

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

THE BOEING COMPANY,

Employer,

and

Case No. 19-RC-15372

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

Union.

THE BOEING COMPANY'S POST-HEARING BRIEF

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THE BOEING COMPANY'S POST-HEARING BRIEF

On January 3, 2011, the Society of Professional Engineering Employees in Aerospace, IFPTE, Local 2001, AFL-CIO (hereinafter referred to as the "Union" or "SPEEA") filed a petition pursuant to Section 9(c) of the National Labor Relations Act, 29 U.S.C. § 159(c). In the Petition, the Union seeks an *Armour-Globe* self-determination election in which "full time & regular part time employees performing the work of Field Service Representatives within Boeing Commercial Airlines working within the United States" would be given the opportunity to vote to join the bargaining unit described in Section 1.1(a) of Joint Exhibit 1 (hereinafter referred to as the "Washington Engineering Unit" or "Engineering Unit").

On January 3, 2011, Acting Regional Director Anne Pomerantz issued a Notice of Representation Hearing setting the date for a pre-election hearing for January 14, 2011. On January 11, 2011, Regional Director Richard L. Ahearn issued an Order Rescheduling Hearing rescheduling the pre-election hearing for January 19, 2011.

On January 19, 2011, the hearing commenced before Hearing Officer Janet Little in Seattle, Washington. The hearing concluded on February 3, 2011.

I. INTRODUCTION

The issue in this case is whether a unit consisting of all Field Service Representatives throughout the United States (hereinafter referred to as “FSRs”)¹ and existing Washington Engineering Unit employees, all of whom work in the State of Washington (or are assigned to work at Edwards Air Force Base or Palmdale, California) would be appropriate. The Union asserts that joining the two employee groups is appropriate because they “form an integral part of a process under which Boeing commercial airplanes are repaired, maintained, kept in the air.” Tr. 8.² However, the record shows that domestic FSRs and Washington Engineering Unit employees do not share a community of interest that is either sufficient or exclusive enough to warrant joining the two groups as petitioned. Thus, an *Armour-Globe* election is not appropriate and the Petition should be dismissed.

The Boeing Company (hereinafter referred to as “Company” or “Boeing”), a global leader in the aerospace industry, employs engineers and other employees at locations all over the United States and world. The Company’s global operations are divided into four major business units: Boeing Commercial Airplanes (“BCA”); Boeing Defense Systems (“BDS”); Engineering, Operations & Test (“EO&T”); and Shared Services Group (“SSG”). The Company employs engineers in each of the major units who are responsible for researching, designing, developing, testing, and evaluating airplanes and other aerospace products for sale to commercial and military customers. Some of the Company’s engineers are represented by the Union, although most are not. The represented engineers fall within several distinct bargaining units based on their status as engineers and the geographic location where they work.

The Union has represented the Engineering Unit since 1946. Since that time, inclusion in the unit has hinged on only two factors: 1) the employee must work within the State of

¹ FSRs are classified as GEC7 employees in the Company’s Salary Job Classification system. Tr. 167-68.

² References to the transcript of the hearing will be made as Tr. __; references to the exhibits of the Union will be made as Un. Ex. __; references to exhibits of the Company will be made as Co. Ex. __; references to exhibits of the Board will be made as Bd. Ex. __; and joint exhibits will be made as Jt. Ex. __.

Washington or be assigned from Washington to Edwards AFB or Palmdale, California, and 2) they must be an engineer. The parties define engineers as employees who “regularly apply engineering disciplines to the research, design, development, test and evaluation of Company products or processes, and who satisfy the definition of ‘professional employee’ as stated in Section 2(12) of the National Labor Relations Act” Jt. Ex. 1. The Washington Engineering Unit currently consists of approximately 13,600 engineers who work in three of the Company’s major business units in the State of Washington.

In addition to engineers, the Company also employs FSRs throughout the United States and world. Unlike engineers, however, the FSRs at issue in this Petition do not work in more than one of the Company’s major business units, but instead, work only in the Company’s commercial airplane organization, Boeing Commercial Airplanes (hereinafter referred to as “BCA”).

BCA relies on FSRs to serve as the face of the Company for its commercial customers and to act as a liaison between the customers and the Company. Employees who work as FSRs are selected for the position because of their experience in the aerospace industry and their ability to develop and maintain strong relationships with BCA customers and their employees. FSRs come from diverse backgrounds, including former engineers and former aircraft mechanics, and have a broad range of education, from no college to doctoral degrees. The work performed by FSRs is undeniably important. Indeed, the FSRs play a critical role by interfacing with the Company’s customers and assisting in resolving customer issues. However, the FSRs work is not engineering work.

A key component of an FSR’s job is to provide technical assistance in resolving mechanical or operational issues that arise with Company manufactured airplanes. The Union asserts that in providing this technical support, FSRs engage in engineering work and, therefore, they are eligible for inclusion in the Washington Engineering Unit. Despite these bald assertions, the overwhelming evidence is to the contrary. The record shows that FSRs, in

assisting customers, rely primarily on either their prior experience or pre-developed solutions from Company manuals to resolve airplane issues. When FSRs encounter issues for which there is no pre-developed solution, they send the issue to Company engineers for resolution. There is no evidence FSRs use any engineering disciplines in performing their jobs.

The Union's Petition to join all domestic FSRs with the Washington Engineering Unit not only seeks to disrupt the historical engineering nature of the unit, but also seeks to throw out 65 years of bargaining regarding the unit's well-defined geographic boundaries. The Parties have no history of bargaining to expand the Engineering Unit to include engineers nationwide, which is evidenced by the many geographically-specific engineering units throughout the country. There is also no evidence that FSRs and Engineering Unit employees are so integrated that deviating from that bargaining history is appropriate here.

Indeed, the record reflects that the Company employs a large number of engineers in other locations. By way of example, in Long Beach, California, engineering employees perform exactly the same type of work as engineers in the Washington Engineering Unit and work within some of the same Company organizations. The FSRs at issue in this case have the same type of interaction with the unrepresented Long Beach engineers as they have with the Washington engineers. The Long Beach engineers and the Washington engineers have frequent interaction with each other.

The Company fully acknowledges that FSRs in the United States have a right under the NLRA to choose to be represented by the Union for bargaining purposes. However, the Company also recognizes that it is both contractually and legally inappropriate to join those FSRs with the existing Washington Engineering Unit. The evidence in the record clearly demonstrates that these two employee groups lack any real semblance of a community of interest and are by no reasonable application of established Board law so integrated that neither possesses a separate identity for bargaining purposes. Moreover, the Union's Petition, by seeking to deviate from the historical geographic scope of the Engineering Unit, fails to included

employees groups, such as the engineers Long Beach, who form an equally integral part of the process under which the Company repairs, maintains, and keeps airplanes in the air. Because of the overwhelming evidence that a unit consisting of United States-based FSRs and Washington Engineering Unit employees is not appropriate, the Union's Petition for an Armour-Globe election must be dismissed.

II. STATEMENT OF FACTS

A. The Company's Business Operations

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

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

Each of the business units described above employs individuals in various job classifications who perform a broad range of job duties. The classifications include FSRs,

engineers, technical employees, touch labor³, sales representatives, warranty personnel, managers, administrators, and many others. Tr. 15-16, 1050-51; Jt. Ex. 1; Co. Ex. 28, 76. Many of these employees are represented by many different unions, including SPEEA. Jt. Ex. 1, Co. Ex. 75-77.

The Union currently represents separate bargaining units of engineers at locations including: Weber and Davis Counties, Utah; the Boeing Atlantic Test Center, Florida; the Company's Sandy Boulevard plant in Portland, Oregon; the greater Puget Sound region of Washington and Portland, Oregon; and Sedgwick County, Kansas.⁴ Jt. Ex. 1; Bd. Ex. 3; ER Ex. 75. It does not, however, represent all engineers working within the United States, including engineers in Long Beach, California. Tr. 1743. The Union also represents technical employees located in: the State of Washington and assigned at Edwards AFB and Palmdale, California; 19000 N.E. Sandy Boulevard, Portland, Oregon; Cape Canaveral Air Force Station, Florida; and Irving, Texas. Co. Ex. 77.

Employees in the Washington Engineering Unit are located in the Company's plants in the State of Washington and work in three of the Company's major business units: BCA, BDS, and EO&T.⁵ Bd. Ex. 1(a); ER Ex. 119. There are approximately 13,600 employees in the Washington Engineering Unit, with approximately 8,700 in BCA, 2,400 in BDS, and 2,400 in EO&T. Bd. Ex. 3; ER Ex. 119. There are 43 classifications of engineers that work in the Engineering Unit. Jt. Ex. 1.

³ Touch labor is a term used at the Company that refers to the employees that do the actual physical work on airplanes. Tr. 1051. It includes mechanics and maintenance employees. Tr. 1051, 1072.

⁴ The following shows the approximate total number of engineers in each of the units: Weber and Davis Counties, Utah – 98; the Boeing Atlantic Test Center, Florida – currently there are no engineers in this unit; the Sandy Boulevard plant in Portland, Oregon - 51 ; Facilities and SHEA engineers in the Puget Sound region of Washington and in Portland, Oregon – 297; Sedgwick County, Kansas – 589. Bd. Ex. 3; ER Ex. 75, 78. There are approximately 27,000 engineers that are not represented by any union, including SPEEA.

⁵ The Company has engineers who work in the SSG business unit, however, they are all covered by Section 1.1(e) of Joint Exhibit 1. ER Ex. 119. The parties have agreed that for purposes of this proceeding only, the engineers described in Section 1.1(e) of Joint Exhibit 1 are not members of the Washington Engineering Unit. Bd. Ex. 3. There are approximately 282 engineers covered by Section 1.1(e) of Joint Exhibit 1 that are located in the State of Washington. ER Ex. 119.

Unlike employees in the Engineering Unit, all the FSRs sought to be represented by the Union in the Petition are employed exclusively in BCA. Co. Ex. 28; Bd. Ex. 1(a), 3. There are approximately 226 FSRs located throughout the world, with approximately 99 located in the United States.⁶ Tr. 1592-93, 1598; Bd. Ex. 3; Un. Ex. 16.

B. BCA

BCA is the business unit primarily responsible for the Company's commercial airplane business. Tr. 20-21. Jim Albaugh is the President and CEO of BCA. Tr. 23, 56. Employees classified as FSRs work in various organizations within BCA, including Field Service (see Section 1.a.1, below), the Boeing Operations Center (hereinafter referred to as "BOC") (see Section 1.a.2, below), 787 Service and Support (see Section 1.b, below), and Boeing Business Jets (hereinafter referred to as "BBJ") (see Section 2, below). Co. Ex. 28. Within these BCA organizations there are seven different FSR roles: co-located FSRs, Seattle Support Center FSRs, Field Service Intro Reps, BOC Controllers, 787 Intro Reps, 747 Intro Reps, and BBJ FSRs. Co. Ex. 28. The section of the brief that follows will discuss the relevant organizational structure.

1. Commercial Aviation Services

Within BCA is a business unit called Commercial Aviation Services (hereinafter referred to as "CAS"). CAS is headed by Lou Mancini, Senior Vice-President of CAS. Tr. 22, 56; Co. Ex. 28. It is responsible for all services provided to customers after airplanes are delivered to them. Tr. 445. Ninety-six of the domestic FSRs fall within CAS and are found within two CAS organizations: Fleet Services and 787 Services and Support. Co. Ex. 27, 28; Un. Ex. 16.

⁶ Nineteen of the 226 FSRs are currently working in non-FSR positions. Bd. Ex. 3, 3(a). The Union only seeks to organize FSRs located in the United States, which includes the 19 FSRs temporarily working in other positions.

a. Fleet Services

The Fleet Services organization within CAS is headed by Dennis Floyd, Vice-President of Fleet Services for BCA. Tr. 22, 56. Fleet Services is responsible for all of the services the Company provides to the engineering and maintenance divisions of customers. Tr. 445.

Within Fleet Service there is another organization called Technical Customer Support (“TCS”). Tr. 22; Co. Ex. 28. It is headed by Peter Weertman, Vice-President of TCS. Tr. 22, 56, BOC, Tr. 59. It is responsible for providing support to customers and for providing the maintenance manuals and other documents that go with a particular model of airplane. Tr. 447. Within TCS are two organization that employ FSRs: Field Service and TCS Customer Support Engineering.⁷ Tr. 22, 59; Co. Ex. 28.

1) *Field Service*

Michael Didonato is the Director of Field Service for BCA. Tr. 21-22. The purpose of Field Service is to act as a liaison between customers and the Company and to ensure customers are able to operate their airplanes successfully. Tr. 24. The FSRs in Field Service are divided into three groups: co-located FSRs, Seattle Support Center FSRs, and Intro Reps. Tr. 24, 27, 229.

2) *TCS Customer Support Engineering*

Lynne Thompson is the Director of Customer Support Engineering. Tr. 275; Co. Ex. 28. Customer Support Engineering is responsible for ensuring the continuing health and performance of the Company’s in-service airplanes. Tr.119-20. Within Customer Support Engineering, FSRs work in the Boeing Operation Center (BOC). Co. Ex. 28. The BOC is supervised by Senior Manager Bruce Rund. Tr. 275. It was established to support customers with urgent mechanical or operational airplane issues. Tr. 276. The FSRs in the BOC are referred to as Controllers. Tr. 32. In addition to the Controllers, the BOC includes structures

⁷ Employer Exhibit 28 refers to Customer Support Engineering by its prior name, Fleet Support Engineering. Tr. 275.

engineers, stress engineers, systems technicians, and material management technicians. Tr. 278, 284, 318, 1289.

b. 787 Services and Support

787 Services and Support⁸ is headed by Michael Flemming, Director of 787 Services and Support. Tr. 60; Co. Ex. 28. It is responsible for providing support to customers when they first receive the 787 for use in their fleet. Tr. 415. Below Mr. Flemming in 787 Service and Support is manager Chris Tasche and below Tasche is first level manager David Bizar who supervises the Intro Reps for the 787 and 747 airplane programs. Tr. 60-61; Co. Ex. 28. The Intro Reps in 787 Service and Support are classified by the Company as FSRs. Tr. 61.

2. BCA Sales and Boeing Business Jets

BCA Sales is headed by Marlin Dailey, Vice President of Sales. Tr. 60; Co. Ex. 28. It is responsible for selling airplanes to customers worldwide. Tr. 140. Below Mr. Dailey in Steve Taylor who oversees Boeing Business Jets (BBJ). Tr. 60; Co. Ex.28. Boeing Business Jets (BBJ) is the part of BCA Sales responsible for selling commercial airplanes to private or VIP customers. Tr. 58. BBJ provides support to its private and VIP customers via FSRs. Tr. 347-48. The FSRs are supervised by William Koperek. Tr. 60; Co. Ex. 28.

C. Field Service Representatives

1. Field Service FSRs

Co-located FSRs,⁹ Seattle Support Center FSRs, and Field Service Intro Reps work in the Field Service organization. Co. Ex. 28. Field Service is part of TCS which falls within the Fleet Services organization, Co. Ex. 28.

Michael Didonato is the Director of Field Service for BCA. Tr. 21-22. Field Service is made up of 11 geographic regions that cover customers worldwide with each region being

⁸ 787 Service and Support was also referred as 787 Entry Into Service or 787 EIS at the hearing. Tr. 60.

⁹ Co-located FSRs were also referred to as "permanent" FSRs at the hearing. Tr. 703.

supervised by a regional director. Tr. 24. It provides support to approximately 900 customers worldwide. Tr. 53. Of those, approximately 100 to 150 are based in the United States. Tr. 53.

Field Service divides the customers it supports into two distinct groups: first tier customers and second tier customers. Tr. 83-84, 990. It provides different levels of support to a customer depending on the customer's first tier or second tier designation. Tr. 83-84, 105. First tier customers are airlines that have either purchased an airplane directly from the Company or who have leased an airplane from a leasing company and is the first actual operator of the airplane. Tr. 84. Second tier customer customers are those airlines that have purchased used Company airplanes. Tr. 26. They are generally smaller and need support less frequently. Tr. 26, 105. First tier customers are generally supported by a co-located FSR, while second tier customers are supported by FSRs in the Seattle Support Center. Tr. 24, 26. Field Service provides first tier customers additional support when they purchase a new model of airplane for their fleet. Tr. 27. This support for the introduction of new models is performed by Intro Reps. Tr. 27.

a. Co-located FSRs

Field Service co-locates many of its FSRs with first tier customers throughout the world. Tr. 24. This means that at least one co-located FSR is permanently stationed onsite at the base of operation of each first tier customer, i.e., the operator of new Company airplanes. Tr. 35. These customer-based locations are referred to by Field Service as bases. Tr. 35. The offices for co-located FSRs are generally located in the customer's offices or maintenance facilities.¹⁰ Tr. 40, 579-83.

