the existing unit and the FSRs overlap significantly with that addressed at length in pp. 34 - 65 of the brief, below, concerning the professional engineering nature of the FSR workforce.

In the current context of the basic community of interest determination, the Union would only point out the following, noting that these facts are supplemented below:

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. First, Dave Topping, a Deputy Fleet Support Chief previously for the Boeing 777 and now for the 737 NG, testified to the direct participation of FSRs in engineering solutions to these service related problems (SRPs). (Tr. p. 1348, Topping) 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)

Topping's testimony confirms that the FSRs act as fully equal and active problem solvers in these meetings rather than as silent scribes. While they are responsible for taking minutes, their role also extends to participating in the meeting, developing and ensuring that the action items are actionable, defining the specific end to the action item, and then coordinating that communication back through the Boeing Company to be answered by engineers. (Tr. p. 1369)

Topping forcefully demonstrated the high degree of professional skill, similar to that of the current professional unit, 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 process 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) This issue ultimately could come before a safety review board and engineering investigation board. *Id.* 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 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, "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” 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 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 testimony of Deputy Fleet Chief Topping only serves to corroborate that of numerous other witnesses who confirm that FSRs perform similar and integrated job functions with those in the SPEEA professional unit. For example, Dominique Fontana, an Airline Support Account Manager (ASAM)⁹, 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)

⁹ Fontana’s position was also referred to as Airline Support Engineer or ASE.

Fontana explained that the functions of the FSRs and the ASAMs coincide, with the ASAMs operating in-house at Boeing while the FSRs 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." 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 related her experience shadowing a Field Service Representative for two weeks as part of her training for her position as ASAM. (Tr. p. 1177, Fontana) She stated that all ASAMs train with FSRs. (Tr. p. 1271, Fontana)

The fact that the FSRs work directly with customers does not distinguish them from the engineers in the professional unit. Erstwhile 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 and equal part played by the FSRs in this process.

The above referenced evidence conclusively demonstrates the similar joint role played by FSRs and bargaining unit engineers 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 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 bargaining unit engineers frequently and continuously

The witnesses who addressed the subject unanimously agreed that the FSRs have daily essential contacts with those in the 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 engineers 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 professional bargaining unit engineers work in Seattle Metro Area and in Renton, Washington. Engineers in Washington

service the heritage Boeing aircraft, and those in Long Beach service the McDonnell Douglas aircraft. (Tr. p. 120, Didonato) 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 Airline Support Engineers 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 3 to 4 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 contacts with deputy fleet chiefs and frequent contacts with 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)¹⁰

FSR Ross Hirsch stressed the importance of collaboration between the professional bargaining unit engineers 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.

¹⁰ There is additional discussion of the validation issue at p. 54, *infra*.

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 structures engineers with whom they work. (Tr. p. 1312, Bennett) This proximity makes it much easier for the FSR Controller to collaborate when they have questions or need to talk about something. *Id.*

Boeing would have the Regional Director conclude that in their frequent contacts with unit professionals, the FSRs act only as passive messengers who take no active part in solving the complex problems they constantly face. The evidence belies the assertion. Common sense dictates the conclusion that employees who provide the direct link between airline engineers and in-house Boeing engineers must possess and apply engineering skills themselves. The customers expect that level of service and that level of service demands that the contacts between FSRs and their colleagues in the professional bargaining unit be meaningful ones.

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 at an engineering level. 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.

g. The frequent interchange of employees from professional unit positions to FSR positions and *vice versa* demonstrates community of interests 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. 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. 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 return to his position as an Intro Rep when the 787 is certified later this year.¹¹ (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 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 Airline Support Engineer. (Tr. p. 212, Didonato) During those temporary

¹¹ The “temporary assignment,” then, is expected to last roughly five years. This was because of the delays in the introduction of the 787.

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 list of actual backfill assignments from 2006 to 2011, shows that despite their nominally low priority, professional bargaining unit backfills for FSRs occur with some frequency.¹²

While Boeing attempts to avoid physical backfill assignments from Airline Support Engineering to Field Service to minimize costs, its recognition of the ASEs’ qualifications to do so demonstrates the close relationship between the two positions. For the purpose of examining whether those positions share a community of interests, that close relationship is all that matters.

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

¹² 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.

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, and asserts that his Field Service position is more demanding. (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.

h. 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.

Based upon a reading of Section 1.1(a) of the collective bargaining agreement, the professional bargaining unit itself derives from several geographically diverse components. 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. (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. 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.

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 south 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 stand-alone unit. (Board Exhibit 3, ¶11) In either event, they bargain together with the employees 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) While the employees in these locations constitute separate bargaining units, (Board Exhibit 3, ¶11) the parties effectively have treated them as a single unit by bargaining for them and providing them with similar conditions of employment in the same collective bargaining agreement.

Within the professional bargaining unit, supervisors commonly do not work in the same locale with their immediate subordinates. (Tr. p. 1773, McKinney) This fact demonstrates that widely varied geography does not constrain a modern global corporation like Boeing in the conduct of its business.

Accordingly, 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 to and from broadly dispersed work sites regularly. If the domestic FSRs choose to join that unit, they will not change its character in that respect in the slightest. An analysis of the work sites of the domestic FSRs discloses no greater geographic diversity than characterizes the professional bargaining unit as a whole. Sixty three percent of the FSRs have their work headquarters in the State of Washington. (Employer Exhibits 16 and 20) The others are scattered among eleven other states. *Id.* 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)

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) 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, Boeing 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 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.¹³

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 advances practically nullifying the isolation previously occasioned by physical separation.

The *Armour-Globe* election will provide an opportunity for the FSRs to make the determination themselves whether they would prefer representation as part of a much larger unit with a long history of successful collective bargaining, rather than attempting collective bargaining on their own, one hundred employees pitted against a very large worldwide corporation. Should the FSRs conclude that their geographic diversity will preclude effective collective bargaining as part of the professional unit, they may vote against inclusion. *Public Service Company of Colorado and IBEW Local 111*, Case No. 27-RC-8058 (2000)

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

¹³ 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.

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. The Regional Director should not accede to Boeing's argument that he must examine separately the community of interest between each assignment of FSRs and the bargaining unit. The Board has never adopted such an approach. Rather, in *Warner Lambert* the Board left it to the Petitioner to identify "a" distinct segment of the workforce, and has sustained the right to an *Armour-Globe* election so long as the designated voting group shares a community of interest with the bargaining unit overall.¹⁴ Indeed, logic dictates that any identifiable distinct segment will have sufficient cohesion that if one subcategory within the voting group shares a community of interest with the existing unit, all subcategories would also share that community of interest.

An examination of the evidence confirms this logic. Boeing has defined all of the categories of 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 to take on Field Service Assignments, and on-site assignments typically rotate every 4 to 5 years. (Employer Exhibit 20) The Regional Director should not now countenance Boeing's plea, contrary to its own business practices, that the FSRs do not form a distinct and identifiable segment. Petitioner has included in the voting group all domestic FSRs, a group that Boeing has made distinct and identifiable through its own classification systems.

Thus, and as an initial matter, Boeing has identified and distinguished FSRs through the commonly applicable set of job descriptions entered as Employer Exhibits 21, 22, and 23. Those

¹⁴ The rule, in this sense, parallels the fundamental rule of unit formation – that the petitioned-for unit must be an, but need not be the most, appropriate unit.

three exhibits delineate highly similar job duties and educational requirements for the three levels of FSRs. While some variations in job duties occur among the subgroups of FSRs, all supervisors who addressed the issue confirmed the basic accuracy of the job descriptions and the similarity of the duties of all FSRs.

For example, Mike Didonato testified that while the job of the FSRs in the Boeing Field Service Seattle Support Center does not include intense building of customer relations, the FSRs in the BFSSSC still perform that function to a smaller degree and otherwise perform the remaining FSR duties. (Tr. p. 104-105, Didonato) Didonato testified that the job descriptions underwent close scrutiny and revision within the past few years, and accurately reflected the job duties of FSRs, in a process that included focus groups of FSRs that validated the words of the description. (Tr. p. 157-58, Didonato) The same job descriptions cover FSR Controllers. (Tr. p. 334, Rund) William Koperek, Manager of Boeing Business Jets, testified that the Level 5 FSR working as his subordinate spends more than 50% of his time doing job duties described in Employer Exhibit 23. (Tr. p. 390, Koperek) Additionally, the Mentoring Program for BBJ Reps provides that the working conditions for those employees are “no different than commercial aircraft field service operations.” (Union Exhibit 1, page 2). David Bizar, Manager of 787 Field Service, testified that Employer Exhibits 22 and 23 accurately describe the skills and attributes that a person needs to spend at least 50% of their time as a 787 Intro Rep. (Tr. p. 529, Bizar) Accordingly, common job descriptions identify and distinguish FSRs as a segment of the workforce.