Most bases are operated pursuant to contractual agreements between the customer and the Company. Tr. 62. When those contractual requirements end, the Company may cease providing Field Service support to those customers. Tr. 62. However, the Company generally

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

maintains a presence at a customer's bases even though it is not contractually required to do so. Tr. 62. The Company does this to maintain relationships with those customers to better position the Company for future airplane sales. Tr. 62.

Three of the 11 Field Service regions that are in the United States include co-located FSRs. Tr. 25, 227. There are approximated 37 co-located FSRs in the United States. Tr. 781; ER Ex. 103. The regional directors for those three regions are located in Dallas, Texas; San Francisco, California; and Seattle, Washington.¹¹ Tr. 227-28. The regional directors all report to Mr. Didonato. Co. Ex. 28. Neither Mr. Didonato nor any of the regional directors supervise employees in the Engineering Unit. Tr. 26.

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

1) *Team Leads*

A single customer may have as few as one co-located FSR assigned to it or as many as five or six.¹² Tr. 35-36. For bases where there are multiple co-located FSRs, the Company designates one of the co-located FSRs to be the base's team lead. Tr. 67-68; Co. Ex. 5. There are approximately 30 to 35 team leads worldwide with 10 to 15 team leads located at bases in the United States. Tr. 73.

¹¹ Approximately 13 co-located FSRs are assigned to Regional Director James Russell, who is located in San Francisco, California. Tr. 227-28; ER Ex. 27. Approximately 13 co-located FSRs are assigned to Regional Director Morgan Standbridge, who is located in Dallas, Texas. Tr. 227-28; ER Ex. 27. Approximately 8 co-located FSRs are assigned to Regional Director Carlos Barrea who is located in Seattle, Washington. Tr. 228; ER Ex. 27.

¹² The Company also employs "Field Service Associates" at its many bases worldwide. Tr. 36. They are not at issue in this Petition. Field Service Associates are typically hired locally and can continue to work indefinitely at the base where they are hired. Tr. 36. They provide administrative and operational support for FSRs. Tr. 36.

Team leads are responsible for managing the workload at the base amongst the several co-located FSRs assigned there. Tr. 69, 232, 746; Co. Ex. 5. In making assignments to the other co-located FSRs, the team lead determines whether to make assignments by model of airplane, function specialty, or some other criteria. Tr. 578-79, 746-47. They ensure that the base operates in compliance with policies and procedures, act as the primary contact for the customer, and develop the co-located FSRs in performance of their duties. Tr. 70; Co. Ex. 5.

Team leads are also responsible for setting work schedules to meet customer requirements and to schedule travel for visits to any remote customer locations. Tr. 70, 230, 579. Team leads often provide input for a co-located FSR's performance reviews as well as discipline; however, the co-located FSR's regional director is responsible for issuing reviews and making disciplinary decisions. Tr. 226.

2) *Job Requirements*

The FSR classification provides for three different levels of progression within the classification. Tr. 168-69; Co. Ex. 21-23. The job descriptions describe the minimum requirements needed by FSRs, including co-located FSRs, for each level, with each higher level demanding greater skill and knowledge in a core set of competencies. Tr. 157; Co. Ex. 21-23.

a) *General and Technical Competencies*

The general competencies FSRs, including co-located FSRs, are required to possess at increasing level of ability include: adaptability; build positive relationships; business (operational) acumen; collaboration; communication; customer focus; decision making; global perspective, political awareness, and strategic decision making. Co. Ex. 21-23.

FSRs, including co-located FSRs, are expected to have the following technical competencies, as well: aircraft knowledge; aircraft maintenance; analytical skills; aviation industry; customer knowledge; field base support; flight safety; product and services value; technical writing; and troubleshooting. Co. Ex. 21-23. None the competencies FSRs are

expected to possess require the knowledge or application of engineering principles. Co. Ex. 21-23.

b) Education and Experience

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

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

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

Co. Ex. 22-23. Co-located FSRs who are promoted to higher levels in the FSR classifications are not required to obtain any additional education prior to the promotion. Tr. 209. Thus, no matter his or her level within the classification, a co-located FSR is not required to have a four year college degree nor any type of engineering degree. Tr. 158-59, 210; Un. Ex. 15, 17. The Union produced evidence showing that, currently, only 60 of the domestic FSRs have a four-year college degree and only 34 of those have engineering degrees.¹³ Un. Ex. 15, 17. Only approximately 14 of the 34 co-located FSRs have engineering degrees. ER Ex. 103.

In contrast to education, experience plays a substantial role in the requirements to be a successful co-located FSR. Tr. 890. As noted in the job descriptions, no matter the level of education, a co-located FSR is required to have related work experience. Co. Ex. 21-23. Co-

¹³ In producing Union Exhibit 17, the Union extracted from a comprehensive list of domestic FSRs all employees who had a bachelor's degree in science or higher and whose degree title contained some form of the term "engineering." Tr. 1599-1600. For purposes of this petition, the Company will rely on Union Exhibit 17 as reflective of the percentage of FSRs with engineering degrees. It should be noted that, although it may be a close approximation, the information in Union Exhibit 17 may not accurately reflect the number of FSRs with engineering degrees as some of the degrees with "engineering" in them may not actually be engineering degrees. However, due to the time and resources it would take to validate each degree as an engineering degree, the Company accepts Union Exhibit 17 as sufficiently accurate for purposes of this hearing.

located FSRs come from various educational backgrounds and are generally expected to have at least five years experience working at the Company. Tr. 113. Moreover, the experience does not need to be engineering in nature, as many of the current co-located FSRs came to the position through other work backgrounds, including aircraft mechanics. Tr. 210, 162, 740-41; Co. Ex. 103-10. Co-located FSRs with engineering degrees and those without are expected to perform the same work and there are no distinctions between them. Tr. 876-77, 1664. FSR Paul Creighton testified that he did not know which of his fellow FSRs have engineering degrees and he could not tell which ones did based on their job performance. Tr. 1663-64.

3) *Role and Responsibilities of Co-located FSRs*

The primary responsibility of co-located FSRs is to ensure that the customer to whom they are assigned is fully informed of the Company's administrative structure and, when necessary, acts as their liaison between the many Company departments. Tr. 37, 92. They are charged with making sure customers are satisfied with the Company's products and services and helping identify areas where customers may be able to increase efficiencies in their fleet and decrease operating costs. Tr. 37, 92; Co. Ex. 6, 7.

a) Customer Relations

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

Co-located FSRs develop the detailed customer knowledge they need through both reactive and proactive work and by developing good working relationships with the customer's employees with whom they regularly interact. Tr. 94, 604-05; Co. Ex. 100-01. Timely and competent reactive work, such as responding to airplane problems that arise, instills in

customers the confidence they need to trust co-located FSRs to do what is best for their business. Tr. 94.

Once a co-located FSR has developed a relationship with a customer through reactive work, it opens the door for co-located FSRs to engage in more proactive work. Tr. 94-95. Proactive work may include strategic planning with the customer on how to improve business practices that are having a detrimental effect on airplane performance. Tr. 94-95, 605-07, 984. To help them develop their working relationships with customer employees, co-located FSRs are given a budget to cover the cost entertainment activities. Tr. 81, 698-700, 959-60; Co. Ex. 100, 101.

Co-located FSRs are also expected to rely on their unique customer knowledge to help market new products to customers. Tr. 37-38, 80; Co. Ex. 6. Each customer is assigned a CAS sales director. Tr. 45, 603. The co-located FSR interacts with the CAS sales director a minimum of two times per month and as often as daily. Tr. 603. In these interactions, the CAS sales director and co-located FSR will discuss sales strategies, identify products to market to the customer, and discuss any perceived obstacles in making the sale. Tr. 603-04.

i) Daily Rounds

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

ii) Customer Support Plans

Co-located FSRs at bases supporting significant customers are requested to work together with other Company organizations to create a customer support plan for that customer. Tr. 170, 174-79; See Co. Ex. 24-26. Other organizations that participate in the plan's development include Customer Support, BCA and CAS Sales Directors, and the CAS Regional Vice President. Tr. 636-37. The customer is also included in preparation of the plan. Tr. 637, 895-96. Customer support plans are typically created annually but can be modified throughout the year. Tr. 637-38, 895.

In preparing the plan, co-located FSRs, with the input from the other organizations, seek to identify what the customer's business goals are and how the co-located FSRs and other organizations within the Company can help them succeed in achieving their goals. Tr. 170-71, 174-79, 636, 895-96. The purpose of the plan is to continually improve the quality of the contribution Field Service and the other Company organizations make to the success of the customer's business. Tr. 171. Progress on the plan is tracked by co-located FSRs at the base in a web-based project management system called MET. Tr. 181-83; Co. Ex. 25-26.

b) Technical Advisor

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

Typically, customers attempt to resolve technical issues with airplanes by themselves using Company-provided manuals and resources before involving the assigned FSRs or other Company employees in the problem. Tr. 889. If the customer is unable to resolve the problem, they may seek assistance from their assigned co-located FSRs in finding a solution. Tr. 889. In providing assistance, co-located FSRs rely significantly on their past experience in dealing with similar problems to gather the information necessary to define the problem. Tr. 710, 893, 1691. They also consult repair manuals, engineering drawings, and other similar resources available to them and the customer to determine if a fix for the problem has already been created. The record shows that at the base in Minneapolis, Minnesota, FSRs and customers were able to resolve 11 percent of the technical problems that occurred in the past year without additional assistance. Tr. 1693. There is also evidence that co-located FSRs and customers at the Alliance base in Texas are able to resolve approximately 40 percent of airplane technical issues that occur. Tr. 890.

When the co-located FSRs and customer determine they are not able to resolve the problem with an existing solution, one of them (either the customer or FSR) will submit a service request to BCA Customer Support Engineering via the Boeing Communication System (hereinafter referred to as "BCS"). Tr. Tr. 85-86, 711-12, 885, 976-77, 991. Although customers are encouraged to file the service requests themselves, the FSRs sometimes assist them. Tr. 357. Of the service requests submitted for customers, co-located FSRs only submit approximately 30 percent of them. Tr. 102. Typically, customers only seek a co-located FSR's assistance in drafting a service request when the situation is too complex or the customer's capabilities are too limited to do so themselves. Tr. 102.

Once a service request is received by BCA Customer Support Engineering, service engineers begin the process of designing a fix for the customer's problem. Tr. 889. Service engineers may involve engineers with more specific engineering expertise in developing a

fix if necessary. Tr. 712, 715, 889. While the service request is pending, co-located FSRs may make periodic contact with the Customer Support Engineering and the engineers working on the problem to monitor the service request's progress. Tr. 88. After the design of the repair is completed by Customer Support Engineering, co-located FSRs are responsible for ensuring that a repair recommended by Service Engineering in fact fixes the problem at issue. Tr. 89-90.

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

Several witnesses gave examples of FSRs participating in the resolution of technical or mechanical issues for customers. None of the examples in the record reflects the use of engineering disciplines. Ross Hirsch, a co-located FSR, explained how he assisted in developing a temporary repair for a crack on or near a pylon on an airplane. Tr. 909-10. Although it is clear that Mr. Hirsch was involved in the discussions related to the resolution of problems, there is no evidence that he used any engineering disciplines in developing the solution. Tr. 909-10. It was the customer's employees that measured the crack and drafted the designed fix and, although Mr. Hirsch asserts he provided input, there is no evidence showing what that input was nor whether it consisted of the use of any engineering disciplines. Tr. 914-16.

It was later determined the pylon issue affected multiple airplanes and Mr. Hirsch participated in meetings with both Company and customer engineers relating to the problem. Tr. 918-35. However, his contribution was limited to advocating for repair of the customer's entire fleet of affect airplanes and not just those identified as having the problem with cracking. Tr. 923-26. He also offered his opinion regarding the use of sealant on the at-issue airplanes but acknowledged that his advice was based on his experience in Field Service, not specific engineering knowledge. Tr. 929-30. Mr. Hirsch testified that he was able to help resolve two other related issues by referring to manuals and service requests. Tr. 930-36.

Mr. Hirsch gave another example of his participation in resolving an issue with an airplane's navigation computer. Tr. 884-87. In that instance, a customer employee identified a problem where there were capacity issues related to the two computer disc system used to upload the navigation database onto a specific model of airplane. Tr. 885. A customer employee brought the issue to Mr. Hirsch's attention and the two discussed the nature of the problem and possible solutions, including expanding the system to three discs. Tr. 885. After gathering information about the issue, Mr. Hirsch sent the issue to be worked on by service engineers and ASEs to design and develop the final resolution to the problem. Tr. 885-88. Mr. Hirsch's testimony shows that he did not use any calculus, physics, chemistry, or any other engineering disciplines in seeking a resolution to the problem. He merely observed that the two disc were not enough.

Paul Creighton, another co-located FSR, gave an example of his participation in resolving a mechanical problem with a customer's airplane. Tr. 1688. In that case, an airline mechanic approached Mr. Creighton and told him an inlet cowl had 12 rivets missing. Tr. 1688. Mr. Creighton testified that he knew from past experience that an airplane would not be dispatched if any rivets were missing. Tr. 1688. Although he sent the issue to the BOC to see if the airplane could fly with missing rivets, Mr. Creighton told the mechanic to get a new cowl because he expected that the BOC would require it. Tr. 1688-89. Not only is there no indication

that Mr. Creighton used engineering disciplines in instructing the mechanic on the issue, it is obvious the solution offered by Mr. Creighton did not demand the use of engineering principles.

Mr. Creighton also gave an example of a probationary FSR that was required to help resolve an airplane issue for a customer as part of his First Base Training. Tr. 1645-48. The trainee was required to search manuals and production drawings to find the proper location and part number for handsets inside several of the customer's airplanes. Tr. 1645-48. There was no indication the trainee ever relied on engineering disciplines to resolve the issue. He merely consulted the same manuals used by airplane mechanics. Tr. 1645-48.

c) Other Job Duties

When Company employees other than co-located FSRs visit a customer, the co-located FSRs act as the liaison between the visiting employees and the customer. Tr. 660-61. They coordinate with the parties regarding meeting times, assist the visiting employees with travel arrangements, and meet the visiting employees when they arrive and escort them to the customer's offices. Tr. 661, 992-93. The co-located FSR is also responsible for educating the visiting employees about the customer and its business to maximize the impact of the engagement. Tr. 38.

Co-located FSRs also have the responsibility to help customers prepare for the introduction of a new model of airplane to an existing fleet. Tr. 96-97. They meet with the customer and representatives of the Company's Contract Administration¹⁴ organization and discuss with them the customer's needs in relation to the new airplane. Tr. 96-97. The co-located FSRs can leverage their unique relationships with the customer to resolve any conflicts that may arise between the parties related to the contract. Tr. 97. Co-located FSRs also play an important role when a customer purchases Company airplanes for the first time, as they serve as the face of Boeing for the new customer. Tr. 97-98.

¹⁴ Contract Administration is a business unit at the Company responsible for drafting contracts for the sale of products and services. Tr. 97.

Co-located FSRs are expected to attend customer management meetings. Tr. 83. At many bases, co-located FSRs participate in daily meetings with the customer in which the status of their fleet is discussed. Tr. 83, 601. Co-located FSRs are the only employees of the Company that attend the daily meetings on a regular basis. Tr. 83.

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

4) *Tools and Resources*

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

a) My Boeing Fleet/Toolbox

My Boeing Fleet is a web-based portal to the maintenance and operations manuals, service bulletins, and other information co-located FSRs rely on to help customers maintain, repair, and operate their airplanes. Tr. 41, 107, 610-11; Co. Ex. 11. Some co-located FSRs use it at least weekly and sometimes daily. Tr. 610. Customers may also purchase access to and use the resources found through My Boeing Fleet. Tr. 41, 107-08. For some airplane models, such as the 787, manuals, service bulletins, and the other related documents can be accessed through a new program called Toolbox. Tr. 425. Toolbox, although containing basically the

same information as My Boeing Fleet, has improved functionality, such as cross-referencing between documents. Tr. 425.

b) Manuals, Drawing, and Catalogs

Co-located FSRs rely heavily on the various manuals, drawing, catalogs, and other documents found on My Boeing Fleet and Toolbox. Tr. 1668. The manuals used by co-located FSRs include: the Aircraft Maintenance Manual; the Fault Isolation Manual; the Aircraft Readiness Log; the Airplane Flight Manual; the Built-In Test Equipment Manual; the Component Maintenance Manual; the Supplier Maintenance Manuals; the Engineer Indication and Alerting System; the Illustrated Parts Catalog; the Maintenance Tips; the Wiring Diagram Manual; and the Structural Repair Manual. Tr. 47, 1668; Un. Ex. 23. These manuals contain processes, fixes, and product lists for each of the Company's aircraft. Tr. 447, 610-11. When attempting to help customers resolve problems with airplanes, co-located FSRs search these manuals for a possible existing solution prior to sending it to engineering. Tr. 610-11. These manuals and other document are also used by Engineering Unit employees, other Company employees, and customer employees, including airline mechanics. Tr. 41, 107-08

c) Service Bulletins

Co-located FSRs also use service bulletins when attempting to help a customer find an existing solution to an airplane problem. Tr. 610-11. A service bulletin is document that describes a specific problem with an airplane and then describes the solution to that problem. Tr. 450. It can be a few pages or a couple thousand pages. Tr. 450. Each service bulletin is prepared by service bulleting engineering and must be approved by the FAA. Tr. 450, 611.

d) Field Service Data Store

The Field Service Data Store ("FSDS") is also available to co-located FSRs. Tr. 42-43. FSDS is a web-based tool that is accessed through the Field Service home page. Tr. 42-43.

Co-located FSRs use FSDS to record an airplane's status and any configuration changes performed by non-Boeing companies. Tr. 42-43, 64, 591, 593. They can also use FSDS to check customer lists, measure the quality of communications to and from the customer, and track and plan current and future assignments. Tr. 593-95. Tr. 42-43, 591. Only employees in Field Service can access FSDS and the availability of some of its tools and resources is dependent on supervisory status. Tr. 61, 592, 709.

e) Boeing Communication System

The BCS plays a significant part in a co-located FSR's job duties. Tr. 42, 594, 998; Co. Ex. 2. It is web-based communication system in which co-located FSRs, customers, and other Company employees enter and track service requests. Tr. 42, 594, 998; Co. Ex. 1. Service requests submitted through BCS are the vehicle by which a customer can obtain support from the Company in resolving the mechanical or operational airplane issue they or the co-located FSR could not resolve. Tr. 42, 594, 998.

f) Significant Issues Visibility tool

The Significant Issue Visibility Tool ("SIVT") is an application that Field Service uses to track critical issues that could potentially cause an airplane to go out of service and be grounded for an extended period of time. Tr. 53-54. It was created as a means for co-located FSRs to enter information into the tool to create increased visibility of the problem, especially for the BOC. Tr. 53-54. It also provides senior management with a tool to see high priority service requests and get a complete history of all the things that have been happening in order to get that airplane back in service. Tr. 53-54.

g) Share Point Sites

Share Point Sites are another tool used by co-located FSRs. Tr. 51-52. They are web-based sites that Field Service regions use to publish information to be shared with co-located FSRs within the region. Tr. 51. Customer support plans are posted on Share Point

sites. Tr. 51-52. The Share Point Sites are only accessible to Field Service employees. Tr. 52.

5) *Policies and Procedures Specific to Co-located FSRs*

Co-located FSRs are subject to policies and procedures that are specific to Field Service. Tr. 64-65; Co. Ex. 3-20; Un. Ex. 26. These policies and procedures are referred to as Local Work Instructions (“LWIs”). Tr. 64, 595. They are written and updated by a process writer assigned exclusively to work with Field Service and approved by the Field Service Operations Group.¹⁵ Tr. 218. The LWIs for Field Service are intended to be exhaustive and comprehensive instructions that co-located FSRs are expected to follow when performing their jobs. Tr. 65, 595. The FSR-specific LWIs do not apply to any employees outside of Field Service. Tr. 66.

6) *Staffing*

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

a) *Hiring*

Company business units typically hire for vacancies in their organizations, including bargaining unit positions, by posting job openings for specifically identified positions on the Boeing Enterprise Staffing System (“BESS”). Tr. 152. All Company employees may access BESS to see the job postings and apply for open positions. Tr. 152.

In contrast to the typical job posting process, Field Service job postings on BESS simply allow a candidate to apply for entry into the Field Service organization. Tr. 152, 155. Details of

¹⁵ The Field Service Operations Group is headed by Greg Norden who recently accepted responsibility for the Seattle Support Center. Tr. 219

any post-hire assignment are not a part of Field Service's BESS listing. Tr. 152, 155-56.

Candidates for the co-located FSR opening are interviewed several times. Tr. 156.

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

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

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

Existing co-located FSRs are able to access, through FSDS, listings of open base assignments for which they may apply. Tr. 150-51; Co. Ex. 20. Only FSRs have access to these postings and only FSRs can be selected to fill them. Tr. 150-51. The base openings are not published on BESS and are not available to non-Field Service employees. Tr. 153. The regional directors and Field Service management evaluate the candidates for open assignments

using specific criteria and guidelines and make the decision regarding who is best suited to fill the open position. Tr. 149; Co. Ex. 20. The hiring and probationary training process for Field Service is unique to the organization. Tr. 149-51.

b) Rotations

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

Field Service maintains a detailed process governing the rotation of employees from one assignment to another to ensure the best match is created between FSRs and customers. Tr. 153-154; Co. Ex. 20. This process includes the use of the Relocation Evaluation Tool which records the FSR's personal information, work history, and prior performance ratings along with other information relevant to the relocation evaluation. Co. Ex. 20.

7) Promotions

As discussed above, there are three levels within the FSR classification: Level 3, Level 4, and Level 5. Co. Ex. 21-23. Typically, co-located FSRs start at Level 3 and can progress up to Level 5. Tr. 741. There is no set amount of time a co-located FSR must be at a specific level in order to progress to the next level and any promotion is based on the co-located FSR's body of work up to that point. Tr. 206-07. Although there is not a set amount of time a co-located FSR must be a Level 4 before they are eligible for a promotion to Level 5, most co-located FSRs spend at least eight years at a Level 4 before being promoted. Tr. 207.

8) *Wages*

Co-located FSRs are salaried employees and are exempt from the Fair Labor Standards Act based on the administrative exemption. Tr. 225, Co. Ex 121. The Company establishes the range of salaries available to co-located FSRs. Tr. 169. They are set forth in the Salary Reference Tables for the GEC7 classification. Tr. 169; Bd. Ex. 3; Co. Ex. 132. Wage rates in the Salary Reference Tables vary depending on location. Co. Ex. 132. A co-located FSR's regional director is primarily responsible for setting the actual salary for each co-located FSRs based on the SRTs. Tr. 225, 741.

9) *Benefits*

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

10) *Training*

As discussed above, co-located FSRs other than BOC Controllers must complete the ninety-day First Base Training to become a co-located FSR. Tr. 165. In addition to the training upon entry into Field Service, co-located FSRs continue to receive training throughout their careers. Tr. 166. The ongoing training includes airplane familiarization training with the launch of new models and personal development training upon recommendation by supervisors. Tr. 166-67. Co-located FSRs may also voluntarily attend training to aid in their career development. Tr. 167. The curriculum for Field Service-specific training is developed and updated by the Field Service Organizational Group. Tr. 220.

11) *Interactions with Other Company Organizations*

In performing their jobs, co-located FSRs interact with many different Company organizations. These interactions may be in-person, by telephone, or through an electronic communication system, such as email. Additionally, every 12 to 18 months co-located FSRs located away from Seattle and Long Beach are given an opportunity to travel to those two locations to visit with representatives of the several organization with which they interact. Tr. 111-12, 114, 235. The week-long visit is referred to as “business week”. Tr. 111-12, 114, 235. The following is a discussion of the Company organizations with which co-located FSRs interact most regularly:

a) Customer Support Engineering

Customer Support Engineering is a group within the TCS business unit. Tr. 86. It is headed by Director Lynne Thompson. Tr. 59; Co. Ex. 28. Customer Support Engineering has engineers located in Renton and Everett, Washington, and in Long Beach, California. Tr. 120. Engineers in Renton support the heritage Boeing’s narrow-body (single aisle) models and engineers in Everett support the heritage Boeing’s wide-body (double aisle) models. Tr. 879. Engineers in Long Beach support heritage Douglas and McDonnell Douglas airplanes. Tr. 120. They also support the Boeing 717. Tr. 120. The engineers located in Renton and Everett are in the Washington Engineering Unit; Long Beach engineers are not represented. Tr. 1148, 1715.

Engineers in Customer Support Engineering, both in Washington and Long Beach, are organized into several groups, including: airline support engineers (hereinafter referred to as “ASEs”), service engineers, fleet support chiefs, and service bulletin engineers. Tr. 121-127; Co. Ex. 13. Organizationally, ASEs in Washington and Long Beach are grouped according to the customers they support; service engineers are grouped by expertise related to different airplane parts or systems; and fleet support chiefs are responsible for all aspect of a specific model of airplane. Tr. 119-24; 612-15; Co. Ex. 13. The role of the Customer Support engineers is to oversee the health of all in-service airplanes and to respond to airplane problems encountered

by customers. Tr. 120, 612. They do this by responding to service requests and in-service data acquired from the customers. Tr. 120.

Service requests come to Customer Support Engineering via BCS. Tr. 31-32. BCS is an electronic communication system that customers access to request assistance regarding a problem they are experiencing with an airplane. Tr.283, 998-99. Typically, the customer submits the service request; however, co-located FSRs working with the customer may do so as well. Tr. 42, 283. Service requests that do not indicate a need for a resolution in less than 24 hours are directed to Customer Support Engineering. Tr.283. Those that indicate a solution is needed within 24 hours are directed to the BOC (see Section 1.C.2, below). Tr. 283.

In responding to and resolving service requests, Customer Support engineers, particularly service engineers, may work with airplane program design engineers to develop solutions to problems with customer airplanes for which a solution has not already been developed. Tr. 86, 120. This may involve conducting an engineering analysis of the problem and designing a new or modifying an existing solution to the problem or working with an outside supplier to resolve problems with components of the airplane produced by them. Tr. 86, 88.

Service engineers are also uniquely situated to identify problems with airplanes that span multiple customers as they respond to service request from co-located FSRs and customers throughout the world that are operating the same model of airplanes. Tr. 86-87. In response to these problems that affect more than one customer, service engineers may issue a service letter informing the customers of the problem and what they can do to remedy it. Tr. 87. The remedy may include an actual repair or it may suggest a new airplane maintenance plan. Tr. 87.

b) Service Bulletin Engineers

Service Bulletin Engineers draft bulletins regarding changes to components or systems on airplanes. Tr. 619-20. The change may be made because the FAA has ordered it to be done or it may be done voluntarily. Tr. 619-20. The service engineers create a

bulletin addressing a specific change and will provide detailed instructions on how to make the change. Tr. 619-20. The bulletin must be approved by the FAA before it is issued. Tr. 620.

c) Material Management

Material Management, previously called “Spares,” has operations in Seattle and in Long Beach and sells Boeing proprietary parts. Tr. 30, 132, 627. Material Management also provides logistics services for distribution of those parts and parts from other suppliers to customers. Tr. 132. The employees in material management are not members of the Washington Engineering Unit. Tr. 375. Studies conducted in 2009 and 2010 have shown that co-located FSRs spend approximately 10 percent of their time dealing with material management issues. Tr. 134, 374.

12) *Customer-driven Terms and Conditions of Employment*

Co-located FSRs are typically required to wear badges issued by the specific customer with which they are co-located that gives them access to the customer’s facilities. Tr. 38-39, 580-83, 1030. These badges are not issued by the Company, although co-located FSRs may have a Company-issued badge in addition to the customer badge.¹⁶ Tr. 39, 1030.

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

¹⁶ Scott Hirsch testified that does he not wear his Company badge while at work. Tr. 1054.

13) *Interchange*

Temporary interchange between co-located FSRs and bargaining unit employees occurs, but is limited and only occurs one way. Tr. 216-16, 239. When a co-located FSR is temporarily absent from their assigned base, Field Service may temporarily “backfill” the position until the assigned co-located FSR returns. Tr. 215. Usually, Field Service is able to use other FSRs to temporarily backfill the vacant position. Tr. 215-16. However, on the rare occasion when another FSR is not available, Field Service may backfill the open position with ASEs or other employees from TCS. Tr. 216. ASEs backfill for FSRs approximately one or two times per year. Tr. 237. The Company identified eleven incidences where Engineering Unit employees back filled for domestic FSR employees from 2006 to 2011. Un. Ex. 27.¹⁷ There are no instances where co-located FSRs have backfilled for employees in the Engineering Unit. Tr. 239.

14) *Meetings*

Co-located FSRs participate in TCS meetings once or twice per year. Tr. 992. The meetings usually take place at the customer’s facilities. Tr. 992; Un. Ex. 992. In these meetings, the co-located FSRs, ASEs, and Deputy Fleet Chief meet to discuss the most critical concerns for the employer and how the Company will address them going forward. Tr. 992, 994.

Many co-located FSRs also participate in a daily calls with other Company employees assigned to support the same customer. Tr. 634-35, 879. These calls do not take place for all customers. Tr. 634. Other participants on the call include ASEs from Seattle and/or Long Beach, depending on the airplane models in use by the customer, and a representative from material management. Tr. 635, 880. They may also include co-located FSRs from other bases. Tr. 879. The call usually last no longer than an hour. Tr. 635, 879. The purpose of the call is to ensure that all parties are on the same page in relation to what the customer needs that day. Tr. 880. In the call, the participants discuss problems needing to be addressed during the day and

¹⁷ The Parties acknowledged that the information in Union Exhibit 27 may not be complete.

go over the interruptions and flight defects that happened over the course of the prior evening.

Tr. 880.

b. Seattle Support Center FSRs

Field Service provides support for second tier customers, i.e., customers who purchase used Company airplanes, via its Seattle Support Center located in Duwamish, Washington. Tr. 26, 102. The Seattle Support Center was established approximately two years prior to the filing of the Petition. Tr. 29-30. Greg Norden is the regional director responsible for FSRs at the Seattle Support Center. Tr. 229. There are approximately 10 FSRs who work in the Seattle Support Center. Tr. 783; ER Ex. 104.

Unlike co-located FSRs, FSRs in the Seattle Support Center are assigned to support several different customers at a time and are not co-located with the customers to whom they are assigned. Tr. 26. FSRs in the Seattle Support Center may on occasion visit their assigned customers, but such visits are infrequent. Tr. 105. The center supports approximately 400 to 500 different customers. Tr. 26, 104.

The Seattle Support Center operates 24 hours per day, five days per week in order to match up with the working hours of its customers throughout the world. Tr. 30-31, 105. The work schedules of Seattle Support Center FSRs are set to ensure the support center is staffed for the hours it is open. Tr. 30-31

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

with employees from other groups from TCS and CAS that are intended to help improve the Company's performance. Tr. 30.

c. Field Service Intro Reps

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

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

When home from an assignment, Intro Reps spend time recuperating and may work at the Company's offices in Duwamish getting ready for their next assignment, doing special projects in Field Service operations, or backfilling for co-located other FSRs. Tr. 29, 223.

Intro Reps come primarily from the flight line where they worked as mechanics. Tr. 27. They do not work on engineering processes or designs. Tr. 28. They do not test or draw any parts of the airplanes. Tr. 28-29.

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

1) *Job Duties*

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

When an Intro Rep arrives on an assignment, they are charged with getting to know the customer's maintenance control people, the line maintenance leaders, and general engineering personnel. Tr. 33. They also contact the co-located FSRs working with the customer to help determine what type of support the customer is actually going to need. Tr. 33. Some customers are better equipped to integrate the new airplane model than others, so the information gathered from FSRs related to the customer's capabilities is very valuable. Tr. 33-34.

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

a) *Meet and Greet*

The primary day-to-day job performed by Intro Reps is called a "meet and greet". Tr. 420-21. In a meet and greet, after the customer has placed the new airplanes into service, the Intro Rep meets every newly introduced airplane as it arrive at the airport and is there for every departure. Tr. 420-21, 1464. The purpose of the meet and greet is to make sure everything with the airplane is working properly and that the customer is coming up to speed with the new product. Tr. 421, 1465. When an airplane arrives from a flight and all the passengers deplane, the Intro Rep, usually with the customer's lead mechanic, goes onboard the airplane to assess the airplane's health. Tr. 421.

Witness Andrew Somers stated that when he conducts a meet and greet it proceeds as follows:

[W]hen a plane arrives at the gate, I am on the ground with a maintenance crew. The maintenance ties in with the flight tech. I start a walk around of the airplane, starting at the nose all the way around the wings, the full walk. I'm looking for fuel -- anything that might hinder the dispatch of that airplane for the next flight.