Also, Boeing has identified and distinguished the FSRs by assigning all of them the same job code, GEC7, and the same skill management code, (GEB). (Employer Exhibit 103) The function of the job code is discussed above at p. 8 of this brief. The Skill Team Leader or

Enrolled Manager of a skill management code monitors the skills of the employees within that code to make sure they comply with the level necessary to do the jobs within that code. (Tr. p. 1546-1547, Plunkett) They play a role in layoff situations to insure that employees with skills necessary to maintain the employer's operations remain on the payroll¹⁵ and they are involved in discussions concerning compensation or the Salary Review Tables for employees within the skill management code. *Id.* Thus, by grouping FSRs together within the same skill management code, Boeing has defined them as an identifiable and distinct segment.

Furthermore, Field Service has its own website home page. (Tr. p. 43 et seq., Didonato) Through this home page, all Field Service Representatives can gain access to an exhaustive and comprehensive set of Local Work Instructions to which they must adhere to do their job. (Tr. p. 65, Didonato) These Local Work Instructions, under the code LWI-FS-006-5070, are peculiar to FSRs and do not relate to how other Business Units or Departments or Programs within Boeing operate. (Tr. p. 65-66, Didonato) Thus, Boeing has again identified and distinguished the Field Service Representatives through their own detailed set of Local Work Instructions.

Finally, Boeing maintains a Field Service Rotation Program under which only and all Field Service Representatives can apply for vacancies in FSR positions. (Employer Exhibit 20, Tr. p. 152, Didonato) On-site Field Service Representatives rotate in their positions every 4 to 5 years, so that FSRs have numerous opportunities to seek transfers, but only employees with prior FSR experience can apply. *Id.*

Boeing has suggested that the Regional Director might fragment the group of FSRs identified by Petitioner as a voting group. Any such fragmentation would violate the NLRB's prohibition against arbitrary separation of employees, and would render the group unidentifiable

¹⁵ All FSRs are in the same group when deciding who gets laid off.

and indistinct. See *Capital Cities Broadcasting Corporation*, 194 NLRB 1063 (1972). Boeing has distinguished and identified the FSRs as a cohesive group by calling them FSRs and by coding them GEC7s (GEB) in the SJ. The Regional Director should not permit them to repudiate their own actions in this regard.

C. The GEC7 Intro Reps on Loan to Flight Test Qualify to Vote in the Election because they Reasonably Expect to Return to their FSR Positions.

The 16 FSRs highlighted in yellow on Employer Exhibit 27 and listed on Board Exhibit 3(a) qualify to vote in the election. The parties stipulated that they will be returning to their GEC7 assignment upon completion of their temporary assignment. (Board Exhibit 3, ¶4) Board law provides that employees on temporary assignment having a reasonable expectation to return to positions in which they would be eligible to vote do not lose their voting rights because of the temporary assignment. *Mrs. Baird's Bakeries, Inc.*, 323 NLRB 607 (1997).

D. The FSRs are Professional Engineering Employees and are Entitled to Join the SPEEA Professional Bargaining Unit.

Section 2(12)(a) of the Act defines a professional employee, in language that is repeated in Article 22 of Joint Exhibit 1, as follows:

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

The primary focus of this definition is the nature of the work performed, rather than individual qualifications of employees. *Aeronca, Inc.*, 221 NLRB 326 (1975).

If the work is predominantly intellectual and varied rather than routine or standardized, if it consistently involves discretion and judgment in its

performance, and if it requires an advanced type of knowledge customarily acquired by a prolonged course of specialized study in an institution of higher learning, the employees performing the work come within the meaning of Section 2(12).

Chrysler Corporation, 154 NLRB 352, 354 (1965). A professional employee is not limited to one who has "received a degree from, or completed a prolonged course of specialized study in, an institution of higher learning." *Id.* The knowledge "may also have been acquired through training or experience." *Id.*; *The Ryan Aeronautical Co.*, 132 NLRB 1160, 1163 (1961).¹⁶ Seen against this legal background, the evidence establishes that all FSRs are professional employees. Indeed, as discussed below, the evidence establishes that they are not just professionals, but professional engineers.

1. SPEEA need not prove that these employees are engineers in order for them to be permitted a self-determination election, but only that they are professionals.

This seemingly self-evident statement – that professionals may choose to bargain together, even if they are not members of the same profession, just as non-professional but varying work classifications bargain in single units – appears never to have been stated by the Board in these terms. However, it is implicit in the unit description in *General Electric Co. (Holyoke, Mass.)*, 120 N.L.R.B. 199 (1958), in which the unit description is a negative statement of the proposition that other varieties of “professional” can be included in a unit with engineers. It is further evidenced by the holding in *Pratt & Whitney*, 327 N.L.R.B. 1213 (1999) that it was inappropriate to limit a bargaining unit (as the Regional Director in that case had done) to “a grouping of ‘traditional engineering core’ employees at the Employer's West Palm Beach Florida Facility [of whom the] Regional Director [had] stated that the professional engineers and technicians in the ‘traditional engineering core’ categories constituted an ‘elite cadre’ within the

¹⁶ This Region recognized and applied the law described above when it dealt with the question of whether employees of Boeing were professional in the Facilities case (Union Exhibit 28 at pages 32-35).

Employer's organization distinct enough to warrant a separate unit appropriate.” *Id.* In critiquing the Regional Director’s decision, the Board provided significant guidance on this question:

As evidence of this distinctiveness, the Regional Director found that these employees possess the highest levels of engineering skills since they design and develop propulsion systems by applying advanced design methodologies and data acquisition systems. She also found their identity distinct since they have the "ultimate authority and the ultimate responsibility for the Employer's products," and have interests in collective-bargaining issues separate from those of other employees. For the reasons that follow, we disagree with the Regional Director.

...

Under these circumstances, and in light of the record as a whole, we conclude, contrary to the Regional Director, that the interests of the professional and technical employees in the "traditional engineering core" are not so distinguishable from those similarly situated employees at the Employer's West Palm Beach campus as to warrant finding that they comprise a separate appropriate unit.

The logistics support engineers, facilities engineers, methods engineers, and related titles, as well as the petitioned-for professionals and related titles, all require similar qualifications and skills and all enjoy the same benefits and pay structure. The inclusion of these professional engineers and related titles in the unit as sought by the Employer constitutes what amounts to an overall unit of professional and technical employees located at the Employer's West Palm Beach facility.

Id. at 1213 – 1214. See also, *Nuclear Management Company, LLC*, 30-RC-6556 (2003), in which the Regional Director of Region 30 directed an election in a unit of engineers, engineering analysts, information technology analysts, licensing regulatory affairs employees, configuration management, planning specialists, procurement employees, and quality assurance assessors.

Nonetheless, because there seemed to be some distinction drawn in certain areas of the testimony between “professional” and “engineering” positions, SPEEA will address these issues separately, urging the Regional Director to conclude that the FSRs are **both** professionals **and**

engineers, while acknowledging that they need only be the former in order to be granted the right to an *Armour-Globe* election.

2. The FSRs are professional employees

Employer Exhibits 21, 22 and 23 are the job descriptions for levels 3, 4 and 5 for all Field Service Representatives. (Tr. p. 751. Standbridge; Tr. p. 528, Bizar; Tr. p. 383, 391, Koperek; Tr. p. 335, Rund) Level 3 is entry-level, and seven of the approximately 100 FSRs in the petitioned-for unit are currently at level 3. All the rest are at levels 4 or 5. (Employer Exhibit 27)

Since the overwhelming majority of FSRs are level 4, SPEEA will focus on Employer Exhibit 22. The initial paragraph describing the job includes the following:

Develops and implements recommendations to improve operational performance. Validates or reviews effectiveness of company provided solutions, takes corrective action and develops recommendations for process/product improvement.

The knowledge required is: "Regularly contributes to the development of new job practices, techniques, and standards. Recognized as a job expert within the department/organization."

Under the heading of Problem Solving, the job description reads: "Develops solutions to complex problems that require ingenuity and innovation. Ensures solutions are consistent with organization objectives." Under the heading of Discretion, one finds: "Performs work with minimal direction and exercises considerable latitude in determining objectives and approaches to assignment." Finally, the educational requirement states: "Bachelor's degree and typically 10 or more years' related work experience, a Master's degree and typically 8 or more years' related work experience or an equivalent combination of education and experience."¹⁷

The fundamental competencies for all three levels are the same:

¹⁷The only difference in this requirement for a level 3 FSR is six or more years of work experience with a Bachelor's degree and four or more years with a Master's degree. At Level 5, the work experience increases to 15 and 13 or more years, depending on the level of the degree.

Build Positive Relationships

. . . Probes for and provides information to clarify situations. Consistently seeks and expands on original ideas from other project leads, internal employees, and external customers, enhances others' ideas and contributes own ideas about the issue at hand. . . .