. . . So I'm looking for cuts in tires, damaged heat shields on the brakes, fuel coming out of the vents or out of panels. I'm looking for hydraulic fluid dripping. I'm looking for worn tires. I'm looking for control surfaces that aren't in the right position, elevator up/elevator down at the gate when they're supposed to be both up or down.

. . . I walk around the whole airplane, in and around the airplane, looking for all these things. During that time, the plane is de-boarding the passengers. I'll go up to the jet way, wait for the passengers to de-plane. I'll walk on board. The cabin crew is usually still on board. They're just wrapping up because the passengers are done.

I'll interface with the pilots. I'll find out how the flight went, ask them if they have any issues, any questions, any concerns, offer any explanations. They might have, you know, we got this message, what's that about. My job is to explain it, reassure them normal or this is where the logic coming from for this message. Did you do something in flight that might've generated that message? Did you -- I can't -- can't quite think of an example.

I would then interface with the cabin crew to make sure the cabin was okay. Were there any problems with the in flight entertainment system? Did you have any problems with the galleys, the ovens, the seats? Any issues with seats? Any thumps, noises, smoke, anything like that? How was the crew rest? Nose to tail, top to bottom.

Tr. 1474-75

Interestingly, his description of the tasks he performed during a meet and greet varies little from the description he gave of his work as a mechanic. He described his mechanic work as:

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

Tr. 1519.

b) Overnight Maintenance

The secondary job of Intro Reps is overnight maintenance. Tr. 422. During the day, as pilots fly the airplanes, they write in a log book any problems they encountered during the day. Tr. 423. When the airplane returns for the night, the Intro Rep will stay with the customer personnel until any issues identified during the day are resolved. Tr. 422, 1491. Although the customer's personnel are responsible for resolving the issues, the Intro Rep may assist the customer when they need help finding a component or using documents and manuals related to the airplane. Tr. 423. The documents and manuals used include the aircraft maintenance manual, the fault isolation manual, system schematics, wiring diagrams, and parts information. Tr. 423. The Intro Reps also act as a liaison between Customer Support Engineering and the customer when there is not a fix to a problem in the existing documents. Tr. 1467, 1470. The Intro Reps do not design any repairs and they do not actually do any of the repairs and they rely largely on the same tools and resources as co-located FSRs. Tr. 424-25.

For example, witness Andrew Somers, while on an assignment as an Intro Rep, was faced with a situation where the wastewater system on a new model airplane was not working properly. Tr. 1466. Initially, the customer had attempted to troubleshoot the problem, but the fix they tried did not work. Tr. 1467. They then contact Mr. Somers began working with Customer Support Engineering to fix the problem. Tr. 1467. According to Mr. Somers, his role in the process was to recommend possible troubleshooting options to the customer. Tr. 1467. He also participated in applying and testing solutions recommended by the engineers in Customer Support Engineering. Tr. 1468-69. Mr. Somers stated that throughout the process of attempting to resolve the wastewater problem, he relied primarily on his past experience as an airplane mechanic and his knowledge of manuals and drawings he had used as a mechanic. Tr. 1472.

There is no evidence that he designed or developed any repairs to the wastewater system or issued any engineering drawings. Tr. 1466-72.

2. BOC Controllers

The Boeing Operation Center (“BOC”) is part of Customer Support Engineering. Co. Ex. 28. It was established in 2005, as a place where the Company could support customers with particularly urgent airplane issues. Tr. 276, 277-78. It operates 24 hours per day, 365 days per year and provides service to customers worldwide, basically serving as a resource for BCA customers with mechanical emergencies on the Company aircraft, including airplane-on-the-ground (“AOG”) situations.¹⁸ Tr. 276, 278, 1288.

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

There are four shift managers in the BOC that oversee the day-to-day operations of the center. Tr. 313-14, 317. The shift managers oversee all the employees in the BOC when on duty, including Controllers. Tr. 314, 330. The Controllers’ assigned manager is Rick Cates. Tr. 276. He is responsible the job performance-related issues of Controllers. Tr. 324-25. There are approximately 14 Controllers in the BOC. Tr. 785; ER Ex. 109 .

Controllers work a variety of shifts, including four-10s, three-12s, and 7 days on/7 days off. Tr. 281-82. Supervisor Rick Cates is responsible for approving Controllers’ schedules. Tr.

¹⁸ AOG or airplane on the ground is a situations where a customer has scheduled to be flying an airplane but is unable to place the airplane in service because of some mechanical or technical issue with the airplane. Tr. 623.

282. However, the Controllers themselves have significant input in determining their shift and work together to ensure that individual shifts align so as to ensure the needs of the BOC are met. Tr. 282, 1334. Controllers working a 12-hour shift work different hours than structures engineers working a 12-hour shift. Tr. 1315. Controllers work 8:00 to 8:00 and structures engineers work 6:00 to 6:00. Tr. 1315.

a. Job Duties

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

Controllers may be able to resolve the customer's request based on the information they collected without engaging other BOC employees. 1284, 1287-88, 1328. They resolve approximately 2 to 3 service requests out of 30 on their own. Tr. 1332. When they resolve a customer problem, they rely on manuals and drawings to determine if there is an existing solution. Tr. 1328. They do not design or develop new solutions and they do not issue engineering drawings. Tr. 1328.

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

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

When a resolution has been developed and delivered to the customer, the Controller is responsible for conducting a final wrap-up discussion with the customer. Tr. 302, 1327. The purpose of the call is to ensure that the customer is satisfied with the resolution they received. Tr. 302. Approximately 60 percent of a Controller's day is spent communicating with customers. Tr. 321. The remainder of their day is spent performing administrative tasks, such as directing messages to where they need to go. Tr. 322.

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

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

b. Tools

In the BOC, there is a large blue screen with dots that represent every request pending resolution. Tr. 285-86, 1323. Functional leads and Controllers can also view the information on

their computers. Tr. 286. When they hover their mouse over one of the dots, information about the service requests is shown, including who is working on it, when it is scheduled to be due, and what stage it is in. Tr. 286. BOC also has an organization-specific website that contains all BOC-specific policies and procedures as well as the roles and responsibilities documents. Tr. 280; Co. Ex. 30-31.

c. Meetings

Controllers participate in daily meetings in the BOC with the other BOC employees. Tr. 286-87. In the meeting, they discuss what is important for the day and make assignments. Tr. 286-87. Controllers also chair daily meetings to discuss specific items listed on SIVT. Tr. 1291-92. These meetings include executive management, BOC management, service engineering management, and the FSRs co-located with the customer whose issue is being discussed. Tr. 1291-92.

d. Interchange

There have been some incidents when other FSRs have worked temporarily in the BOC as Controllers. Tr. 316-17. However, there has not been such interchange in at least one and one half years. Tr. 325-26. Other FSRs have also transferred into the BOC as Controllers. Tr. 316.17. There have been no incidents were a BOC Controller has transferred into another FSR position. Tr. 326. There are no occasions where a Washington Engineering Unit member has temporarily worked as a Controller and no Controller has temporarily worked as an engineer. Tr. 1334.

Controllers interact with other Company employees outside of the BOC. Tr. 309. These include service engineering in both Washington and Long Beach, material management, airline security, and air safety. Tr. 309.

e. Staffing

Hiring for the BOC Controller position is different from the hiring for other FSR positions. Tr. 330. Controllers are hired directly into the BOC and not into the Field Service organization.

Tr. 330, 750. Mr. Cates is responsible for hiring the Controllers. Tr. 309. The Controllers do not spend any time training as an FSR and they do not participate in First Base Training. Tr. 330. Many of the Controllers hired into the BOC are hired from airlines and have a mechanics background. Tr. 323-24. They are hired because of their practical knowledge and not their theoretical knowledge of how to fix an airplane. Tr. 323-24, 337. Controllers receive a shift differential when they work the second shift, third shift, Saturdays, and Sundays. Tr. 315, 1312. They are only issued Company badges. Tr. 326-27.

3. 787 and 747 Intro Reps

The Company is currently flight testing two new models of airplanes: the 787 and the 747-800. Tr. 525. To prepare for deployment of the new models, the Company has been training 787 and 747 Intro Reps to provide short-term onsite support to customers when they receive the new airplane for the first time. Tr. 415.

There are eight 787 Intro Reps and three 747 Intro Reps. Tr. 415, 783-84; ER Ex. 106-107. They are supervised by Field Service Introductions Manager David Bizar. Tr. 412, 15. The 787 Intro Reps are located in Seattle and the 747 Intro Reps are located in either Palmdale or San Bernardino, California.¹⁹ Tr. 415. In addition to the current 787 and 747 Intro Reps, there are 19 individuals that were hired to be either 787 or 747 Intro Reps but have been temporarily transferred to other positions until the new models are delivered. Bd. Ex. 3, 3(a).

Intro Reps for the 787 and 747 are not required to have a college degree. Tr. 548. To be hired as a 787 or 747 Intro Rep, it is preferred that candidates have a background in aviation along with either a college degree, A & P license²⁰, or military background. Tr. 548. Bizar is responsible for their performance evaluations and has input into salary increases, hiring and discipline. Tr. 545-46, 549, 551. When on assignment, the 787 and 747 Intro Reps may be

¹⁹ One of the 747 Intro Reps is in the process of returning to Washington where additional 747 flight testing will take place. Tr. 418.

²⁰ An A & P license is an Airframe and Powerplant License that is issued by the FAA after an individual completes a two-year course, usually at a community college or similar institution. Tr. 211. The A & P license allows the individual to perform maintenance work on an airplane. Tr. 211.

eligible for location or hardship pay. Tr. 550. They will also be required to have customer-issued badges. Tr. 553.

a. 787 Intro Reps

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

1) *787 Intro Rep Responsibilities Pre-delivery*

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

In addition to interacting with the mechanics and technicians working on the 787 flight test, the 787 Intro Reps interact with quality systems, liaison engineering, the shift manager, ground ops engineering, and other program personnel. Tr. 427. They also interact with the "Tool Box" designers, maintenance document writers, maintenance engineering, and service engineering. Tr. 427.

During flight testing, the 787 Intro Reps provide 24 hour per day coverage, Monday to Friday. Tr. 431. They also cover two shifts on Saturday and Sunday. Tr. 432. Their work

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

The 787 Intro Reps attend daily operational review meetings. Tr. 429. These last about one half hour and include about 20 to 30 people. Tr. 431. In addition to the 787 Intro Reps, the operational review meeting is attended by representatives from the BOC, Entry Into Service monitoring, Gold Care²¹, and representatives from suppliers. Tr. 430. Additionally, the 787 Intro Reps attend daily manager's meetings with flight test manufacturing. Tr. 431.

2) 787 Intro Rep Responsibilities Post-delivery

The responsibilities of 787 Intro Reps after delivery of new 787 airplanes to a customer will be similar to those that Intro Reps in the Field Service organization perform. Co. Ex. 79. However, there are some differences. Tr.498. For example, the entry-into-service team for the 787 will include representatives from organizations from the Company not normally included in the standard entry-into-service team. Tr. 498. The 787 entry-into-service team will include: Intro Reps; co-located FSRs; customer support engineering; design engineering; E-Enabling; material management; Reliability, Maintainability and Testability; IT; the on-site team leader; and suppliers. Tr. 499; Co. Ex. 79. The Company has decided to provide the additional support for the 787 due to the increased complexity of the airplane and to accelerate the customer's familiarity with it. Co. Ex. 79.

As with the typical entry-into-service team, the 787 team will be onsite with the customer for approximately 90 days. Tr. 499. As part of the 787 entry-into-service team, the Intro Rep will be responsible to perform meet and greet duties, assist with problem resolution, participate in daily meetings, and provide information on-the-job training to the customer's maintenance employees. Co.. Ex. 79.

For the 787, an electronic system referred to as "Tool Box" will be used in place of My Boeing Fleet. Tr. 423. Tool Box will have research functionality My Boeing Fleet does not have,

²¹ Gold Care is a service group that deals with the sale of services to customers. Tr. 430.

such as cross-linked documents. Tr. 425. It will contain all of the maintenance manuals, flight operations documents, parts list, etc., related to the 787 that will be used by the customer and the Company to help resolve problems. Tr. 423-24.

b. 747 Intro Reps

As with the 787 Intro Reps, there are two stages to a 747 Intro Reps assignment: pre-delivery and post-delivery. The 747 Intro Reps are currently with the airplane as it is being flight tested so they can gain experience with and knowledge about the new airplane. Tr. 419. In addition to gaining experience with the airplane, the Intro Rep may provide advice or feedback about the airplane from a customer's point of view. Tr. 419. The 747 Intro Reps' work schedule is currently set by the team lead with input from the Intro Reps. Tr. 549.

When the 747-800 is delivered to a customer for the first time, the 747 Intro Rep will accompany the airplane and perform the standard Intro Rep duties. Tr. 420. A service engineer may also accompany the airplane. Tr. 525-26. The onsite assignment will only last approximately 60 days, instead of the 90 days for other airplanes. Tr. 420. The 747 Intro Reps will be performing duties similar to those performed by Field Service Intro Reps, including performing meet and greets and overnight maintenance. Tr. 531.

The 747 Intro Reps will spend approximately 65 percent of their work hours performing meet and greets and the remaining 35 percent of their time working on overnight maintenance. Tr. 543. When working on overnight maintenance, the 747 Intro Reps may engage in some troubleshooting. Tr. 543, 531. If the 747 Intro Rep is unable fix the problem, he may enlist the help of the onsite service engineer for more complex troubleshooting requiring more knowledge and expertise. Tr. 531.

c. 787 and 747 Intro Reps Loaned out to Flight Test

Approximately nineteen employees who were originally selected to be 787 and 747 Intro Reps have been temporarily assigned to other positions. Tr. 489-92. These employees, who have been "loaned" from Field Service to their temporary positions, are expected to return to

their Intro Rep positions once the airplanes to which they are assigned begin to be delivered to customers. Tr. 490.

Approximately eight of the loaned FSRs are currently working as ground operations engineers. Tr. 489-90; Co. Ex. 27. All eight are working on the 787 program and each has an engineering degree. Co. Ex. 27, . The ground operations engineers are represented by the Union in the Engineering Unit. Tr. 489.

As ground operations engineers, those employees maintain configuration of the airplane for the flight tests and act as the safety officer onboard the airplane while in flight. Tr. 489; 1110-1122. They also act as weight engineers and are responsible for ensuring the airplane carries the proper amount of weight and is properly balanced during the course of a flight. Tr. 489, 1110-15.

To perform the weight engineer duties, the operations engineer uses such tools as a WETS processor, which calculates the fuel burn on the airplane, and a WF processor, which calculates total weight and weight distribution of the airplane. Tr. 1113-14. Both of those tools are computer based. Tr. 1113-14. However, if the computer systems fail, the calculations must be done by the weight engineer. Tr. 1113-14.

Seven of the loaned FSRs currently work as flight analysts. Tr. 491-92; Co. Ex. 27. Five are working on the 787 program and two are working on the 747 program. Tr. 492-93; Co. Ex. 27. As flight analysts, the transferred employees work as assistants to the flight crew during a test flight to resolve in-flight discrepancies and to record maintenance issues. Tr. 491. If there were a system that needed to be reset during flight to complete the test, they may be called on to do that. Tr. 491. They also consult with the ground maintenance crew when they return. Tr. 491. None of them have engineering degrees. ER Ex. 105. Flight analysts are represented by the Union in the technical employees unit, not the Engineering Unit. Tr. 492.

4. BBJ FSRs

Boeing Business Jets (BBJ) sells and modifies standard commercial airplanes for private or VIP use. Tr. 58. Customers are typically private operators, not commercial. Tr. 350. The BBJ unit is headed by Steve Taylor, President of BBJ. Tr. 346. The FSRs in BBJ are supervised by William Koperek. Co. Ex. 28. FSRs working in the BBJ are not considered to be part of Field Services. Tr. 57. Also, Bill Koperek participates with the Field Service's leadership team even though Mr. Didonato, as head of Field Services, has no direct responsibility for him. Tr. 58.

There are five BBJ FSRs, two of which are located in the United States. Tr. 345. The two domestic BBJ FSRs are located in Dallas, Texas, and Ventura, California. Tr. 345, 365. They work out of their homes, but travel to visit customers about 100 to 130 days per year. Tr. 347, 353. They are on-call 24 hours per day. Tr. 357.

It is preferred that BBJ FSRs work in an assignment for at least six years because of the time it takes for them to get familiar with customers in a private aviation setting. Tr. 350-51. Customers are assigned to BBJ FSRs based on geographic location. Tr. 371. Typically, if a customer has BBJ and commercial airplanes, the BBJ FSR will be assigned to support that customer for all airplanes. Tr. 349. BBJ FSRs visit each of their customers two to three times per year. Tr. 352.

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

BBJ FSRs also provide support to the modification centers. Tr. 347, 368. Modification centers are Company approved third-party businesses that perform the modifications to Company airplanes to meet customer's specifications and preferences. Tr. 368. BBJ FSRs provide support to modification centers by answering questions about proposed modifications to

the airplane or helping them finding the right answer from other Company organizations either directly or by filing a service request through BCS. Tr. 369-70.

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

The work performed by a BBJ FSR differs to some extent from that performed by Field Service FSRs. Tr. 351-52. For example, the urgency that accompanies many service requests from commercial customers is not so great with BBJ customers. Tr. 351-52. This is generally because BBJ customers typically are not using their airplanes as a revenue source, but instead a transportation tool. Tr. 351. Thus, commercial customers lose money each flight an airplane is not able to make, where a BBJ customer can simply find another mode of transportation to fill their needs. Tr. 351-52.

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

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

management, sales support, airline support engineers, and digital data.²² Tr. 356, 372, 387.

BBJ FSRs do not design or test parts of airplanes and they do not release engineering drawings. Tr. 359, 371. They are subject to the same staffing procedure as Field Service FSRs. Tr. 345.

D. Characteristics of the Engineering Unit

The Engineering Unit consists of approximately 13,600 engineers in 43 different job classifications working in Company plants within the State of Washington.²³ Tr. 11; Jt. Ex. 1, 2; Jt. Ex. 1. Less than half of all Company engineers fall within the Engineering Unit. Tr. 11. There are also engineers in locations such as Long Beach; Weber and Davis Counties, Utah; Portland, Oregon; and Sedgwick County, Kansas. Tr. 1743; Jt. Ex. 1.

The Collective Bargaining Agreement covering the Engineering Unit also applies to other distinct bargaining units, including a unit in Weber and Davies Counties, Utah; a unit of the Company's plants at the Boeing Atlantic Test Center, Florida; a unit covering the Company's Sandy Boulevard plant in Portland, Oregon; and a unit in the Company's Facilities and Safety, Health and Environmental Affairs ("SHEA") organizations in the greater Puget Sound region of Washington and Portland, Oregon. Jt. Ex. 1.

There are two principal characteristics of the Engineering Unit: 1) its members must be engineers and 2) the members must work within the State of Washington or be on assignment from Washington to Edwards AFB or Palmdale, California. Employees working in Engineering Unit classifications are required to have at least a bachelor's degree in engineering, computer science, mathematics, physics or chemistry.²⁴ Co. Ex. 32-74; Bd. Ex. 3. They are also required to regularly use engineering principles in the performance of their jobs. Co. Ex. 32-74; Bd. Ex. 3.

²² Digital data maintains the Company's electronic communications systems used by Company employees and customers. Tr. 372-73.

²³ The parties dispute the inclusion of engineers at Edward AFB and Palmdale, California, in the Engineering Unit. Bd. Ex. 3.

²⁴ The parties stipulated that the job descriptions contained in Employer Exhibits 21-23 and 32-74 accurately reflect the job requirements for FSRs and engineering unit employees. Bd. Ex. 3.

The Union, in its 1999 Second Post Hearing Memorandum, affirmed that “the engineering employees throughout Boeing share common educational backgrounds and job requirements.” Co. Ex. 136, 26. In its 1999 Memorandum, the Union acknowledged that the bargaining unit at issue in both the 1999 case and here constitutes an engineering unit and that to be eligible for inclusion in the unit, a classification of employees must perform engineering work. Co. Ex. 136, p. 2. Language from the Parties’ contract supports this position. Jt. Ex. 1. It states:

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

Jt. Ex. 1, p. 45. Section 2(12) of the National Labor Relations Act defines a professional employee as:

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

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

29 U.S.C. §§ 152(12).

As far as engineering disciplines, the Union explained in its 1999 Petitioner’s Second Post Hearing Memorandum:

All engineers, regardless of field, study a common curriculum during their first two years of study. They then take more specialized classes, with considerable

overlap, depending upon the particular field of engineering they elect. Tr. 13437. All four-year engineering degree programs are rigorous in their requirements for calculus, differential equations, compound mathematics, thermodynamics, dynamics, chemistry, physics, and statistics. Tr. 10721-28, 10902-03.

Co. Ex. 136, p. 20.

The Union has a history of defending the contractual right Washington Engineering Unit members have to perform engineering work. Tr. 310; ER Ex. 29. In 1979, the Company and Union participated in an arbitration in which the Union accused the Company of failing to recognize an employee as a member of the Engineering Unit. ER Ex. 29. In the alternative, it argued that the Company had violated the contract by allowing an employee who was not an engineer as defined the Parties' contract to perform engineering work. ER Ex. 29. Similarly, the Union has filed at least three grievances asserting that technical employees in the BOC who are not in the Engineering Unit have performed Engineering Unit work. Tr. 310. There is no evidence that the Union has ever filed a grievance arguing either that FSRs, including Controllers in the BOC, should be recognized as engineers as defined by the Parties' contract or that the Company has violated the contract by having FSRs perform work exclusive to engineers. Tr. 310.

E. Bargaining History

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

1. Lack of Bargaining History Regarding FSRs

Since 1946, the Company has recognized the Union as the bargaining representative of engineering employees in the State of Washington. Bd. Ex. 3; Co. Ex. 136, p. 5. At no time have FSRs been included in the unit nor has the Union sought to include them. In fact, in 1998, the Union filed a petition seeking to add employees to the Engineering Unit. Un. Ex. 28. In that hearing, the Union agreed that the employees it sought to represent by way of the petition were

the only engineers in the Puget Sound region that were not represented by the Union. Un. Ex. 28, p. 4; Co. Ex. 136, p. 17. At the time of the petition, the Company employed FSRs in the State of Washington. Tr. 1450. There is no evidence in the record that their job duties or job requirements have changed substantively since that time.

2. Historic Geographic Bargaining Standard

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

a. The Washington Engineering Unit

The Engineering Unit has been and continues to be limited in its geographic scope. The bargain unit description in the current contract is:

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

Jt. Ex. 1. This description explicitly relies on the geographic location of employees to determine inclusion or exclusion from the unit.

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

Washington that is scheduled to last more than two years, the employee becomes a member of the bargaining unit at the start of their assignment. Tr. 754-55.

A similar policy applies to virtual employees. Virtual employees are those employees who work from home on a permanent basis, but who have a designated work location at one of the Company's facilities. Tr. 757-58. The recognized practice between the Parties is that virtual employees who have a designated work location in the State of Washington, but who work from their home outside of Washington, are not members of the bargaining unit. Tr. 758-59. The Union has in the past attempted to reverse the Parties' policy related to virtual employees, but the Company has held firm to its position on this policy. Tr. 118; Co. Ex. 102; Un. Ex. 6. For example, in negotiations for a new contract in 2005, the Union proposed to change this policy through suggested changes to the recognition clauses. However, the Company refused to the Union's overtures and the Union's proposal was not included in the ratified contract. Tr. 1189; Co. Ex. 102; Un. Ex. 6.

Additionally, the Parties continue to dispute the applicability of the collective bargaining agreement to engineers in Palmdale and Edwards Air Force Base, California, since the engineers there became permanent employees at those locations instead of employees assigned from Seattle. Bd. Ex. 3. The Parties also disagree regarding whether the engineers described in Section 1.1(e) of the Parties' contract is part of the same bargaining unit as Section 1.1(a), although they agreed to treat the two groups as separate units for purposes of this Petition only. Bd. Ex. 3.

b. Other Units Represented by the Union

The geographic nature of the Parties bargaining history is not limited to the unit at issue. The Parties have a long established history of bargaining almost exclusively on a geographic basis. For example, in addition to the engineering employees represented in Washington, the Union has represented units of engineering employees in: Weber and Davis Counties, Utah; the Boeing Atlantic Test Center, Florida; the Company's Sandy Boulevard plant in Portland,

Oregon; greater Puget Sound region of Washington and in Portland, Oregon; and Sedgwick County, Kansas. Tr. 77, 75. It also represents technical employees located in: the State of Washington and assigned at Edwards AFB and Palmdale, California; 19000 N.E. Sandy Boulevard, Portland, Oregon; Cape Canaveral Air Force Station, Florida; and Irving, Texas. Co. Ex. 77.

III. ARGUMENT AND CITATION OF AUTHORITY

In its Petition, the Union requested that the Board conduct an *Armour-Globe* self-determination election to determine if FSRs located in the United States want to become part of the Engineering Unit. It justifies its request for an *Armour-Globe* election by asserting that the FSRs and Washington Engineering Unit employees “form an integral part of a process under which Boeing commercial airplanes are repaired, maintained, kept in the air.” Tr. 8. However, an *Armour-Globe* election is not appropriate because domestic FSRs and Washington Engineering Unit employees do not share a community of interest that is either sufficient or exclusive enough to warrant joining the two groups as petitioned.

Most significantly, a unit combining the two groups into a single unit would be a significant departure from the Parties’ history of bargaining on a geographically-restricted and engineer-only basis. The evidence also shows that the majority of FSRs are subject to day-to-day supervision, staffing procedures, and daily job duties, that are very different than those of Engineering Unit employees. Interaction between the two groups is very limited, as well.

In addition to the many differences between FSRs and Engineering Unit employees, there are no conditions of employment that are shared uniquely by the two groups. Instead, any similarity between the two groups are also shared by other employees that are not members of either group and are not being sought to be included in the *Armour-Globe* election. The obvious example of this is the engineers in Long Beach, California, who work in tandem with Washington-based engineers in the Company’s Customer Support Engineering organization.

Because the record fails to demonstrate a sufficient community of interest between domestic FSRs and Engineering Unit employees or provide sufficient justification for deviating from the parties' past bargaining history, the Union's request for an *Armour-Globe* election should be denied and the Petition dismissed.

A. An Overview of *Armour-Globe* Self-Determination Elections

A self-determination election is a procedure that "allows employees 'to determine the scope of a unit by allowing them to cast a vote for each of several potential units which the Board has determined are appropriate.'" See *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (5th Cir. 1990) (citing *NLRB v. Lorimar Productions, Inc.*, 771 F.2d 1294, 1301 (9th Cir. 1985)). The self-determination election procedure is different from the standard procedure in which the Board defines a single appropriate unit and then employees vote to join or not join the unit as defined by the Board. Unlike a self-determination election, the standard procedure does not give employees the opportunity, through their vote, to influence what the makeup of the final certified unit will be. In *NLRB v. Underwood Machinery Co.*, 179 F.2d 118, 121 (1st Cir. 1950), the First Circuit, in response to an employer's complaint that the Board improperly deferred the final decision on the certified unit to employees, explained the Board's rationale for using self-determination elections:

The wishes of the employees are a factor in a Board's conclusion upon a unit; they are to be weighed with the similarity of working duties and conditions, the character of the various plants, and the anticipated effectiveness of the unit in maintaining industrial peace through collective bargaining. [citations omitted] In this case, after considering all of the circumstances of the situation with reference to whether there should be one or two units selected as the appropriate collective bargaining agency, the Board came to the conclusion that the single factor that would tip the scales was the preference of the employees. The Board's determination, based upon the expression of the employees' practically unanimous preference, cannot be said to be improper and invalid.

The self-determination election procedure is used in several situations, including *Armour-Globe* elections.

1. History of *Armour-Globe* Self-determination Elections

The concept of a self-determination election arose early in the existence of the NLRA, occurring first in the context of disputes amongst unions seeking to represent the same group of employees but in different units. Two cases that addressed this issue and have subsequently become synonymous with self-determination elections are *The Globe Machine and Stamping Co.*, 3 NLRB 294 (1937), and *Armour and Company*, 40 NLRB 1333 (1942).

In *Globe Machine*, a union filed petitions seeking to represent three separate bargaining units. Another union then filed its own petition seeking to represent all the employer's employees, including those employees sought by the other union. The Board determined that each of the four bargaining units sought in the petitions could constitute an appropriate bargaining unit. Thus, it ordered an election where employees had the choice between forming separate units, having a joint unit, or having no unit at all. It deferred its final determination on what employee groups would constitute the certified unit(s) until after the election.

Similarly, in *Armour and Company*, a union that represented a production and maintenance unit sought an election that would have consolidated employees from three other separate bargaining units, all of which were represented by different unions, into a single unit with the production and maintenance employees. The Board determined that each of the three units would be given the opportunity to vote to decide if they wanted to be added to the production and maintenance unit.

Since their inception, *Armour-Globe* self-determination elections have been expanded beyond disputes between unions to certain situations where a union seeks to join an unrepresented group of employees to an existing unit. See *S.S. Joachim and Anne Residence*, 314 NLRB 1191 (1994); *Carr-Gottstein Foods Co.*, 307 NLRB 1318 (1992); *Warner-Lambert Co.*, 298 NLRB 993 (1990); *Duke University*, 227 NLRB 1627 (1977). This is the situation faced by the Parties in this case as the Union seeks to add all FSRs throughout the United States to the Washington Engineering Unit.

In a situation of this nature, the election, if appropriate, is conducted solely among the unrepresented employees who are given the choice of joining the existing unit or not. See *S.S. Joachim and Anne Residence*, 314 NLRB 1191; *Carr-Gottstein Foods Co.*, 307 NLRB 1318; *Warner-Lambert Co.*, 298 NLRB 993; *Duke University*, 227 NLRB 1627. In some cases, if requested by the union, the unrepresented employees also may have the choice of forming a separate, independent bargaining unit. See *Carr-Gottstein Foods*, 307 NLRB 1318 (finding the Regional Director inappropriately gave employees the option to select a standalone unit because the union had not indicated it was willing to represent the employees in a unit separate from the existing unit). Because of the nature of the representation question at issue in this type of *Armour-Globe* election, the Regional Director must wait until after the vote to determine whether it must either: 1) amend the existing bargaining unit to include the new employee group, 2) certify a new unit, or 3) do nothing at all. See *S.S. Joachim and Anne Residence*, 314 NLRB 1191; *Carr-Gottstein Foods Co.*, 307 NLRB 1318; *Warner-Lambert Co.*, 298 NLRB 993; *Duke University*, 227 NLRB 1627.

2. The Community Of Interest Between Groups of Employees Is Critical in Determining if an *Armour-Globe* Election Is Appropriate

For an *Armour-Globe* election to be appropriate, a union must show that any unrepresented employees it seeks to join in an existing unit meet two criteria: 1) they must have a community of interest with the employees in the existing unit and 2) they must, by themselves, constitute an appropriate voting group. *Warner-Lambert Company*, 298 NLRB at 995. Neither party contests that the domestic FSRs are an appropriate voting group for purposes of an *Armour-Globe* self-determination election.

a. The Community of Interest Standard

In the *Armour-Globe* context, the Board typically relies on its standard community of interest test to determine if an election is appropriate. See *Unisys Corp.*, 354 NLRB No. 92, slip op. 1 (2009). In making the decision, the Board is not limited to determining which grouping of

employees is most appropriate for bargaining purposes. See *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Instead, it is only obligated to determine if the unit requested constitutes an appropriate unit so that employees in the resulting unit are accorded the fullest freedom when exercising their rights guaranteed by the NLRA. See *Bartlett Collins*, 334 NLRB 484; *Overnite Transportation*, 322 NLRB 723.

The community of interest test consists generally of seven factors: 1) degree of functional integration; 2) common supervision; 3) nature of employee skills and functions; 4) interchangeability and contacts among employees; 5) work situs; 6) general working conditions; and 7) fringe benefits. *NLRB Outline of Law and Procedure in Representation Cases*, Section 12-210. The community of interest is typically said to be sufficient to justify an *Armour-Globe* election if it would have been sufficient enough that the unrepresented employee group could have participated in the original bargaining unit election. *The Boeing Company*, Decision and Direction of Election, 5-RC-15260, slip op. 34. As will be discussed below, the FSRs could not have been eligible to participate in the original election under the Board's community of interest standards.

b. The Multi-location Standard

In this case, in addition to the typical community of interest considerations, there are also multi-location issues to consider because the FSRs and the Engineering Unit have two distinct geographic identities. Under Board law, a single location unit is presumptively appropriate and the party seeking the multi-location unit carries the burden of showing that the presumption has been overcome. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

To establish that a multi-location unit is appropriate, the party seeking the unit, in this case the Union, must meet a threshold significantly more restrictive than the basic community of interest standard. A multi-location unit will only be found appropriate where the employees at one location are so integrated with the employees at the other location that they have lost their separate identities. *New Britain Transportation*, 330 NLRB at 397. The factors weighed to

determine whether employees at multiple locations are so integrated that they do not have separate identities are similar to those of the standard community of interest test, but also include: central control over labor relations, the extent of local autonomy, geographic separation, and bargaining history. *Budget Rent A Car Systems*, 337 NLRB 884 (2002).