Communication

. . . Consistently frames even complex messages in line with audience experience, background, and expectations; uses terms, examples, and analogies that are meaningful to the audience. . . .

Decision Making

Consistently recognizes a wide range of complex, specialized issues, problems, or opportunities in own workgroup, across the organization and with external customers; determines whether action is needed. Steadily identifies the need for and collects information to better understand issues, problems, and opportunities. Regularly integrates complex information from a wide variety of sources; detects complex trends, associations, and cause-effect relationships. Consistently creates relevant options for addressing problems/opportunities in achieving desired outcomes. Formulates clear decision criteria; evaluates options by considering implications and consequences; chooses an effective option. Consistently implements decisions or initiates action within a reasonable time. . . .

Strategic Decision Making

Consistently identifies and fills gaps in information required to understand the strategic issues. Organizes information and data to identify/explain major trends, problems, and causes; compares and combines information to identify underlying issues. Generates and considers extensive options for actions to achieve a long-range goal or vision; . . . selects the strategy most likely to succeed. Identifies the key tasks and resources needed to achieve objectives. . . .

Analytical Skills

Skill and ability to: collect, organize, synthesize, and analyze data; summarize findings; develop conclusions and recommendations for appropriate data sources with clients, customers and/or suppliers.

Aviation Industry

. . . Ability to apply that knowledge to wide range of complex tasks. . . .

Troubleshooting

The extensive, specialized ability to use established physical, mechanical, or **scientific principles** and perform appropriate tests to identify and solve problems encountered on the job. This includes the ability to locate and isolate the problem, identify possible solutions, and select approaches that are practical and effective. [Emphasis added.]

At Level 5, more is expected (Employer Exhibit 23). The Level 5 FSR is "[t]ypically a technical expert . . ." He will develop "new job applications based on **professional principles theories and concepts**." [Emphasis added.]¹⁸ His problem solving responsibilities include developing "solutions to problems of unusual complexity that require a high degree of ingenuity, creativity and innovation. Develops solutions to unique challenges that may serve as precedent for future decisions." The competency required for Troubleshooting is: "The advanced, expert ability to use established physical, mechanical, or **scientific principles** and perform the appropriate tests to identify and solve problems encountered on the job. This includes the ability to locate and isolate the problem, identify possible solutions, and select approaches that are practical and effective." [Emphasis added]

It is hard to imagine a job description that would more accurately describes an employee whose work is "predominantly intellectual and varied in character," involves the "consistent exercise of discretion and judgment in its performance," is of a character that the result "cannot be standardized in relation to a given period of time," and requires "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction . . ."

Other exhibits confirm the professional status of the FSRs. For example, Employer Exhibit 6 requires that FSRs "ensure that all pertinent information is understood." They also have to have the "determination and perseverance required to solve technical problems." They

¹⁸ With apologies, all generic individuals will be referred to from here on in the masculine. There are women in each job classification to which reference is made, but the "he/she" usage is awkward.

are "technical advisors" to the customers and they have to work closely with the customer to "solve a broad range of airline management concerns." They must "use their knowledge and technical expertise to advise operators" in the selection or use of Boeing products. Beyond data collection and reactive reporting, the FSR is "expected to be more involved in the predictive and proactive problem solving." They are expected to solve problems "associated with operator-or vendor-furnished hardware and software installed on Boeing airplanes." They must coordinate modifications and procedural changes with the Boeing Airline Support groups and coordinate changes to various kinds of procedures or designs that are required "to alleviate technical and operational problems." They should "recognize problems and trends before they have an adverse impact on safety." Finally, and most importantly, they must "provide technical expertise, when required, to maintenance, **engineering**, and operations people." [Emphasis added.] Only if further expertise is needed should the FSRs contact a Service Engineer.¹⁹

Employer Exhibit 8 talks about the responsibilities of both Intro Reps and co-located FSRs for new plane introductions. Both are part of a team that has the responsibility for, among other things, "providing **engineering** and technical information . . ." [Emphasis added.] They must provide the operator with "specific knowledge needed to operate a new model, including specific aircraft knowledge, systems operations" etc. If there are problems with the plane, they are supposed to "assist in proper diagnosis and problem resolution."

Employer Exhibit 9 goes into more detail about what a co-located FSR is supposed to do. On page 3, the FSR is directed to "make every effort to handle the request on-site by using local resources . . ." Critically, the Boeing procedures explain that using local resources "does not mean that questions should not be sent to Airline Support . . ." "It does mean that **as engineers**

¹⁹ See also, Employer Exhibit 7 for a comparable listing of FSR duties and responsibilities.

and technicians, FSRs should develop and maintain a professional attitude toward problem solving in the field." [Emphasis added.]

Employer Exhibit 12 not only reemphasizes the FSRs role in trying to resolve issues or problems, but the importance of being able to communicate with other Boeing organizations, including engineering services. It should be apparent, though, that it is impossible to communicate technical issues to engineers effectively without understanding the engineering behind those issues.

Employer Exhibit 24 is a customer support plan developed out of the Dallas office by the FSR team there. It demonstrates the link between the requirements and expectations set forth above and the expectations which operators have for the FSRs. On page 7, the plan discusses the relationship with the senior director and director of engineering for the customer for the FSRs and the services the latter are anticipated to provide. The senior director "seeks consultant advice and suggestions from our Office." Also, "he expects quick resolution to issues, technically oriented." The director of engineering seeks the same kind of advice and "relies on our office for technical advisement . . ." On page 4, the plan notes that the customer wants "key 'go to' people, who can get things done." "If the issues can be dealt with effectively/reasonably [the customer] believes there is little need for unnecessary support elements." This is recognition of the desire to solve issues locally if at all possible, but one cannot resolve the kinds of issues faced daily by FSRs on the local level without the education and training, and without the judgment and discretion, held and used by professional employees.

Employer Exhibit 29 and Union Exhibit 8 (pages 21-22) talk about the roles and expectations specifically of FSR Controllers. As Mr. Bennett described, these roles and expectations were written by a team of FSR Controllers with one supervisor. (Tr. p. 1308,

Bennett) Skill requirements are to be an "**engineering** or technical generalist as appropriate." [Emphasis added] At the beginning of the AOG process, they must "determine if an issue is AOG and help determine if the issue will be worked within BOC." As with the positions covered in the general job descriptions discussed above, the FSR Controllers have to collect all relevant information and then "provide expertise to help the BOC functional lead determine the best 'go-ahead plan' for resolution of each issue."²⁰ Consistent with Mr. Bennett's testimony that will be described in more detail below, FSR Controllers are supposed to request assistance to find solutions only "if needed" and also engage in a multi-discipline discussion only "if needed." In order to perform these functions, the FSR Controller must have the education and experience, and use them in conjunction with the exercise of judgment and discretion, that are required of professional employees.

The discretion and judgment regularly required of FSR Controllers is reemphasized on numerous occasions in Employer Exhibit 30. For example, the first step in the process of handling a call to the BOC requires a determination of whether a technical solution is needed (page 8). This function requires use of the judgment and discretion of a professional employee. Performing the functions required in sections 1.7, 1.8, 1.9 and 1.10 (pages 11-12) all require the same exercise of judgment and discretion. Section 2 emphasizes not only judgment and discretion but also the ways in which FSR Controllers can use their expertise to solve technical problems without consulting any other individuals ("investigates accepted technical items and provides a response to the customer.") Sections 2.2 and 2.3 require the exercise of judgment and discretion as a professional. As has been explained in more detail above, they also have the

²⁰ The functional lead is often an engineer covered by the SPEEA professional collective bargaining agreement. (Tr. p. 1311, Bennett)

same working conditions, including shift differentials and overtime pay as the professionals covered by the SPEEA CBA who work in the BOC.

Turning to specific responsibilities of Intro Reps, Employer Exhibit 79 contains a listing of the responsibility, authority and accountability of this position. Page 4-12 describes the obligation of Intro Reps to assist with "problem resolution" and coordinate with on-site experts to resolve problems.²¹ Figure 4-3 on page 4-24 shows that the responsibility and authority of an FSR is the same as that of employees in service engineering, specifically, to "Troubleshoot, ID Potential Solutions . . ." Once the recommended solution is developed, they must "Confirm Recommended Solution . . ." Again, these functions require the kind of knowledge and exercise of judgment and discretion required of professional employees.²²

The Employer relies in some measure on its Exhibits 82 through 99 to demonstrate the purported non-professional status of the FSRs. These exhibits are screenshots from various MET entries. MET is a communication and tracking tool used only in Region 1 by Regional Director Standbridge. (Tr. p. 707, Standbridge) It is not a substitute for the Boeing Communications System (BCS) that is used regularly for communication relating to technical issues between customers, FSRs and service engineering. (Tr. p. 898, R. Hirsch) Putting aside the hand-selected nature of these exhibits by Boeing, they do nothing to detract from, and in some instances enhance, the conclusion that FSRs are professional employees. For example, Employer Exhibit 87 describes how an FSR developed a case study on dispatch reliability and then analyzed the information in that case study to verify a hypothesis about why dispatch

²¹ Page 4-13 shows that the co-located FSR on the site has the responsibility to "resolve complex technical issues at the appropriate levels . . ." It also shows their authority is to provide "AOG troubleshooting assistance" and "chronic issue troubleshooting assistance and recommendations."

²² All of the figures in this exhibit, except figure 4-10, show an identical set of responsibilities.

reliability had been on a downward trend. As the testimony of witnesses that discussed herein shows, this is clearly an engineering/professional function.

There are two additional employer exhibits that Boeing is expected to rely upon to argue that FSRs are not professional employees. The first is Employer Exhibit 121 which shows that the FLSA exempt status is based upon Boeing's determination that the FSRs are covered by the administrative (rather than professional) exemption under the FLSA. Such a determination, though, is irrelevant to this case. The Board makes its determination about professional status regardless of what other federal agencies under other federal statutes have done. *Standard Oil Co.*, 107 NLRB 1524 fn. 8 (1954). Certainly, **the employer's own** determination under a different federal statute has even less impact. Employer Exhibit 126 is of no value to any analysis because it is a service letter that expressly says that it is to inform **operators** about how to communicate directly with Boeing. It has nothing to do with FSRs.

In contrast, a number of union exhibits **are** relevant to this determination, and support the professional status of the FSRs. Thus, Union Exhibit 1 outlines aspects of a mentoring program for BBJ reps, and discusses the fact that one of the desired attributes is the willingness "to look for the answer to a difficult question," a classic description of the professional's job. Union Exhibit 7 is a recent job posting for the position of FSR Controller. Besides stating that the educational requirements are the same as those contained in Employer Exhibit 22 (it is for a level 4 position), under the heading of "Position Description" Boeing has written, "Researches and resolves a variety of complex operational or aircraft reliability issues through full situational understanding and collaborative methods."

Union Exhibit 15 takes all of that information contained in Employer Exhibits 111 – 118 concerning the details of the education and training of domestic FSRs and consolidates it into a

simple bar graph showing the degree of education obtained by both all 226 FSRs (domestic and international) and 99 FSRs that are in the mix for inclusion in this self-determination election.²³ (Kempf, Tr. p. 1592-93) It shows that approximately 8% of all FSRs have an Associate's degree, and another 67% have a Bachelor's degree or higher.²⁴ Approximately 45% of all FSRs have a degree that is in some sort of engineering. (Tr. p. 1599-1600, Kempf; Union Exhibit 17)²⁵

Union Exhibit 18 shows the work experience of the FSRs. Approximately 80% have 20 or more years of work experience with Boeing. (Tr. p. 1601, Kempf) If one compares the employee profiles that contain educational background (Employer Exhibits 111-118) and the work histories (Employer Exhibits 103-110), one finds that all but a couple of the FSRs who are without at least a Bachelor's degree have significant work experience with Boeing.²⁶ Thus, even those FSRs who do not have a Bachelor's degree or higher meet the fourth prong of the legal standard for being a professional employee. The knowledge they have gained through their training and experience is **not** something that could be accomplished in a four or five year apprenticeship program, as recognized by the educational requirement in the job descriptions as well.

Finally, Union Exhibit 19 shows that 33% of all FSRs and 21% of the current domestic FSR component have previously held positions within the SPEEA professional bargaining unit.

²³ It is necessary to consider this information for all 226 FSRs even though those with international assignments to a customer's base are not covered by the Act, since FSRs rotate between international and domestic assignments. Those that are currently based internationally could be based domestically in the near future, and their education and experience are therefore part of the base of education and experience for the U.S.-based workers. They are interchangeable and interchanged and, therefore, looking at the whole group is both proper and important.

²⁴ The bars in the "blank" column indicate an absence of data. Therefore, the 75% identified as holding Associate or higher degrees may understate the actual percent people with this level of education, if the information simply was not provided. (Tr. p. 1595, Kempf)

²⁵ The Decision and Direction of Election in the Facilities case (Union Exhibit 28) found that persons who did not have 4-year college degrees were still professionals. (P. 38)

²⁶ These records do not show experience with another employer unless that employer was purchased by Boeing.

This is the very unit that the petition seeks to allow them to join by means of a self-determination election.

The testimony of the various engineers in the SPEEA professional unit who have regular interaction with the FSRs confirms that they are also professional employees. For example, Dominique Fontana 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) She testified that she and the FSRs do all of the functions on page 6 of the exhibit. It was common for her, when describing what she did in her job, to say that the FSRs do the same things.²⁷

The testimony of Dave Topping, Deputy Fleet Chief, much of it addressed above in Section II.A.1.e, provided example after example about how FSRs have used their engineering and professional skills to contribute to solutions even after a problem had been moved up to Mr. Topping's level.²⁸ He discussed the FSR contribution to resolution of issues regarding repair of lenses on wingtip lights (p. 17, *supra*), ensuring that the engineers in Seattle did not recommend the normal fix, which was too expensive and often impossible to use at remote locations. He addressed the FSR involvement in addressing the Boeing 777 tire pressure indicating system (*Id.*); the problem with an auxiliary power unit that had not been foreseen by any of the engineers and could have been a significant safety problem (p. 17, *supra*); the actions by an FSR to point out that there was a service bulletin that contained a reference to a variant on the standard wiring practice for retractable landing lights that could be used to solve a problem with the lights (p. 16,

²⁷ Looking at Section 22.1 of the CBA, Ms. Fontana described how her job requires her to research the development of solutions and evaluate processes. (Tr. p. 1259) She also described how the standards for being a professional set forth in that section all apply to her job (Tr. p. 1260), a description that clearly applies to the nearly-identical functions of the FSRs.

²⁸ In one of his various jobs covered by the SPEEA professional CBA, Mr. Topping was an instructor. (Tr. p. 1352-53)

supra); and identification of the problem with materials being used for the blowout panels (p. 18, *supra*). Mr. Topping described further how, during a particular technical review meeting, the FSR gave the technical reasons for the customer's concerns and that information allowed the team to develop an appropriate response. (Tr. p. 1370-71) In another instance, addressed briefly above at p. 17, 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)

Boeing's efforts on cross examination to detract from this testimony by pointing out that Mr. Topping does not have "firsthand" knowledge of who actually came up with these various solutions was unavailing. First, based upon Mr. Topping's experience with the communications he has had with the people involved, his belief that these solutions were generated by the FSR has to be given significant weight. He knows the difference between an FSR-generated solution and a customer engineering-generated solution. Next, when one recalls Ross Hirsch's testimony about the close working relationship between the FSRs and customer engineers (laid out in more detail below), the very nature of the process often makes the actual generator of the idea impossible to determine.²⁹ Also, it is important to recall the instruction contained in Employer Exhibit 9 that communications through the BCS system should not reference an FSRs participation. Testimony of the sort Mr. Topping gave is the best evidence that can be achieved. (Employer Exhibit 9, page 5)

Finally, regardless of whether any of the examples of engineering solutions given by Mr. Topping came only from an FSR, he emphasized that the information that his department gets

²⁹ As discussed below, even when an idea is generated by the customer's engineers, it is still filtered and evaluated by the FSR.

from an FSR has to be accurate in the context of the airplane actually being used; relevant to the technical, regulatory and business environment at the airline; and contain the appropriate amount of data so that service engineering can develop a solution. (Tr. p. 1383) As many of the witnesses pointed out, a person without engineering and professional knowledge and expertise cannot accomplish this kind of communication.

3. The FSRs are engineers

As argued above, SPEEA need not establish that the FSRs are engineers in order for them to be permitted to vote on joining the professional unit: It need prove only that they are professionals. (See Union Exhibit 28, p. 39) However, the evidence does, in fact, establish that they are engineers **and** professionals.