Additionally, the Board is loathe to find a multi-location unit to be appropriate when the common interests of the employee groups to be joined are not separate and distinct from those shared with employees excluded from the unit. See *Hilander Foods*, 348 NLRB 1200 (2006); *Turner Industries Group*, 349 NLRB 428 (2007); *Laboratory Corporation of America Holdings*, 341 NLRB 1079 (2004); *Stormont-Vail Healthcare*, 340 NLRB 1205 (2003). The Board is also reticent to find a multi-location unit appropriate if the combined unit does not conform to the employer's administrative, divisional, or regional groupings. *Id.* In other words, the Board will not fragment an employer's administrative divisional, or regional grouping of employees into separate bargaining groups without a significant justification for doing so. See *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972) (the Board dismissed a petition seeking an *Armour-Globe* election to add artists to an existing unit because the union did not seek to add other employees with whom the artists also had a substantial community of interest); *Minneapolis-Honeywell Regulator Co.*, 116 NLRB 1324 (1956) (the Board dismissed a petition seeking an *Armour-Globe* election to add products coordinator to an existing unit because the union did not seek to add other employees with similar skills, duties, and interest); *Solar Aircraft Company*, 116 NLRB 200 (1956) (the Board dismissed a petition seeking a unit of technicians and assistants because the union did not seek to include technicians working in the same plant but in different departments).

Here, the Engineering Unit is restricted geographically to the State of Washington.²⁵ In contrast, the FSR group at issue covers all FSRs nationwide. Clearly, this case does not fit neatly within the typical multi-facility scenario where the geographic identities of the employees share no overlap. Furthermore, the fact that some FSRs work within the geographic scope of the Engineering Unit does not diminish the fact that the geographic identities of the two groups are undeniably distinct. A unit consisting of Washington-based engineers and all United States-based FSRs does not conform to any Company administrative structure. Thus, a multi-location analysis in this case is necessary and the higher threshold for inclusion must be met. Based on the totality of the evidence, a multi-location unit consisting of all FSRs located in the United States and Engineering Unit employees in the State of Washington is obviously not appropriate. If geographical considerations were to be disregarded, there would be no justification for excluding the Company's TCS organization which includes the FSRs as well as Long Beach engineers who interact with the FSR's and with Washington Engineering Unit employees as part of "they form an integral part of a process under which Boeing commercial airplanes are repaired, maintained, kept in the air." Tr. 8.

B. FSRs Do Not Share a Community Of Interest with Washington Engineering Unit Employees

FSRs and Engineering Unit employees do not share a community of interest sufficient to support finding a multi-location unit appropriate in this case. Principally, the Union has failed to present evidence sufficient to justify disturbing the Parties' bargaining history related to the Engineering Unit by expanding its geographic scope beyond the State of Washington and expanding the unit to include non-engineering employees. Additionally, the evidence demonstrates that FSRs and Engineering Unit employees have distinct job requirements and

²⁵ The bargaining unit description indicates engineers "assigned" to Edwards AFB and Palmdale, California, are also in the Engineering Unit. A unit clarification petition is currently pending regarding the continued inclusion of those engineers in the Unit. Bd. Ex. 3.

most share no day-to-day supervision and are subject to different hiring and staffing practices.²⁶

To the extent there are common interests between the FSRs and Washington Engineering Unit employees, those interests are shared with other Company employees as well. FSRs and Washington Engineering Unit employees share no common interests that are unique to only those two employee groups. Because the evidence fails to justify joining FSRs with the Engineering Unit, an *Armour-Globe* election is not appropriate and the petition should be dismissed.

1. The Parties' Bargaining History Precludes an *Armour-Globe* Election

The Parties began bargaining regarding the Engineering Unit in 1946. Since that time, there have been two distinguishing characteristics of the Unit: 1) it is limited to the State of Washington and engineers assigned from Washington to Edwards AFB and Palmdale, California, and 2) it is limited to engineers. With its Petition, the Union seeks to significantly alter both of these primary characteristics.

When analyzing the appropriateness of joining two groups of employees in a single unit, the Board gives substantial weight to prior bargaining history. It has stated:

Both the Board and the courts have long recognized not only that the traditional factors, which tend to support the finding of a larger or single unit as being appropriate, are of lesser cogency where a history of meaningful bargaining has developed, but also that this fact alone suggests the appropriateness of a separate bargaining unit and that compelling circumstances are required to overcome the significance of bargaining history.

Canal Carting, Inc., 339 NLRB 969, 970 (2003) (citing *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993)). The Union has failed to provide evidence that is sufficiently compelling to justify disturbing the historic nature of the Engineering Unit in any way. Thus, an *Armour-Globe* election is not appropriate and the Petition should be dismissed.

²⁶ The BOC Controllers, unlike all other FSRs, share common day-to-day supervision with Engineering Unit employees as well as other employees. Tr. 314, 330. Controllers are also subject to different staffing procedures than the other FSRs, procedure that are similar to those applicable to Company employees generally, including Engineering Unit employees. Tr. 314, 330.

a. The Parties Have a History of Bargaining on a Geographically-specific Basis

The reach of the Engineering Unit is limited to the Company's plants in the State of Washington, as it has been since its inception. The Parties adhere so strictly to this geographic limitation that even employees on temporary assignments outside of Washington's plants are removed from Union rolls once it is determined their assignment will last more than two years. Tr. 754-56; Un. Ex. 6. This same rule applies in reverse to employees on temporary assignment to facilities in Washington. *Id.* The geographic limitations of the Engineering Unit are further demonstrated by the fact that even employees who have designated work locations in Washington, but who work from remote locations outside of the State, are not Washington Engineering Unit members. *Id.*

As indicated, there has been only one deviation in the Parties' 65 year history from its historic geographic scope. This occurred in 1976, when the Company voluntarily recognized the employees assigned from the State of Washington as member of the Engineering Unit to Edwards AFB, California, and then later Palmdale, California. The intentions of Parties when they expanded the Unit to include Edwards AFB and Palmdale engineers is in dispute, as is their continued inclusion. However, the fact that the Edwards AFB and Palmdale inclusion in the Engineering Unit was also discreetly limited to a specific geographic location (and included only engineers at those locations) bolsters the geographically limited bargaining history of the Parties. In contrast to the Engineering Unit's state-specific geographic identity, the FSRs in the proposed voting group have no geographic identity, but are located throughout the country and in locations that may change based on customer demand.²⁷ Indeed, it is not uncommon for an FSR never to work in the State of Washington. Tr. 704.

²⁷ The nationwide limitation of the proposed group is merely a function of the NLRA itself. *Asplundh Tree Expert Co. v. NLRB*, 365 F.3d 168 (3rd Cir. 2004) *revq.* 336 NLRB 1106 (2001) (the NLRA does not apply to employees on temporarily assignment outside of the United States); *Range Systems Engineering Support*, 326 NLRB 1047 (1998) (the NLRA does not apply to employees outside of the United States); *RCA Oms, Inc.*, 202 NLRB 228 (1973) (the NLRA does not apply to employees outside of the United States). But for statutory limitations, the FSR group would likely include individuals located worldwide.

Clearly, the significant distinction in the geographic identities of the two groups makes a unit including both of them inappropriate. By including the FSRs in the Engineering Unit as petitioned, the Board would be destroying one of the Engineering Unit's two hallmarks, its limited geographic scope. The inappropriateness of this proposition is enhanced by the fact that the expansion of the geographic scope of the Unit would only apply to the FSRs and would not directly impact either existing Unit employees or employees working in classifications covered by the existing agreement who are working outside of Washington. Engaging in such geographic gerrymandering would create the precise type of industrial instability the NLRA was designed to prevent, and would fly in the face of the community of interest analysis that the Board has systematically undertaken.

1) *The Petitioned-for Unit Does Not Conform to the Company's Administrative Structure*

The geographic inappropriateness of the proposed unit is further highlighted by the fact that adding the FSRs to the Engineering Unit does not conform to any administrative divisions of the Company. See *Hilander Foods*, 348 NLRB 1200; *Laboratory Corporation of America Holdings*, 341 NLRB 1079; *Stormont-Vail Healthcare*, 340 NLRB 1205.

It is true that FSRs and some Engineering Unit employees fall within the same organization at the Company, specifically BCA. However, so do many other employees the Union does not seek to represent. Most notable are the engineers located in Long Beach who are part of Customer Support Engineering and with whom many FSRs and Engineering Unit employees regularly interact. Additionally, the Union already represents many engineers throughout the country that are within BCA. However, those engineers are represented in geographically-specific units separate from the Engineering Unit and the Union does not seek to combine those separate units through these proceedings.

Moreover, unlike FSRs, the Washington Engineering Unit is not limited just to the BCA business unit. It also covers employees in BDS and EO&T, as do the other engineering units

represented by the Union outside of the State of Washington. There is no justifiable reason for disturbing the historical geographic identity of the Engineering Unit by including all domestic FSRs while excluding other engineers who, like the FSRs, are located throughout the United States. Furthermore, FSRs are largely limited to the Field Service organization, which includes no engineers and no employees in the Engineering Unit.

The closest administrative organization that includes both FSRs and Engineering Unit employees is TCS. However, as noted above, TCS includes engineers in Long Beach that interact regularly with FSRs and Washington Engineering Unit employees as part “of a process under which Boeing commercial airplanes are repaired, maintained, kept in the air.” Tr. 8. If the geographic scope of the Washington Engineering Unit were to be disregarded, it would be inappropriate to fragment the TCS organization by including the FSRs in the unit but excluding Long Beach engineers who not only interact with Washington Engineering Unit employees, but perform the exact same job duties as engineers in the Washington Engineering Unit.

2) *The Parties’ Bargaining History Related to Other Bargaining Units Is Geographically-specific*

The historical significance of the geographical limitations of the Washington Engineering Unit is placed in proper context when considering that the Union has represented several groups of Company employees in both engineering and technical bargaining units and all have been specifically limited to a geographic location. See *Spartan Department Stores*, 140 NLRB 608 (1963) (the Board found a bargaining unit to be appropriate based in part on the parties’ bargaining history in other units). None of them have been nationwide in scope. For example, the Union has represented engineers or technical employees in separate units in the following locations: Weber and Davis Counties, Utah; the Boeing Atlantic Test Center, Florida; the Company’s Sandy Boulevard plant in Portland, Oregon; greater Puget Sound region of Washington and Portland, Oregon; Sedgwick County, Kansas; 19000 N.E. Sandy Boulevard, Portland, Oregon; Cape Canaveral Air Force Station, Florida; and Irving, Texas. Jt. Ex. 1; ER

Ex. 75-77. It is undisputed that engineers in the units listed above perform the same functions as engineers in the Washington Engineering Unit.

The geographic limitation of the Washington Engineering Unit is historically one of its defining characteristics. By requesting an *Armour-Globe* election in this case, the Union seeks to deviate from that history without providing compelling reasons for doing so. For that reason, the Petition should be dismissed.

b. FSRs Are Not Eligible for Inclusion in the Washington Engineering Unit Because They Are Not Engineers and Do Not Perform Engineering Work

In addition to limiting the geographic scope of the Washington Engineering Unit, the Parties have historically recognized it as a unit exclusive to engineers. Because FSRs are not engineers as defined by the contract, they are not eligible for inclusion in the Engineering Unit. Therefore, an *Armour-Globe* election is not appropriate and the Petition should be dismissed.

The Board has repeatedly recognized engineer-only bargaining units as appropriate. See, e.g., *Omni-Dunfey Hotels, Inc.*, 283 NLRB 475 (1987); *Western Electric Co.*, 126 NLRB 1346 (1960); *F.W. Sickles Co.*, 81 NLRB 390 (1949); *Westinghouse Electric Corp.*, 80 NLRB 591 (1948). The Parties' collective bargaining agreement makes clear that the Engineering Unit is exclusive to engineers. It states that inclusion in its coverage "shall be limited to those employees who, in performance of their assigned work, regularly apply engineering disciplines to the research, design, development, test and evaluation of Company products or processes" Jr. Ex. 1, p. 45.

Although "engineering disciplines" is not specifically defined in the contract, the Union provided a definition of the term in its 1999 Petitioner's Second Post Hearing Memorandum in which it explained:

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

Co. Ex. 136, p. 20. That the disciplines listed by the Union in the 1999 Memorandum are basic disciplines of engineering is corroborated by the current curriculums of recognized engineering programs at California Polytechnic State University and the Oregon Institute of Technology. Tr. 1014; Co. Ex. 122-25.

There is no evidence in the record showing that FSRs regularly apply engineering disciplines to the research, design, development, test and evaluation of Company products or processes. The clear consensus among the witnesses was that when recommending fixes to airplanes, FSRs use manuals, catalogs, service bulletins, and other resources which contain pre-designed, pre-tested, and pre-approved solutions but do not design new repairs or parts for airplanes.

According to testimony, FSRs are able to resolve no more than 40 percent of the problems brought to their attention. If a fix is not contained in the available resources, the problem is sent to engineers to design and develop a solution. Because FSRs do not regularly use engineering disciplines in performing their work, they are not engineers as defined by the Parties' collective bargaining agreement and, thus, should not be allowed to join the Engineering Unit.

The Union has a history of defending the contractual right Washington Engineering Unit members have to perform engineering work. In 1979, the Company and Union participated in an arbitration in which the Union accused the Company of failing to recognize an employee as a member of the Engineering Unit. ER Ex. 29. In the alternative, it argued that the Company had violated the contract by allowing an employee who was not an engineer as defined the Parties' contract to perform engineering work. *Id.* Similarly, the Union has filed at least three grievances asserting that technical employees in the BOC who are not in the Engineering Unit have performed Engineering Unit work. Tr. 310. There is no evidence that the Union has ever filed a grievance arguing either that FSRs should be recognized as engineers as defined by the

Parties' contract or that the Company has violated the contract by having FSRs perform work exclusive to engineers.

Several witnesses gave examples of their role in fixing mechanical issues as FSRs. None of the examples reflects the use of engineering disciplines. Ross Hirsch, a co-located FSR, explained how he assisted in developing a temporary repair for a crack on or near a pylon on an airplane. Although it is clear that Mr. Hirsch was involved in the discussions related to the fix, he gave no indication he used any engineering disciplines in developing the solution. In fact, it was the customer's employees that measured the crack and drafted the design and, although Hirsch asserts he provided input, there is no clear evidence showing what that input was and if it consisted of the use of any engineering disciplines.

When it was later determined the issue affected multiple airplanes and Mr. Hirsch participated in meetings with both Company and customer engineers, he admitted that his contribution was advocating for applying the repair to the customer's entire fleet of affect airplanes and not just those identified as having the problem with cracking. He also offered his opinion regarding the use of sealant on the at-issue airplanes but acknowledge that his advice was based on his experience in Field Service. He was able to help resolve two other related issues by referring to manuals and service requests.

Mr. Hirsch gave another example of his participation in resolving an issue with an airplane. Tr. 886. In that instance, a customer employee identified a problem where there were capacity issues related to the two disc system used to upload the navigation database onto a specific model of airplane. A customer employee brought the issue to Mr. Hirsch's attention and the two discussed the nature of the problem and possible solutions, including expanding the system to three discs. After gathering information about the issue, Mr. Hirsch sent to issue to service engineers and ASEs to design and develop the final resolution to the problem. At no time did he use any calculus, physics, chemistry, or any other engineering disciplines in seeking

a resolution to the problem. He just observed that two discs did not have enough space for all the data required.

Paul Creighton was another witness that gave an example of his participation in resolving an airplane problem. Tr. 1688. In that case, a mechanic approached Mr. Creighton and told him an inlet cowl had 12 rivets missing. Mr. Creighton knew from past experience that an airplane would not be dispatched if any rivets were missing. Although he sent the issue to the BOC to see if the airplane could fly with missing rivets, Mr. Creighton told the mechanic to get a new cowl because he knew what the likely response from the BOC would be. Not only is there was no indication that Mr. Creighton used engineering disciplines in instructing the mechanic on this issue, it is obvious the solution offered by Mr. Creighton did not demand the use of engineering principles.

Mr. Creighton also gave an example of a prospective FSR that was required to help resolve an airplane issue for a customer as part of his First Base Training. Tr. 1646. The trainee was required to search manuals and production drawings to find the proper location and part number for handsets inside several of the customer's airplanes. There was no indication that the trainee ever relied on engineering disciplines to resolve the issue.