The evidence from the FSRs about their actual work is consistent with the job requirements discussed above. Ross Hirsch, an employee with Boeing (or its predecessor) since 1979 (Tr. p. 869), testified at length about what a domestic, co-located FSR does on a day-to-day basis. Before doing that, he described what engineering is all about as he was taught in engineering school. It is using applied science, knowledge, experience and decision-making in a systemic thought process to come up with a solution to a problem. It involves creativity, but it does not necessarily involve the design, development or testing of a part or product. (Tr. p. 877)³⁰ What his engineering degree primarily taught him was to think systematically and logically. (Tr. p. 890) Using this definition, he described engaging in these kinds of activities 70% of his day. (Tr. p. 878) His coworker at his Dallas base is not a degreed engineer, but uses the same analytical and decision-making skills as Mr. Hirsch as a regular part of his job. The expectation of Boeing is that they are each capable of doing the full job of an FSR and there is no

³⁰ Again, SPEEA would draw the RD's attention to the Rotruck Grievance decision, Union Exhibit 29 – Engineers may once have been people who worked just on **things**, but that is no longer exclusively the case.

difference in the allocation of work between them because Mr. Hirsch is a degreed engineer and his coworker is not. (Tr. p. 876; See also, Tr. p. 1664, Creighton; Tr. p. 1555-1556, Fontana.³¹)

Mr. Hirsch walked through Employer Exhibit 22, his job description, and described exactly what he does and how his engineering background helps him perform his job effectively. With respect to communication, his primary contact is with his customer's engineering staff (Tr. p. 891), which means that he deals with engineers specializing in things like structures, avionics, systems engineering and electrical engineering. He has to understand the language they use and the subject matter about which they are speaking or he cannot understand the problem that he is being asked to solve. (Tr. p. 882; 975-76. See also, Tr. p. 1178-79, Fontana)

In discussing the heading of collaboration, he affirmed that the language in Employer Exhibit 22 accurately describes what he does all the time. It is an essential part of the decision-making process. (Tr. p. 888)³² Mr. Somers, an Intro Rep, also explained how this collaborative process is not just Boeing engineers telling him what to do, but involves a real exchange of ideas. (Tr. p. 1470-71)

Focusing on the heading of decision-making in Employer Exhibit 22, Mr. Hirsch testified that this is the kind of thing he does every day, and described how an issue moves through the solution process:

Initially, an airline mechanic will attempt to resolve a problem. If that is unsuccessful, the issue will go to the crew chief, a more experienced mechanic. If the crew chief is unable to resolve the issue, he will take it to the customer's engineering department. If the engineers in that department cannot resolve the problem, they will bring it to Mr. Hirsch. If he cannot resolve

³¹ Ms. Fontana, a member of the current bargaining unit as an ASAM or ASE, identified a number of FSRs with whom she has worked. The employee profiles show that one, Kent Cummings, is not an engineer, but Ms. Fontana testified that there is no difference in how she communicates with him as compared to any of the other FSRs.

³² Virtually every witness testified that Boeing encourages working in teams for **all** of its jobs.

it, he takes it up to the Boeing Service Engineering group and, lacking a solution there, it goes to a subject matter expert engineer as, for example, an electrical engineer. If it is still unresolved, it will go to design engineering. (Tr. p. 888-889) This process demonstrates that a problem with an airplane never even gets to an FSR if it can be resolved by the engineers of the customer. It should go without saying that a problem that cannot be solved by the customer's engineers would not be taken to someone with **less** skill and ability for resolution.³³

While the testimony of many of the Boeing witnesses created the impression that all an FSR does when he gets a problem from the customer's engineering department is pass it along to engineers in the Puget Sound area, nothing could be further from the truth. SPEEA has already pointed out the various Boeing documents that encourage FSRs to solve as many problems as they can at their level. Mr. Hirsch testified that using his engineering background, experience and analytical methods learned through both his education and experience, he resolves about 40% of the issues brought to him by customer engineers. While there is no direct testimony about the number his partner resolves, given that Boeing has the same expectations of all FSRs and that the work done by Mr. Hirsch and his partner is indistinguishable, it must be concluded that the roughly same resolution percentage applies to both. (Tr. p. 890; See also, Tr. p. 972-73; 976) Even if the problem is moved up to service engineering, FSRs continue to contribute to the substantive discussions and continue to suggest solutions. (Tr. p. 886)³⁴

Mr. Hirsch also described how he uses the strategic decision-making skills described in Employer Exhibit 22 all the time and the analytical skills every day. The troubleshooting

³³ As discussed both above and below, even after the problem gets to engineers in Seattle, the FSR still actively participates in the problem solving process.

³⁴ One of the points made by Ms. Fontana was that the problem solving process at her level is a collaborative one and the FSRs contribute substantively to that process. (Tr. p. 1155, 1167, 1254-55)

described at the end of the exhibit is something he performs about once every week and a half. (Tr. p. 891-94)

Union Exhibit 2 is an MET communication log relating to matters handled by Mr. Hirsch. One of those items (#10053) involved a crack in a pylon in the aft bulkhead, illustrating the breadth of professional and engineering expertise expected of the FSRs:

In this instance, the problem was brought to him by a customer engineer and further investigation showed that it was not anything that could be found within the standard repair manual because it was outside the typical repair or damage. Mr. Hirsch then instructed the airline's engineer how to get the appropriate dimensions to put into a drawing and the other kinds of information that would be needed by Boeing service engineering to get a prompt response. Working together with the airline's engineer, they designed and developed a possible repair. The fundamental notion of a "bathtub repair" came from Mr. Hirsch and then the collaborative process with the airline's engineer expanded upon it. Working together, they drew up the repair and sent it to the Boeing structures group at service engineering where it was approved. During this process, Mr. Hirsch is the one who chose the material to be used to construct the repair -- steel so it would properly mate with a steel bulkhead and would have similar temperature yields, thus minimizing thermal stresses and galvanic corrosion. All of this required engineering training, experience and creativity. (Tr. p. 907-17)

Ultimately, the airline could not use the temporary repair designed by Mr. Hirsch and its engineer because there were other cracks found in the airplane. Mr. Hirsch found a service bulletin related to these cracks, but it was in error and he had to pass that information along to the Boeing Service Bulletin Engineering group. Since the issue was now larger and might affect

other airplanes, Mr. Hirsch put together a teleconference with engineers in Seattle. During this teleconference he provided ideas and input into possible solutions. (Tr. p. 920-23)

After design engineering drafted changes to the service bulletin, there was another teleconference to discuss those changes. Basically, the recommendation was to go from an inspection every 1500 hours to one every 800 hours. During this teleconference, Mr. Hirsch pointed out that the design engineers did not take into account that the equipment needed for the inspection might not be available at the airport where the plane was located after 800 hours of flying. He also pointed out that the shortened inspection schedule meant that it was not necessary to replace the sealant, since there would not be sufficient corrosion to require replacement. These suggestions and comments led to changes in the final service bulletin. (Tr. p. 928-30)

While changes made to the service bulletin were necessary, they did not deal with the airplane on which the initial problem had been discovered. Discussions between Mr. Hirsch and the airline's engineer led to a conclusion that the only way to get the bulkhead properly remounted on the pylon was to send the pylon back to the manufacturer. When it came back from the manufacturer, the airline's mechanics drilled holes in the wrong place. The airline's engineers contacted Mr. Hirsch to get his help in solving this problem. He, in turn, pointed out that even this small variation was the kind of problem that had to be corrected. However, rather than sending the problem back to service engineering in Seattle, Mr. Hirsch found a service bulletin covering this (new) circumstance which allowed the repair to occur much more quickly. (Tr. p. 931-934)

Even then, there was one **more** problem associated with this pylon crack. The pylon did not fit exactly as it needed to. When that was brought to Mr. Hirsch's attention, he found a

(another) service bulletin referencing a slightly different part, determined that there was a kit available for that part, and further determined they could take two parts out of that kit to fix the issue with this specific pylon. (Tr. p. 935)

Mr. Hirsch acknowledged that the pylon example was atypical. However, he very clearly explained that the skills that he used to deal with that circumstance are the kinds of skills he uses on every problem that comes his way. (Tr. p. 1046) This statement is backed up by other examples of his day-to-day activities to which he testified. There was a cowl heating issue that was caused by the failure of an O-ring. Mr. Hirsch explained to service engineering that the task card concerning inspections of this O-ring needed to be updated. When service engineering told him he was wrong, he did numerous detailed drawings to show the exact nature of the structure and the problem and then sent these drawings back to service engineering. The task card was changed. (Tr. p. 943-48)

Another example dealt with a slat asymmetry troubleshoot. Pilots reported that they were getting a message on the flight deck that they had slat asymmetry. This is not a problem that can be checked while the plane is on the ground. The airline's engineer came to Mr. Hirsch and said they could not find a fix for this problem. Brainstorming with his fellow FSR, they determined that another airline flying the same plane may have had the same problem, so they contacted FSR offices for those airlines. In fact, they found that the other airline had indeed had a similar problem and had developed a fix. He got authority to communicate that fix to his airline. (Tr. p. 948-51)³⁵

³⁵ While Boeing is likely to argue that all he was doing was copying something someone else had already done, that argument ignores the testimony of several witnesses that good engineering does not require reinventing things, but engages in plagiarism if at all possible. (Tr. p. 951, R. Hirsch; Tr. p. 1730, S. Hirsch; Tr. p. 1231, Plunkett) Jack Bennett's testimony about his job as an FSR Controller emphasizes this point. He explained that the first thing he does with a call is to see if he can solve it himself. In so doing, he avoids re-creating the wheel, but instead finds and relies on established procedures by looking at manuals, drawings and other such documents. (Tr. p. 1284) If he

Another example dealt with a grommet substitution. During a teleconference with Boeing engineers, Mr. Hirsch and the airline's engineers stressed that the solution to this problem had to come in two pieces rather than one so they would not have to ground the airplane during the time necessary to deal with a one-piece solution. Mr. Hirsch had to use all of his familiarity with the airplane as a whole and what it actually meant to break and detach cables in order to understand and explain this requirement. As a result, the fix came in two pieces.

This kind of collaborative process is engaged in on a weekly basis by the FSRs. In fact, it occurs on a smaller scale every time an airline's engineer comes into the office to bounce an idea off an FSR and get the FSRs input. These kinds of discussions require engineering knowledge, discretion and creativity. (Tr. p. 951-55) Discussions where FSRs suggest solutions to problems raised by customer engineers occur every day. (Tr. p. 883) Even if the problem involves nothing more than inability to find a part, engineering is involved. The FSR may be able to find the part, but if not, they may have to find a different part that will serve the same function, modify a part to make it work, and maybe even figure out if the customer really needs the part. (Tr. p. 942-43)

Mr. Hirsch gave other examples that demonstrate that FRSs are engaged in engineering work. For example, 80% of service bulletins are not currently validated because the service bulletin engineers simply do not have the time to do the validation. Mr. Hirsch and other FSRs, as part of a Lean steering team, were asked to develop a process for the FSRs to do the validation of many of these service bulletins. In doing so, Mr. Hirsch worked with the senior manager for

cannot solve the problem and he passes it to, for example, a structural engineer in the BOC (a person who sits right next to him), that engineer does the exact same thing—looks at manuals, drawings and the like. (Tr. p. 1337-38)

In any event, reading and understanding the various manuals provided by Boeing is not like reading a newspaper. As Mr. Somers described, it requires a good deal of sophistication and knowledge to understand them. The FSR has to understand the whole system of a plane to do that. Since the documents are not always accurate, the FSR needs to be able to identify when they are not accurate and then figure out a workaround. (Tr. p. 1480-81)

Service Bulletin Engineering. (Tr. p. 1049) While the process has not yet been implemented, it has been approved by the management of service bulletin engineering group. (Tr. p. 967-968) Validation is an engineering function. (See Joint Exhibit 1, Section 22.1(a), "evaluation of Company products or processes . . .")³⁶ Also, engineering involves technical writing and every time an FSR writes a service request, he is engaging in technical writing. (Tr. p. 972)

FSRs also use engineering and professional skills when the answer coming back from the engineers in Seattle is not fully acceptable to the customer. In these cases, the customer may go to the FSR to see whether he can come up with a modification to that solution to make it more acceptable. If the FSR can do this, the FSR-developed changes are sent back to Seattle with an explanation of why the first solution was unacceptable. (Tr. p. 977)

Mr. Hirsch explained how the directive to engage in predictive and proactive problem solving found in various employer exhibits actually functions in reality. To do this kind of problem solving, an FSR has to engage in analytical and process thought in order to predict what may happen in the future. The FSR also has to be able to understand where there may be problems, including problems with a potential solution. Finally, it requires engineering skill to come up with a creative solution to prevent problems from occurring in the first place. (Tr. p. 985-86) (See also, Tr. p. 1504-05)

As an example of assisting airline personnel in solving problems associated with the airline's or a vendor's furnished hardware and/or software described in Employer Exhibit 6, Mr. Hirsch described how a fairly large part on an airplane can show a problem, but it involves troubleshooting to discover what specific component of the larger part is actually the cause of the

³⁶ Over the shoulder validation is also mentioned as part of the FSR job in Employer Exhibit 81, p. 9. Since FSRs are not actually supposed to touch the plane, this over the shoulder validation is exactly what they should do and exactly what an engineer would do.

problem. The same thing can happen with software problems. (Tr. p. 987-88) (See also, Tr. p. 1506-07, Somers)

Employer Exhibit 6 also references changes in maintenance and operational procedures. Mr. Hirsch testified that customers sometimes complain to an FSR that a maintenance procedure is incorrect. Rather than just passing that complaint along to the appropriate people in Seattle, the FSR will first review the procedure and analyze it in light of the customer's complaint. If the FSR concludes that the customer is wrong, it is up to him to explain that to the customer. Only if his independent analysis, using his own discretion and judgment, shows that the procedure is incorrect will it be sent to Seattle. (Tr. p. 989) (See also, the testimony of Dave Topping on how FSRs have to filter suggestions that come from an airline engineer. They have to validate it or enhance it before it moves up to the fleet support level where he works. (Tr. p. 1446))

Recall that page 4 of Employer Exhibit 9 states, "Sometimes you have the answer, but the operator wants confirmation from the home office. In such instances, forward the question to Service Engineering with your answers outlined and a request that the home office confirm the information." Mr. Hirsch explained that there is actually a function built into the BCS system to facilitate this process. By clicking on a specific option in a drop-down menu, he can submit his solution and it will simply come back on official Boeing letterhead as a typical service response. The returned document goes to the customer. (Tr. p. 999-1000)

Indeed, comparing the work of FSRs with other engineering positions covered by the professional CBA demonstrates the similarity of their work. Dominique Fontana held several engineering jobs before becoming an ASE. One of her jobs was as a product manager, which was really that of a project manager. She did not do any actual design work even though she was working with the design engineering group. However, her engineering background allowed her

to understand technical design and how the product worked so that she could manage the project effectively. (Tr. p. 1149-1150) She was also a certification engineer which, again, was more akin to a project manager job. She served as the go-between for Boeing with the FAA. She did not sign off on any engineering documents and she worked with a team of engineers. Again, her engineering background allowed her to do this. (Tr. p. 1150-1152) All of these jobs were covered by the SPEEA professional contract. (Tr. p. 1148)³⁷

Rich Plunkett is currently on the SPEEA staff but spent many years working as a Boeing engineer. He described his jobs with Boeing, two of which were in customer engineering - the buyer-furnished equipment group - and later as an account manager. His role in buyer-furnished equipment was to deal with customers who purchased some of their own equipment to put into airplanes being ordered from Boeing. He described his functions in this job as making sure that part numbers were consistent with the Boeing drawings; making sure the equipment was suitable for installation; and managing the whole process of getting that equipment into the plane. He had to deal with engineering groups and the customers themselves, but did not perform any engineering research, design, development, testing or evaluation functions himself. This was a job was covered by the SPEEA professional contract (Tr. p. 1215-20) and sounds remarkably similar to that of the BBJ reps.

As a customer engineering account manager, he was responsible for dealing with changing customer desires and all of the changes that a customer may make to the plane over time. He had to work with various departments within Boeing, including engineering and sales, trying to implement those changes in a way that was acceptable to both Boeing and the customer in terms of price and what was described as “offerability.” (Offerability deals with timing). He

³⁷Fontana’s testimony demonstrated generally the fact that engineering jobs at Boeing are varied, and not limited in the ways that Boeing management attempted to portray them.

was translating customer desires into a deliverable product by working with others. (Tr. p. 1220-1224) This job sounds remarkably similar to that of a co-located FSR.

In neither of these jobs did Mr. Plunkett become involved in the research, design, development, testing or evaluation of Boeing products or processes. The closest thing he did to these traditional “engineering” jobs was to monitor configuration processes. (Tr. p. 1227-1228) As he described it, engineers at Boeing can be the kind of person who designs hardware or software as well as the ones who integrate something that has already been designed into a larger system. Specifically in customer engineering, the “engineering” function is to understand all of these aspects of the job but also be able to deal with what customers want and to make sure that the customer’s desires are met. (Tr. p. 1230-1231)

In his role on the SPEEA staff, Mr. Plunkett has provided representation to engineers engaged in developing a hypothesis as to why something is happening, studying data to see whether the hypothesis is correct, and then communicating that information to other engineers (Tr. p. 1236), exactly what Mr. Standbridge described was occurring with respect to Employer Exhibit 86. Finally, to the extent that the testimony from Boeing witnesses emphasized the coordination aspect of the FSR’s job, that testimony makes them sound like project managers (Tr. p. 49, 91-92, 128-29, (FSR Controller is doing “program managing”), 137, Didonato; Tr. p. 284-285, 300, Rund; Tr. p. 497-498, Bizar; Tr. pp. 597-598, 665, 679-680, 683-685, Standbridge), work that is very similar to that of Ms. Fontana in several of her bargaining unit jobs.