Andrew Somers described an incident with a new model airplane he dealt with while he was on assignment as an Intro Rep. The airline customer was faced with a situation where the wastewater system on a new model airplane was not working properly. Initially, the customer had attempted to troubleshoot the problem, but the fix they tried did not work. They then contact Mr. Somers began working with Customer Support Engineering to fix the problem. According to Mr. Somers, his role in the process was to recommend possible troubleshooting options to the customer. He also participated in applying and testing solutions recommended by the engineers in Customer Support Engineering. Mr. Somers stated that throughout the process of attempting to resolve the wastewater problem, he relied primarily on his past experience as an airplane mechanic and his knowledge of manuals and drawings he had used

as a mechanic. There is no evidence that he designed or developed any repairs to the wastewater system or issued any engineering drawings.

Contrast these examples of FSR work with the work performed by Robert Hess when he works as a weights engineer. He explained that as a weights engineer he is responsible for ensuring the airplane carries the proper amount of weight and is properly balanced during the course of a flight test. To do this, he uses such tools as a WETS processor and a WF processor, both of which run complex calculations. Both of those tools are computer based, and are relied on throughout the flight to ensure the weight in the airplane is properly balanced. Due to the critical nature of the proper weight balance, the weight engineer must continually validate the computer-based calculations to ensure they remain accurate. If the computer systems were to fail, the calculations to ensure proper weight distribution would need to be done by hand. Clearly, the job duties of a weight engineer require the regular use of engineering disciplines.

Mr. Somers also gave a description of the meet and greets he performed as an Intro Rep stating that he would walk around the airplane from nose to tail looking for “fuel -- anything that might hinder the dispatch of that airplane for the next flight, . . . cuts in tires, damaged heat shields on the brakes, fuel coming out of the vents or out of panels, . . . hydraulic fluid dripping, . . . worn tires, . . . control surfaces that aren’t in the right position, elevator up/elevator down at the gate when they’re supposed to be both up or down.” Tr. 1474.

His description of the tasks he performed during a meet and greet vary little from the description he gave of his work as a mechanic. He described his mechanic work as:

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

We might do a quick reconfigure of putting in another piece of test equipment or adjustment to a system. Then the pilots would take it and go off again.

Tr. 1519. The similarity between Mr. Somer's work as an Intro Rep and a mechanic also demonstrates that the work performed by FSRs does not constitute engineering work.

Significantly, the Union's analysis shows that fewer than 35 percent of the domestic FSRs have a degree in engineering, a degree the Union has previously described as "rigorous in their requirements" for inclusion in the Washington Engineering Unit. Co. Ex. 136, p. 20. There is no evidence in the record showing how these individuals, through experience alone, develop a working understanding of even basic engineering disciplines, such as "calculus, differential equations, compound mathematics, thermodynamics, dynamics, chemistry, physics, and statistics." *Id.*

At the hearing, much was made of the discretion and judgment used by FSRs in performance of their job duties. However, discretion and judgment are not by themselves sufficient factors for determining the eligibility of FSRs for inclusion in the existing unit. Instead, by contractual obligation, the discretion and judgment must be exercised when regularly applying engineering disciplines. Put simply, there is no evidence that FSRs regularly apply engineering disciplines when they exercise discretion and judgment.²⁸

In *F.W. Sickles Company*, the Board considered whether employees with virtually the same job requirement and job duties as FSRs should be included in a voting group of technical employees or engineering employees. 81 NLRB 390 (1949). In deciding to place the production engineers at issue in the technical employee group, the Board noted that the job description for the position stated that "a production engineer should have a college degree plus at least 1 year of practical experience in the Employer's plant or in a similar plant, or in the alternative, he should have some technical training plus 3 years of experience in the employer's plant or in a similar organization, or any other suitable combination of formal training or practical

²⁸ Creighton testified that he did not know which of his fellow FSRs have engineering degrees and he could not tell which one did based on their job performance. Tr. 1663-64.

experience.” *Id.* at 393-94. It also determined that the most important requirement for employment as a production engineer was a thorough knowledge of employer’s products and that in performing their jobs, the production engineers were to act as “trouble shooters,” represent the engineering unit as a whole, and have a good deal of contact with the customers. *Id.* Finally, when responding to customer complaints, the production engineer would initiate and direct corrective action. *Id.*

In *New York Telephone Co.*, the Board came to a similar conclusion finding that employees working as special representatives were not engineers. 79 NLRB 1124, 1125 (1948). In that case, the Board acknowledged that the special representatives handled customer requests for installation and servicing of equipment, however, requests for more complicated equipment were handled by service engineers. *Id.* It also noted that, although 50 percent of the special representatives were college graduates, the employer did not require a degree as a prerequisite for employment, and that the job did not require a knowledge of engineering or mathematics because it was limited to handling of predesigned equipment as set forth in manuals furnished by the employer. *Id.* Finally, the special representative were required to attend a three week training course to acquaint them with the equipment they would be servicing. *Id.*

If production engineers in *F.W. Sickles* and special representative in *New York Telephone* were not deemed by the Board to be engineers, then the FSRs here are not engineers either.

The Union may argue that FSRs perform the same work as employees currently in the Unit. This argument misses the point. Whether other employees that are currently in the Engineering Unit meet the minimum qualifications for inclusion was not fully addressed at the hearing and indeed does not impact whether FSRs are engineers. The record is clear that employees in the Engineering Unit are required to have an engineering degree and to regularly use engineering disciplines and that neither of these criteria apply to FSRs.

Finally, there is absolutely no bargaining history between the Parties regarding FSRs. Since the Union was first recognized as the bargaining representative of engineers in the State of Washington, the Parties have negotiated many contracts. There is no evidence that any of these contracts ever covered FSRs or that the Union, prior to this Petition, has ever argued that they did.

In 1999, the Regional Direction for Region 19 issued a decision in a case in which the Union sought to add classifications of employees to the Engineering Unit through an *Armour-Globe* election. In that case, the Union agreed that the classifications it was seeking to add to the Engineering Unit consisted of all the remaining unrepresented engineer classifications in Washington. Although at that time, Company employees were working as FSRs, the Union did not seek to add them to the Engineering Unit at that time. Clearly, the Union did not believe that FSRs were engineers.

The Company and Union have bargained for more than 60 years in relation to the Engineering Unit. During that time, the Parties have recognized it as an engineer-only unit. The record shows that FSRs are not engineers and that they do not regularly use engineering disciplines in performing their jobs. Therefore, the Regional Director, in order to maintain the integrity of the engineer-only unit long recognized by the Parties, should deny the Union's request for an *Armour-Globe* election and dismiss the Petition.

c. FSRs Are Not Eligible for Inclusion in the Washington Engineering Unit Because They Are Not Professional Employees As Defined in the NLRA

In addition to requiring that Engineering Unit members be engineers, the Parties' contract also requires members to be professional employees as defined by the NLRA. The NLRA defines a professional employee as an individual 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.

29 U.S.C. § 152(12)(a). For an employee to qualify as a “professional employee” under this test, all four requirements must be met.

Here, it is abundantly clear from the record that the FSRs are not professional employees because they fail to satisfy all four requirements of the statutory definition of professional employee. As discussed above, only about one third of the FSRs have engineering degrees and the FSRs come to their positions from a diverse array of backgrounds. The FSRs’ work involves assisting customers with problems that do not require knowledge of the advanced type contemplated by the statute. This is enough to fail the fourth element of the professional employee test.

Moreover, when a customer problem requires any degree of technical assistance, FSRs consult manuals, service bulletins, and other documents created by the Company’s engineers and the FSRs are not permitted to stray from the manuals in any way. The manuals are used throughout the company, very frequently by nonprofessionals, and are also used directly by the Company’s customers. If the protocol for a fix for a customer is not provided in the manuals, the FSRs cannot exercise their discretion or judgment in addressing the issue, but rather, they must turn the matter over to the Company’s engineers.

While the Board has not previously considered whether employees in field service representative positions are professional employees under the NLRA, the Board has consistently deemed employees engaged in work analogous to that of the FSRs to be nonprofessional. For example, in *Loral Electronics Systems*, the Board considered whether marketing managers functioning as “technical liaison representatives” to government clients

were professionals. 200 NLRB 1019 (1972). The Board found that, while the duties of these employees “as a group require technical expertise, their responsibilities do not require knowledge of an advanced type ordinarily acquired by professional personnel through a prolonged course of specialized study in an institution of higher learning or through experience equivalent to such study.” *Id.* at 1021. Thus, the Board concluded that they were technical, not professional employees. *Id.*

In the same case, the Board found that quality assurance engineers and a senior test engineer were technical, and not professional, employees. *Id.* Noting that most of these employees “do not have college engineering degrees, although some of the group have more than 10 years’ experience in the electronics industry,” the Board found that their positions did “not clearly require knowledge of an advanced type as does that ordinarily performed by groups of employees with professional standing under Section 2(12) of the Act.” *Id.*

Similarly, in *Western Electric Company*, the Board determined that certain engineering associates at issue were not professional employees. 126 NLRB 1346, 1350-52 (1960). The Board concluded that the employees were not professionals, stating:

While the composite picture presented [by the testimony provided] shows work requiring considerable technical skill, we are not persuaded that it requires “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.” Its essential attribute appears to be experience rather than a college education.

Among other testimony, the Board relied upon the testimony of one of the employees under consideration, who “indicated that the only advanced knowledge in a field of science he utilizes in performing his tasks is the knowledge he has acquired from mechanical handbooks while working with engineers.” *Id.* at 1350.

Finally, in *Western Association of Engineers, Architects and Surveyors*, the Board held that a civil engineer was not a professional employee where employee “has had 14 years of experience and 2 or 3 years of college,” finding that “[a]lthough his duties of coordinating the

office work on engineering projects require a general knowledge of engineering in its various phases, . . . his work is substantially routine in nature, involving limited exercise of discretion and judgment.” 101 NLRB 64, 66 (1952).²⁹

Like the employees at issue in the above-cited cases, FSRs do not engage in work that requires advanced knowledge in a field of science. Paul Creighton, a long time FSR, admitted that he did not even know which, if any, of his co-workers over the years had engineering degrees. Tr. 1663-64. Instead, the evidence shows that the technical work FSRs perform is rooted in their prior work experiences and generally consists of reviewing manuals, drawings, and other documents for existing fixes for airplane problems. Significantly, only one-third of the FSRs in the United States have engineering degrees. This alone proves the point – if only one third of the FSR’s have engineering degrees, then an engineering degree is not necessary to perform the job duties of an FSR.

Accordingly, based upon the evidence in the record and the Board’s consistent findings that employees engaged in work similar to that of the FSRs are not professionals, the Board should find that the FSRs are not “professional employees” under the NLRA.

2. The Majority of FSRs Do Not Share Common Day-to-Day Supervision with Washington Engineering Unit Employees

Most FSRs are managed on a day-to-day basis by supervisors that have no supervisory authority over any Engineering Unit employees. The supervisors who do manage both FSRs and Engineering Unit employees on a day-to-day basis also manage other employees. Similarly, higher levels of management that have responsibilities for FSRs and Engineering Unit employees also manage employees in other classifications. The lack of common supervision

²⁹ See also *General Dynamics Corp.*, 213 NLRB 851, 863 (1974) (concluding that “senior service engineers” fail to meet the professional standards, even though they are “primarily concerned with writing publications to assist the Employer’s customers, particularly in the use of its aircraft products”); *Design Service Co.*, 148 NLRB 1050 (1964) (concluding that engineers at issue were technical, rather than professional, employees, stating “none of the engineers in the New York City plant was engaged in work which required ‘a prolonged course of specialized intellectual instruction’ or which ‘cannot be standardized’”).

unique to FSRs and Engineering Unit employees weighs against finding the petitioned-for unit appropriate.

In regards to the degree of control over daily operations and labor relations, the Board emphasizes day-to-day supervision of employees over other matters of employee and labor relations. In *Hilander Foods*, 348 NLRB 1200, the Board, in response to an employer's assertion that a multi-facility unit was appropriate, explained the critical value of meaningful day-to-day supervision in its multi-facility analysis:

Although the Employer contends that its centralized control over personnel and labor relations policies requires a finding that the seven facilities function as one unit, centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. *New Britain Transportation*, 330 NLRB 397 (1999). Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems. For example, in *Renzetti's Market*, 238 NLRB 174, 175 (1978), despite centralization and similarity of employee skills, functions, and pay, the Board found a single-facility unit to be appropriate where immediate supervisors issued oral warnings, granted leave requests, and participated in hiring and discharge decisions. This level of involvement, according to the Board, was not routine but "demonstrate[d] meaningful local autonomy and participation in matters directly affecting the service representatives' working lives." *Rental Uniform Service, Inc.*, 330 NLRB 334, 335-336 (1999).

Id. at 1203.

Co-located FSRs, Seattle Service Center FSRs, BBJ FSRs, Field Service Intro Reps, 787 Intro Reps, and 747 Intro Reps all have day-to-day supervisors who do not supervise Engineering Unit employees. These day-to-day supervisors have responsibility for performance reviews and have the authority to set salaries and issue discipline.

Co-located and Seattle Service Center FSRs are supervised on a day-to-day basis by regional directors in the Field Service organization. There are three regional directors that currently supervise domestic co-located FSRs and one that supervises the Seattle Service Center FSRs. Two of the four supervisors do not work in the State of Washington. None of the four supervise Engineering Unit employees. Additionally, the second level supervisor of co-

located and Seattle Service Center FSRs also has no supervisory authority over Engineering Unit employees.

BBJ FSRs and Field Service Intro Reps each have their own day-to-day supervisor. 787 Intro Reps and 747 Intro Reps share the same day-to-day supervisor. The supervisors of each of these groups are responsible for performance reviews and have the authority to set salaries and issue discipline. None of them supervise Engineering Unit employees.

The only FSRs that share common day-to-day supervision with Engineering Unit employees are Controllers in the BOC. However, the BOC supervisors with responsibility for Controllers and Engineering Unit employees also supervise other employees, such as employees in the technical employees bargaining unit. This common supervision among all BOC employees does not reflect the integration necessary to justify joining FSRs with the Engineering Unit.

The day-to-day supervision of supervision of most FSRs is separate from that of Engineering Unit employees and where there is common day-to-day supervision it is not unique to just those two groups of employees. The lack of common day-to-day supervision for the majority of FSRs further demonstrates the inappropriateness of the unit sought by the Union.

3. FSRs Are Subject to Hiring and Staffing Practices that Are Different from Those of Washington Engineering Unit Employees

The hiring practices for FSRs vary widely from those for the Engineering Unit employees. Unlike openings for Engineering Unit positions, specific openings for FSR assignments are not published to the Company's BESS system, which is accessible to all Company employees. Instead, FSR-related postings on BESS are only for entrance into the Field Service organization. It is not until an individual is hired into the Field Services organization that they are given a specific assignment. Additionally, FSRs must pass through First Base Training before they are even admitted into the Field Service organization, something

that is not required for any Engineering Unit positions. The only group of FSRs not subject to these hiring practices is Controllers.

Once in the Field Service organization, FSRs are subject to a rotation policy that typically limits their assignments to five years. When one assignment has ended, the FSR is moved to another assignment in a new location. The subsequent assignment may be domestic or international. There is no evidence that any Engineering Unit employees are subject to a similar rotation policy.

The hiring and staffing policies applicable to FSRs are significantly different from the policies applicable to Engineering Unit employees. These significant differences support the conclusion that FSRs should not be joined in the Engineering Unit.

4. There Is Little Interchange between FSRs and Washington Engineering Unit Employees

There is very little interchange between FSRs and Engineering Unit employees. The lack of any meaningful interchange between FSRs and Engineer Unit employees, coupled with similar interchange between FSRs and other employees, undermines the Union's assertion that the unit sought is appropriate.

According to the Board, limited interchange between two groups of employees weighs against finding a multi-location unit appropriate. *Hilander Foods*, 348 NLRB 1200. The Board has also determined that a sum total of temporary transfers provides little evidentiary value without evidence of the percentage of the total number of employees involved in the interchange. *New Britain Transportation*, 330 NLRB at 398. The failure to present proper evidence related to temporary transfers weighs against the party seeking to establish a multi-location unit. *Id.*

There are 99 domestic FSR and 13,600 Engineering Unit employees. Currently, approximately fifteen 787 and 747 Intro Reps are temporarily assigned to non-FSR classifications. Eight of those are working as ground operations engineers and are currently in

the Engineering Unit. Approximately seven are flight analysts and are represented by the Union in the technical unit. In addition to the 787 and 747 Intro Rep temporary loan outs, the Company identified eleven incidences where Engineering Unit employees backfilled for domestic FSR employees from 2006 to 2011.