Against all of this information supporting the conclusion that FSRs are both professional employees as defined by the Act and engineers, Boeing's evidence presented two contradictory positions – that the FSRs **are** professionals, and that they are not engineers **therefore not**

professional. On the one hand, much of the testimony from Boeing's witnesses **supports** the conclusion that FSRs are professionals. Besides the educational requirements set forth in Employer Exhibits 21-23, Mr. Didonato testified that to get hired as an FSR, a person has to have either a college degree or an A&P license, requiring at least a two-year Associate's degree. Because of this, Boeing does little technical training. (Tr. p. 210-211) Mr. Rund testified that the FSR Controllers in the BOC engage in work that is intellectual in nature and that they are required to use their discretion and judgment. (Tr. p. 322-323) Mr. Bizar testified that the Intro Rep's work is intellectual in nature, requires the use of discretion and judgment, is not done under close supervision and is not standardized by time. (Tr. p. 546-548) Finally, Mr. Standbridge testified that FSRs use their discretion and judgment "all day long" and that "virtually all of the work they do involves them exercising their discretion." He also confirmed the testimony of SPEEA's witnesses that FSRs contribute to the overall solution when they work with Boeing engineers in service engineering. (Tr. p. 724)

The testimony of Scott Hirsch is instructive in this regard.³⁸ He supervises the ASEs like Ms. Fontana. He described the ASEs as engineers, affirmed that is important for them to be engineers, and described why that was true. The ASEs must use judgment and discretion in the way they resolve technical issues. They have to study data, analyze data and do their best to understand systems and what systems or engineering communities may be affected. They have to use their judgment to be able to work with other engineering disciplines to solve issues and he relies on their "critical thinking" to "find their way there." (Tr. p. 1717-1718) The testimony given by the FSRs who testified in this hearing all describe exactly those job functions and

³⁸ Besides the following testimony, he described the FSRs as the "experts in keeping the airplane flying for the customer." (Tr. p. 1717) In considering this statement, one has to recall that FSRs do no hands-on maintenance.

attributes. Scott Hirsch, nominally speaking of bargaining unit ASEs, was essentially describing an FSR.

Mr. Hirsch then gave a specific example of something he did as an ASE. The supplier had some problems and the solutions it was providing were simply not acceptable to the customer. He had to try to understand why the supplier could not provide the appropriate answer and in so doing recognized that the supplier was deficient in engineering skills. He then had to determine and communicate with the correct Boeing technical resource, who happened to be a software systems engineer. He then had to understand the software development process. It required his engineering skills to do all of this. (Tr. p. 1718-1719) Again, he was describing exactly the kinds of things that the FSRs who testified described as regular and recurring job functions.

Finally, Scott Hirsch gave yet another example that corresponded exactly with the testimony of Ross Hirsch and Dave Topping about FSRs, discussed above. He testified that he relies on his ASEs to analyze solutions that are offered and provide value instead of just passing along what comes to their desks. If the ASE (like an FSR) knows a solution is incorrect, then the ASE (like an FSR) has to challenge the people providing the solution, by which he meant that when it does not meet the customer's needs the ASE (like an FSR) has to go back to the service engineer or the design engineer and question them in detail in an effort to get a better solution. (Tr. p. 1719-1720)

In contrast to this evidence, upper management witnesses claimed that FSRs are neither engineers nor professionals. Mr. Weertman defined engineers at Boeing as doing the following: "Engineers are going to do analysis, calculation, derive solutions to problems that will then be documented, some engineering -- whether it's a drawing or a service bulletin, some piece of

engineering documentation.” (Tr. p. 449) As Mr. Plunkett explained, if this definition were accurate, 50% to 90% of the people covered by the SPEEA professional contract would no longer be covered. (Tr. p. 1232-1233) Indeed, Mr. Didonato, who worked as an ASE between 1989 and 1994, testified directly contrary to Scott Hirsch, a person who directly supervises ASEs today. Mr. Didonato said that there were no engineering functions and activities as part of the ASE job that he performed. (Tr. p. 203)

What is clear from the testimony of Mr. Weertman and Mr. Didonato is that Boeing is attempting artificially to narrow what an engineer is at Boeing in order to support its contention that FSRs are neither professional employees nor engineers. The problem with this testimony is that it is contradicted by virtually every other witness who testified, both for SPEEA and for Boeing. Indeed, the testimony is inherently incredible on its face. It should simply be ignored.

As an apparent, although patently misleading, part of its contention that FSRs are not engineers, Boeing made reference during counsel’s opening statement to a stipulation entered into during the hearing concerning the facilities engineers that led to the direction of election among that group. The stipulation is described on page 4 of the Regional Director’s Decision and Direction of Election (Union Exhibit 28). “The parties also agree that the engineers sought by Petitioner are the only unrepresented engineers employed by the Employer in the Puget Sound region.” SPEEA expects Boeing to argue that the stipulation acknowledged at that time that FSRs were not engineers. **However, as Mr. Koperek described in his testimony, all FSRs were *in management* before Boeing converted to the SJC compensation system.** A review of a work history of an FSR (John Bair in Employer Exhibit 103) shows that he was still coded as management (column “Pay Cat Cd”) until August 1999.³⁹ The hearing in the facilities case

³⁹ The testimony of Dorothy McKinney explains that the pay category M stands for management. (Tr. p. 849)

began in July 1998, recommenced in September and October of that year, and finally concluded in January 1999. (Union Exhibit 28, page 4, footnote 4) Thus, at the time the stipulation was entered, all FSRs were in management and the stipulation was accurate with respect to then-FSRs, but irrelevant to the instant case.

When a complete review of the record is made, the evidence is overwhelming that FSRs are professional employees under the Act. Their job is highly intellectual; it is varied every day; and it cannot be measured in terms of output per any segment of time. Every task involves the exercise of some amount of judgment and discretion, often a great deal of judgment and discretion. They simply could not do any of the technical aspects of their job -- from providing solutions to technical problems that were not solvable by customer engineers, to understanding those problems as communicated to them by customer engineers, to providing complete and accurate information to Boeing service engineering so that it can deal with problems that the FSR could not solve locally, to participating in a substantive way in the efforts by teams of engineers to solve problems -- without having the "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning" described in Section 2(12). However, they are not only professional employees; they are engineers who perform the exact same functions as many of the engineers currently covered by the SPEEA professional contract. They are qualified to have a self-determination election to see if they want to join that professional unit.

The testimony of Mr. Rund about the job of FSR Controllers appeared designed to make it look like all they do is field calls, pass problems to engineers for solution, and then

communicate the solution to the customer. In order to get the full and accurate picture of what they really do every day, one needs to look at the testimony of Mr. Bennett, an FSR Controller.⁴⁰

By way of history, Mr. Bennett explained how the BOC where he now works came into existence. He worked for McDonald-Douglas before its merger with Boeing. It had what was called an In-Service Coordination Center (ISCC). Its job was to deal with issues that arose when the engineering team was not working. Later, its name was changed to the Rapid Response Center (RRC), but its functions remained the same.⁴¹

The RRC did not have any service engineers working for it. That meant that the people in Mr. Bennett's job had to solve as many problems called in from customer engineering departments as they could. If they could not solve the problem, they called a service engineer at home. The BOC is an outgrowth of the RRC. It now has an expanded 24/7 staff that includes service engineers of various specialties as well as representatives of some other Boeing departments. Mr. Bennett helped start the BOC and moved to it permanently a few months after it opened. (Tr. p. 1279-1282)

When a call from a customer engineer or from an FSR comes in, he will first try to determine if it needs a temporary, or a permanent, response. He will determine if it needs Boeing or FAA documentation as part of the resolution. If the request comes through the BCS, he will review any sketches, outlines of the damage or other documentation that may be attached. By doing all of this he will be able to determine if he can solve it himself or if he must refer it to some other expert.⁴² Once all of these decisions are made, he will call the customer and discuss

⁴⁰ While Mr. Bennett has a Master's in aeronautics, it is not an engineering degree so Boeing apparently does not consider him an engineer.

⁴¹ The RCC name came into being after the Boeing/McDonald-Douglas merger.

⁴² During the week the BOC will average about 30 calls day and the FSR Controllers will solve 2-3 of these themselves.

a course of action. (Tr. p. 1283-1284) If he cannot solve it himself, he will determine if it needs to stay in the BOC or if it should be referred to another Boeing group. If it goes to a different group, he will coordinate the transfer. If it stays in the BOC, he has to determine if it should be referred to the structures group, systems group or spares.⁴³ Once assigned, he will communicate a time frame for resolution with that group to develop and then coordinate the resolution process. (Tr. p. 1285-1286) Once the group handling the matter comes to a solution, he communicates it to the customer. If the customer is unhappy with the solution, he can discuss the matter and authorize a change, if needed. (Tr. p. 1287-1288)

Mr. Bennett also went through Employer Exhibit 22 and explained how it describes his job (with the exception of being a team leader because there are none in the BOC), including the paragraphs under the headings “knowledge,” “problem solving,” “discretion” and “communications.” Specifically with respect to communication, he testified that his Bachelor’s and Master’s degrees help him do the job because they allow him to understand the problems, understand the background and the overall picture and what the customer’s needs are. The same is true with the decision-making paragraph, the strategic decision-making paragraph and the analytical skills paragraph. (Tr. p. 1294-1297) In part, his degrees are important because they allow him to be able to find the various documents he may need to look at and then to understand them. These documents are very technical, as are the drawings to which he refers. (Tr. p. 1338-1339)

Mr. Bennett described how he does research and evaluation of products, defined as the parts of the plane he is trying to fix. He said that he needs a “full engineering evaluation” of the problem, which requires getting or finding sketches that map out the problem and the materials

⁴³ Roughly 75% to 80% of the issues that are referred go to structures; about 15% go to systems and the rest to spares. (Tr. p. 1287-88)

needed to fix it. He always has to make sure that the information he is getting from the customer is complete.

Finally, Mr. Bennett looked at the factors that determine whether a job is professional as set forth in Section 22.1 and he described how all of them apply to his job. (Tr. p. 1304-1306) He also described how every call to the BOC is different and the fact that he has to exercise judgment in everything he does. (Tr. p. 1335-36; see also, Rund, Tr. p. 322-23.)

E. The FSRs are not Technical Employees, nor is their Work Primarily Administrative or Characterized as “Customer Relations.”

All of the testimony about how the FSR job requires the knowledge, education or training, and discretion required to be a professional (engineering) employee has to be contrasted with Paul Creighton’s testimony about the jobs he held in the SPEEA technical bargaining unit. In each of those jobs, the work was not varied, it did not involve the exercise of judgment and discretion and it did not require any advanced training. (Tr. p. 1632-1638) In contrast, his job as an FSR is intellectual in nature, and varied in character. It involves discretion and judgment. He has to analyze problems and use analytical thought to set up a plan for problem solution. All of this uses a lot of what he learned getting his engineering degree. (Tr. p. 1638-40) Mr. Creighton also has held jobs in the SPEEA professional unit and he testified that he does more engineering work as an FSR than he did in his jobs in support engineering and service engineering. (Tr. p. 1654)

Mr. Somers testimony confirms that of Mr. Creighton. He is currently on loan to a job covered by the SPEEA technical contract. This job is much more routine than his Intro Rep job. He regularly exercises judgment and discretion in his Intro Rep job and only occasionally does so in his current job. In his Intro Rep job he uses his Bachelor’s of Science degree a lot, but only a little bit in his current job. (Tr. p. 1486-1494)

During the hearing, Boeing presented a great deal of evidence that is best characterized as red herrings. First, it emphasized some of the administrative tasks that FSRs have to perform. There is no dispute that some of the work of FSRs is administrative. However, Mr. Hirsch said that only 30% of his job is administrative. (Tr. p. 1000-1001) Boeing also emphasized how important the working relationships between the FSRs and customers are to the overall success of the field service process. No one disputes that. It is true that some engineering jobs will have little or no customer contact but others will have a lot. (See, *e.g.* Tr. p. 1215-24, Plunkett, where he describes his jobs in customer engineering and the amount of customer contact required in those jobs.) But, the FSR job is not solely about using good personal skills. As Ross Hirsch explained, to be successful an FSR must have both good personal skills and good technical ability or the customer would "boot you out the door." (Tr. p. 974) (See also, Tr. p. 1501, Somers)

F. The Team Leaders 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 leaders do **not** do.

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

The starting point of this analysis is Employer Exhibits 4 and 5. The description of the team leader in Employer Exhibit 4 simply says that he "is responsible for the activity at that base." Employer Exhibit 5 says that the team leader "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 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 leaders 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 leader. (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 leaders 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 leaders schedule employees and assign work. Therefore, SPEEA will turn to the evidence related to those functions.

The first thing to note is that 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 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 leaders 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 leader 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 leaders to "schedule or assign" work.

Ross Hirsch testified that when he got to his current base, he sat down with his team leader 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 leader to testify was Paul Creighton. He testified that there really is no assignment of work as a team leader 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 leaders did not get any additional pay or any benefits that are not already given to all the FSRs. (Tr. p. 1690)⁴⁴

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

The most important case for analyzing whether team leaders 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 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 the team leads were not

⁴⁴ Mr. Plunkett explained that there are team leads 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 leaders. (Tr. p. 1239-40)

supervisors. The Board pointed out that the team leads 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 leads. *Id.* at 722.

Cases decided after *Croft* support the conclusion that team leaders in this case are not supervisors. In *Talmadge 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 leaders 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.⁴⁵ *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 leaders 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).

Combining this law with the facts in this case, it is clear that team leaders 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 and do not involve any exercise of independent discretion as defined by the law. The only team leader to testify

⁴⁵ 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).

confirmed this, as did Ross Hirsch. Team leaders in this case do not meet any of the statutory criteria to be supervisors and they should be included in the unit for the self-determination election.

G. SPEEA Has Not Waived its Right to Represent the FSRs, nor can the Geographical Limitations of the Contract be Applied to Restrict the Rights of the FSRs to an *Armour-Globe* Election.

SPEEA anticipates that the Employer may argue that SPEEA has waived its right to represent the FSRs through contract language appearing in Joint Exhibit 1, but such a contention cannot succeed. 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 contract⁴⁶ waived the Union's right to seek an *Armour-Globe* election and he rejected Boeing's argument. He should do the same here.

Finally, the Regional Director should reject the argument that the parties must negotiate any alteration in the geographic limitations outlined in the Recognition Article of Joint Exhibit 1. (Article I page 1) The National Labor Relations Board has primary responsibility for defining the scope of appropriate bargaining units. In this respect, Boeing takes precisely the opposite position from that which it took in *The Boeing Company*, 349 NLRB 957 (2007) (Board Exhibit 3(c)) where it won the point that the determination of the unit status of employees ultimately depends upon Board law, and not upon the recognition clause in a contract subject to interpretation by an arbitrator.

III. Conclusion

The Regional Director should direct an election in the following bargaining unit.

All full time & regular part time employees performing the work of Field Service Representatives within Boeing Commercial Airplanes working within the United States.

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

The ballot should further provide for an *Armour-Globe* election as follows:

⁴⁶ 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)

If a majority of the employees in this voting group vote “YES”, they will be taken to have indicated their desire to be included in the existing bargaining unit as described in Section 1.1(a) of the current collective bargaining agreement between the Company and SPEEA, to wit, all persons working in the Company’s plants in the State of Washington, including persons who are on travel status from such plants, who are classified by the Company in one of the classifications listed in Appendix B of the collective bargaining agreement and including those persons assigned (other than on travel status) at Edwards AFB, California or Palmdale, California who are classified by the Company in one of the classifications listed in Appendix B.

All of the FSR’s sought in the petition are professional employees as defined by the Act and the evidence shows that they have a community of interest with members of the bargaining unit in which they seek to be included. They consist of a distinct, identifiable group. The team leaders are not supervisors and should be allowed to vote. Those FSRs who are currently on loan to either the SPEEA professional or technical bargaining units, should also be allowed to vote since they have a reasonable expectation of return to the bargaining unit.

Three other points need to be made:

First, even though the parties often used the shorthand of the job code GEC7 to describe this group during the hearing, the unit description should not reference it or any specific job code. The evidence is clear that these job codes are changed unilaterally by Boeing. Also, there is one FSR that has the job code GEC6, but both parties agree that that person can vote in an appropriate unit that includes his position.

Second, if the Regional Director rules that an election other than requested herein is the only appropriate election, SPEEA request a reasonable amount of time to indicate whether it is willing to proceed on that basis.

Finally, because the FSRs are located all over the country, the election must be conducted by means of a mail ballot.

Dated February 24, 2011.

Respectfully Submitted

s/ Joseph M. Goldhammer
Joseph M. Goldhammer, #5761

s/ Thomas B. Buescher
Thomas B. Buescher, #6796
Attorney for Petitioner SPEEA
Buescher, Goldhammer,
Kelman & Dodge, P.C.
1563 Gaylord Street
Denver, CO 80206
Phone: (303) 333-7751
Fax: (303) 333-7758
jgoldhammer@laborlawdenver.com
tbuescher@laborlawdenver.com

CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the *PETITIONER'S POST HEARING BRIEF* were served upon the parties via electronic mail, this 24th day of February, 2011, properly addressed to the following:

Ray Goforth
Society of Professional Engineering
Employees in Aerospace, IFPTE, Local 2001
15205 52nd Avenue South
Seattle, WA 98188
rayg@speea.org

Richard Hankins
Alston Correll
McKenna, Long & Aldridge
303 Peachtree St. NE Suite 5300
Atlanta, GA 30308
rhankins@mckennalong.com
acorrell@mckennalong.com

s/ Victoria T. Green