The Parties conceded at hearing that the number of temporary transfers between FSRs and Engineering Unit employees may not be accurately reflected in the evidence; however, the evidence as presented fails to show the level of interchange necessary to establish the appropriateness of a unit joining the two employee groups. The fact that FSRs temporarily transfer to non-Engineering Unit positions only serves to diminish the value any interchange with Engineer Unit employees may have. Moreover, to the extent the evidence is incomplete, it must be weighed against finding a multi-location unit appropriate. Put simply, one or two instances each year of engineers filling in for FSRs is not sufficient interchange to support an *Armour-Globe* election.

5. The Job Requirements and Duties of FSRs Are Different Than Those of Washington Engineering Unit Employees

The job requirements and job duties of FSRs are significantly different than Engineering Unit employees. Not only do FSRs not perform engineering work, they also perform day-to-day duties that are unique to the position. Additionally, many FSRs are subject to policies and procedures unique to their organizations and are not shared by Engineering Unit employees. In instances where there is overlap in job duties, such as customer support, similar job duties are shared by other employees not in the Engineering Unit. There are no job duties shared between the FSRs and Engineering Unit employees that are unique to those two groups of employees. Because of the significant differences between the job duties of the FSRs and Engineering Unit employees and the lack of shared job responsibilities and duties unique to the two groups, the FSRs should not be joined in the Engineering Unit.

As detailed above, the job requirements and job duties of FSRs are significantly different from those of Engineering Unit employees based in large part on the fact that FSRs are not required to have an engineering degree or regularly use engineering disciplines in the performance of their work. FSRs are not required to research, design, development, test or evaluate Company products or processes using engineering disciplines. However, these duties are explicitly required of members of the Engineering unit.

Additionally, FSRs routinely engage in day-to-day job duties in which Engineering Unit employees do not engage. For example, co-located FSRs have unique access to customer employees due their permanent onsite assignments. On a daily basis, co-located FSRs make rounds through their assigned customer's engineering and maintenance departments to build relationships with customer employees and gather information about the customer's airplanes. Through their in-person relationships, co-located FSRs are also expected to help identify potential products or services CAS sales could market to the customer. Co-located FSRs are also budgeted money to use in entertaining customer employees.

Intro Reps when dispatched with a newly delivered airplane also engage in unique job duties. Specifically, Intro Reps do meet and greets daily, in which they meet every arrival of the newly dispatched airplane to gather information about the airplanes performance. Intro Reps also participate in overnight maintenance related to the new airplanes. After a new airplane has completed its flight schedule for the day, it is taken to customer maintenance to resolve any issue it may have had that day. The Intro Reps stay with the new airplanes until all issues are resolved or have been sent to the proper organization for resolution.

Many FSRs are subject to policies and procedure to which Engineering Unit employees are not subject. For example, the Field Service organization maintains a set of LWIs that detail the policies and procedures that are specific to employees in the organization. As members of the Field Service organization, co-located FSRs, Seattle Support Center FSRs, and Field

Service Intro Reps are all subject to those LWIs. Because there are no engineers in Field Service, the LWIs do not apply to any Engineering Unit employees.

In some instances, FSRs and Engineering Unit employees perform similar duties, such as supporting customers when they experience mechanical or operational problems with airplanes. However, many other employees throughout the Company also provide similar customer support, including Customer Support Engineers in Long Beach, material maintenance employees, and the sales departments. In fact, there are no job duties or responsibilities that are performed exclusively by FSRs and Engineering Unit employees.

Because FSRs and Engineering employees do not have the similar job requirement and job duties or do not share any job requirements or job duties unique to the two groups, an *Armour-Globe* election should not be permitted.

6. FSRs Are Not Entitled to the Same Guaranteed Annual Salary Rate Adjustments as Washington Engineering Unit Employees

The salary ranges for FSRs and Engineering Unit employees are determined by the Company using the same procedure that the Company uses to set salary ranges for all classifications with the Company. However, the method in which the specific salaries are set for individual employees is different. The supervisors for FSRs are responsible for setting each employee's specific salary based on the ranges given in the Salary Reference Tables

The salaries for Engineering Unit employees are governed by Article 11 of the Parties' contract. Jt. Ex. 1. In addition to the rates established in the Salary Reference Tables, Engineering Unit salaries are adjusted based on a Salary Adjustment Fund which guarantees each employee at least a two percent upward adjustment of their salaries each year. Engineering Unit employees may receive a cost-of-living adjustment as well.

The base salaries for FSRs and Engineering Unit employees, as well as other Company employees, are set by the same procedure. However, Engineering Unit employees are entitled

to salary increases that are not necessarily available to FSRs. These differences highlight the incongruity between the two groups, making a unit consisting of both of them inappropriate.

7. FSRs Are Required to Participate in Training in which Washington Engineering Unit Employees Are Not Required To Participate

As noted above, prior to officially entering the FSR classification, most FSRs are required to participate First Base Training before they become eligible to fill an FSR assignment. The majority of the training takes place at a base outside of the State of Washington and lasts approximately 90 days. It also includes a short training period in the Seattle Support Center. If it is determined the in-training FSR will not be able to perform the duties required of the job, they are not admitted to the Field Service organization and cannot fill an FSR assignment. No Engineering Unit employees are required to go through the same or similar training.

After entering the classification, FSRs are required to participate in additional training developed by the Field Service organization. Also, there is no evidence of any training unique to only FSR and Engineering Unit employees. The fact that FSRs are required to complete training unique to the classification and there is no training exclusive to the two employee groups further demonstrates that a multi-location unit is inappropriate.

8. FSRs and Washington Engineering Unit Employees Do Not Share Any Terms and Conditions of Employment that Are Unique to only those Two Groups of Employees

The Board does not give substantial weight to common terms and conditions of employment in its community of interest analysis if those terms and conditions are shared by employee groups other than the two at issue. See *Hilander Foods*, 348 NLRB 1200; *Laboratory Corporation of America Holdings*, 341 NLRB 1079; *Stormont-Vail Healthcare*, 340 NLRB 1205. There is no evidence that FSRs and Engineering Unit employees share any terms and conditions of employment that are unique to those two groups of employees.

The Parties entered into a stipulation regarding many of the terms and conditions of employment of FSRs and Engineering Unit employees. Bd. Ex. 3(d). The stipulation covered:

health care, retiree medical, dental, short-term disability, long-term disability, life insurance, accidental death and dismemberment, and retirement plans. Bd. Ex. 3(d). The stipulation shows that there are some differences between the benefits of FSRs and Engineering Unit employees and some similarities. However, it also shows that the similar benefits are shared by all Company employees and are not uniquely shared by FSRs and Engineering Unit employees.

Also, many of the terms and conditions of employment of co-located FSRs are dictated by the customer to whom they are assigned. For example, co-located FSRs have work hours that are compatible with those of the customer, are required to wear a customer-issued badge, and are subject to the customer's dress code. There is no evidence the terms and conditions of employment of Engineering Unit employees are subject to similar customer influence.

9. FSRs and Washington Engineering Unit Employees Regularly Interact with Other Employee Groups

The Company does not contest that there is interaction between FSRs and Engineering Unit employees. However, FSRs have similar interactions with other non-Washington Engineering Unit employees. The interactions between FSRs and Washington Engineering Unit employees are not sufficient to justify a unit combining the two groups.

All FSRs interact with Engineering Unit employees in some manner. Although these interactions occur, FSRs have similar interactions with non-Engineering Unit employees. For example, co-located FSRs interact with ASEs and service engineers in Washington regarding issues customers are having with their airplanes. However, FSRs have these same interactions with ASEs and service engineers in Long Beach, who are not represented by the Union and whom the Union does not seek to include.

Similarly, Intro Reps work with engineers from the Engineering Unit when introducing a new airplane model to a customer. At the same time, the Intro Reps also work with employees from BCA and CAS sales, material management, and other Company organizations that are not cover by the Engineering Unit. Intro Reps for the 787 and 747 currently interact daily with

engineers from the Engineering Unit as those airplane models are flight tested. They visit with maintenance employees on daily basis, as well. Maintenance employees are not represented in the Engineering Unit.

Controllers have perhaps the greatest interaction with Engineering Unit employees as they work together in the same room as members of the BOC. However, there are technical and material management employees located in the same room as well, none of which are Engineering Unit employees.

Although there is interaction between FSRs and Engineering Unit employees, the interactions are not unique to the two groups. Without evidence of unique interactions, the impact of the interactions between the two groups carries little weight in determining the appropriateness of the *Armour-Globe* election. The Petition should be dismissed.

C. Team Leads Are Supervisors and Are Not Eligible to Vote in an Election

The Field Service Organization assigns a co-located FSR to the position of team lead when there are multiple co-located FSRs at a base. The team leads assume responsibility for directing the work of the other co-located FSRs at the base and effectively participate in employment actions taken related to those FSRs. The evidence thus shows that team leads are supervisors under the NLRA and, therefore, should not be eligible to vote in an election.

The NLRA defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11). The Board has clarified that an employee only needs to possess one of the criteria listed in Section 2(11) to be a supervisor. See *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002).

The evidence shows that team leads are responsible for setting the work schedules of other co-located FSRs and assign to the work they perform. Both of these tasks require independent judgment because the team lead is required to accommodate the needs of the customer.

Team leads can effectively participate in the performance review process and in giving discipline. They are also responsible for assessing the performance of candidates who are going through First Base Training. That assessment is used to determine whether or not the candidate becomes a permanent member of the Field Service organization.

Because team leads assign other co-located FSRs in their work and effectively participates in the hiring and discipline of other co-located FSRs, team leads are supervisions under the Act and are ineligible to vote in an election.

D. A Sonotone Election Must Be Held if the Petitioned-For Unit Is Found to Be Appropriate because FSRs Are Not Professional Employees as Defined by the NLRA

For all of the reasons discussed above, it would be inappropriate for the Union to be permitted to hold an *Armour-Globe* election. FSRs are not engineers or professional employees and thus should not be included in the historic engineer-only Unit. Nevertheless, if the Regional Director determines that an election should go forward on a mixed unit basis, a *Sonotone* election must be held to permit the professional employees in the Engineering Unit to vote on whether they want to be included in a mixed unit of professional and non-professional employees with the FSRs.

Section 9(b)(1) of the NLRA indicates that a unit including both professionals and other employees is inappropriate “unless a majority of such professional employees vote for inclusion in such unit.” 29 U.S.C. § 159(b)(1). These separate elections in which professional employees vote on whether they want to be included in a unit with nonprofessional employees are often called “*Sonotone* elections,” named after *Sonotone Corp.*, 90 NLRB 1236 (1950).

The Board and the courts have been steadfast that this statutory requirement must be honored, rejecting arguments asserted by parties that circumstances exist that make it unnecessary to afford professionals the opportunity to vote for or against inclusion in a mixed unit. For example, even when an employer and a union have stipulated to a mixed unit previously, a *Sonotone* election must be held. In *Pontiac Osteopathic Hospital*, the Board concluded that a hearing was necessary to determine the professional or nonprofessional status of “med tech” employees even though the employer stipulated to inclusion of the employees in the professional unit. 327 NLRB 1172, 1173 (1999). The Board further held that, if the employees were determined to be professionals, the prior election must be set aside and a *Sonotone* election must be held. *Id.*

Similarly, in *Utah Power & Light Co.*, the Board considered a decertification petition among the employer’s engineers, which were at that time part of a represented unit of production and maintenance employees. 258 NLRB 1059 (1981). The unit had been recognized for over 40 years by the employer and the engineers had never had an opportunity to vote separately as to whether they desired to be included in the unit. *Id.* at 1059. After finding that the engineers were professionals within the meaning of Section 2(12) of the NLRA, the Board concluded that an election should be directed to permit the engineers to vote for or against inclusion in a mixed unit. *Id.* at 1060-62.

Likewise, the parties are not relieved of the requirement that professional employees have a separate election even when professional employees have on a prior occasion voted in favor of inclusion in a unit with nonprofessional employees. *Westinghouse Electric Corp.*, 116 NLRB 1545, 1547 (1956).³⁰ In fact, the Board has consistently held that the right to a separate

³⁰ See, e.g., *Sunrise, A Community for the Retarded, Inc.*, 282 NLRB 252, 252 (1986) (setting aside election where the stipulated unit violated Section 9(b)(1) of the NLRA on its face by not affording professionals an opportunity to vote whether they wished to be included in a mixed unit); *Westinghouse Electric Corp.*, 129 NLRB 846, 848 (1960) (“Section 9(b)(1) of the Act precludes the Board from joining in a single bargaining unit professional and nonprofessional employees, without first affording the professional employees the opportunity to separately express their desires respecting such inclusion.

election cannot be limited “to a single opportunity in the course of their employment for a particular employer.” *Westinghouse*, 116 NLRB at 1547.

By way of example, in *American Medical Response Inc.*, the Board set aside a mail ballot election of a unit consisting of both nonprofessional and professional employees in which all employees were asked if they wanted to be represented by the employees’ current representative, by a different union, or by neither. 344 NLRB 1406, 1408 (2005). The Board determined that the election failed to comport with the requirements of Section 9(b)(1) of the NLRA, rejecting the ALJ’s conclusion that a *Sonotone* ballot was not necessary “based on the assumption that professional employees need only have one opportunity to vote on inclusion in a mixed professional/nonprofessional unit.” *Id.* at 1408. As a result, the Board directed a *Sonotone* election for professional employees to vote on whether they wished to be included in a unit with nonprofessional employees, even though the nonprofessional employees already had been included in a unit with nonprofessional employees for several years. *Id.* at 1409.

And, even when the number of nonprofessionals seems insignificant, a separate election must be afforded to professionals. In *Leedom v. Kyne*, 358 U.S. 184, 186 (1958), the U.S. Supreme Court affirmed that the failure of the Board to afford 233 professionals an opportunity to vote on whether they wished to be included in a unit with nine nonprofessionals violated the statute.

Thus, especially under the circumstances present here, where (1) the Company has not stipulated to the inclusion of the FSRs in the professional unit, (2) the professional employees in the current unit have never voted in favor of inclusion in a mixed unit, and (3) the FSRs sought to be added to the unit are not insignificant (totaling 99), it is abundantly clear that a *Sonotone* election must first be held to determine whether the Engineering Unit employees, as professionals, want to permit the FSRs to be included in the unit. Accordingly, in the event an

This is so whether or not the professional employees have, on a prior occasion, been afforded such opportunity.”); see also 1 *Developing Labor Law* 457 (Patrick Hardin et. al. eds., 3d ed. 1992).

Armour-Globe election is permitted, the Board should direct that a *Sonotone* election also be held.

IV. CONCLUSION

The Union seeks an *Armour-Globe* election that would permit FSRs located in the United States to vote as to whether they wish to be included in the Washington State Engineering Unit, because they “form an integral part of a process under which Boeing commercial airplanes are repaired, maintained, kept in the air.” Tr. 8. The evidence fails to show that FSRs and Washington Engineering Unit employees share a community of interest sufficient or exclusive enough to support the Petition.

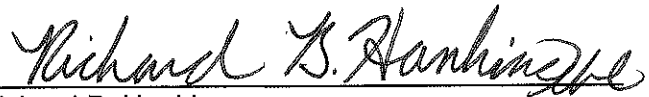
FSRs possess a geographic diversity – a nationwide group -- that conflicts with the historic nature of the geographically-specific Washington Engineering Unit. They are also not eligible for inclusion in the Washington Engineering Unit, which is historically an engineer-only unit, because they do not perform engineering work.

In addition to failing to establish that the Parties’ bargaining history should be ignored, the evidence shows that FSRs and Engineering Unit employees do not share a community of interest so significant that each group has lost its separate identity. Instead, the evidence establishes that either the two groups do not share common interests, or that when they do, those interests are shared with other employees not in the Engineering Unit. The Union has presented no basis for allowing FSRs to vote in an *Armour-Globe* election for inclusion in the Washington Engineering Unit.

If the Regional Director, despite the significant evidence to the contrary, determines an election is appropriate, team leads should not be permitted to vote because they are supervisors as defined by the Act. Additionally, because FSRs are not professional employees, the Region must conduct a *Sonotone* election amongst Engineering Unit employees to determine their willingness to be joined in the same unit as FSRs.

Respectfully submitted this 24th day of February 2011.

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V. CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the **THE BOEING COMPANY'S POST-HEARING BRIEF** in Case No. 19-RC-15372 via electronic filing through the National Labor Relations Board's website, www.NLRB.gov, upon:

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

THE BOEING COMPANY'S POST-HEARING BRIEF was also served, via electronic mail, upon counsel of record for the Petitioner, as follows:

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