

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

THE BOEING COMPANY

Employer

and

Case 19-RC-15419

SOCIETY OF PROFESSIONAL ENGINEERING
EMPLOYEES IN AEROSPACE (SPEEA),
LOCAL 2001

Petitioner

DECISION AND ORDER

The above-captioned matter is before the National Labor Relations Board (“the Board”) upon a petition duly filed under § 9(c) of the National Labor Relations Act (“the Act”), as amended. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.¹

I. SUMMARY

The Boeing Company (“the Employer”) designs, manufactures and sells aircraft that are operated throughout the world by airlines, governments, and other entities. In conducting its operations, the Employer employs tens of thousands of employees, a significant portion of whom are engineers. The Society of Professional Engineering Employees in Aerospace (SPEEA), Local 2001 (“Petitioner”), currently represents approximately 13,600 of the Employer’s engineering employees, who are primarily employed at various locations in Washington State and California (“engineering unit”).² Over 21,000 engineers employed by the Employer are unrepresented.

The instant case follows my Decision and Conditional Order in Case 19-RC-15372 involving the same voting group. In that case, Petitioner sought a self-determination election among a voting group of approximately 92 of the Employer’s 226 Field Service Representatives (“FSRs”) to determine whether those FSRs located in the United States wished to join the engineering unit.³ The petition in that case was dismissed pursuant to §9(b)(1) of the Act,

¹ The parties, by stipulation, agreed that the hearing record in Case 19-RC-15372, in addition to a stipulation specific to this case, would constitute the full and entire record in this matter. As such, no further hearing was conducted. The record establishes the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

² The parties stipulated that the employees in the engineering unit are professionals as defined in § 2(12) of the Act. In light of this stipulation, the record as a whole in Case 19-RC-15372, and my Decision and Conditional Order in that prior case, I find that the engineers are professional employees as that term is defined in the Act.

³ Petitioner does not seek to represent those FSRs employed by the Employer outside the United States due to the limits of the Board’s jurisdiction, and does seek to represent any particular division or department within the FSR complement. “FSRs” as used in this Decision refers only to the domestic FSRs in the voting group sought unless otherwise indicated.

wherein I found that the petitioned-for voting group consisted of non-professional employees, while the existing unit consisted of professional employees.⁴ In dismissing the petition, however, I also noted that the Board's decision in *Sonotone Corp.*, 90 NLRB 1236 (1950) potentially presented a framework for adding non-professionals to a professional unit, assuming a sufficient community of interest existed between the two groups. Petitioner has now returned by the instant petition to avail itself of this potential opportunity under *Sonotone*.

The parties further stipulated that the instant petition raises three issues:

First, whether the FSRs share a sufficient community of interest with the engineering unit to allow their inclusion in a combined unit. Petitioner argues that the FSRs share a sufficient community of interest with the existing engineer unit and that the petitioned-for election is therefore appropriate. The Employer contends the FSRs and the engineers do not share a community of interest, which makes the petitioned-for election inappropriate. While Petitioner does not seek an election in a stand alone unit of FSRs, the Employer does not oppose the direction of an election in such a unit.

Second, whether Team Lead FSRs are supervisors as defined by § 2(11) of the Act. Petitioner contends that Team Lead FSRs are not statutory supervisors. The Employer contends that Team Lead FSRs assign work, evaluate in regard to performance evaluations and hiring, and make recommendations regarding discipline, and as such possess indicia of § 2(11) authority.

Finally, the parties were asked to address a third issue; in the event a self-determination election is directed, how should the order of balloting occur? Petitioner contends that voting should occur in two stages; the voting group should first vote on whether they wish to be represented by Petitioner, and if a majority votes in the affirmative, the existing unit of professionals would then vote on whether they want to be included in a unit with non-professionals. While the Employer agrees that if directed, the self-determination election should occur in two stages, it asserts the order should be reversed, with professionals voting on inclusion first and the non-professional voting group voting on representation second.

I have carefully reviewed and considered the record evidence and the parties' post-hearing briefs.⁵ For the reasons expressed below, I find the FSRs do not share a sufficient community of interest with the engineering unit to warrant their inclusion in a combined unit. While the record focuses almost exclusively on the engineering unit, the domestic FSRs, and their interaction, I find these two groups of employees are part of a much broader technical support system operated by the Employer. When viewed in the context of the Employer's global operations and the engineers and FSRs not involved in the instant case, the evidence provides insufficient support for Petitioner's position. Specifically, I find, consistent with the Employer, that the FSRs, while having some contact and interchange with the existing unit, do not share a sufficient community of interest in view of the lack of common skills and functions, common working conditions, and lack of common supervision with the existing unit in this case. Additionally, I find, consistent with Petitioner, that Team Lead FSRs are not statutory supervisors. I have not addressed the third issue presented as it is moot in light of my findings concerning the first two issues.

Below, I have set forth the relevant evidence contained in the record, as well as the legal

⁴ The Board denied Petitioner's request for review on July 7, 2011.

⁵ The Employer and the Union timely filed briefs, which were duly considered.

standard utilized by the Board in regard to community of interest and supervisory determinations. I have then applied those standards to the evidence and articulated the rationale for my findings. Following my conclusion and order, I have set forth the process for requesting review of this decision.

II. RECORD EVIDENCE

The lengthy record in this matter demonstrates that the work involved here is very complex. In the following sections, I have first addressed the collective bargaining landscape, identifying the bargaining unit involved in the instant case, and briefly distinguishing that unit of employees from others not involved here. Second, I have turned to the Employer's operations and employees in the voting group sought, and addressed the facts in the record relevant to the FSRs' community of interest with the engineering unit. The record evidence section concludes with evidence relating to FSR Team Leads' duties and responsibilities.

The record addresses the engineering unit and the domestic FSRs in the voting group sought but reveals relatively little regarding the 21,000 plus engineers outside the engineering unit and a majority of FSRs who are assigned internationally.

A. The Existing Bargaining Units Represented by Petitioner

The Employer employs tens of thousands of employees in the United States and numerous foreign countries in developing, designing, manufacturing, selling, and servicing commercial and military aircraft. The production of aircraft requires designing and manufacturing capability on a vast scale and while the Employer has a worldwide presence, many of its employees are clustered at several large bases of production in the United States. Three of these bases of production, the Seattle metropolitan area in Washington State, Edwards Air Force Base, California, and Long Beach, California, are relevant to the instant case.⁶

Petitioner has represented a bargaining unit consisting of engineers since its certification by the Board in 1946, first in Washington State and later including employees in equivalent engineering positions at Edwards Air Force Base.⁷ Presently, the engineering bargaining unit numbers about 13,600 employees in 43 job classifications, and is identified in Article 1, Section 1.1(a) of the engineering agreement.⁸ Petitioner does not represent engineers employed at the Employer's Long Beach facilities. The Long Beach engineers are part of the 21,000 plus engineers employed by the Employer who are not represented by Petitioner or any labor organization.

⁶ The Seattle metropolitan area includes the Employer's facilities in Seattle, Everett, Tukwila, Renton, and Sea-Tac, Washington. Unless a specific reference is necessary, these facilities will be referred to individually and collectively as "Seattle." Edwards Air Force base includes facilities at Edwards Air Force Base and facilities approximately 25 miles away in Palmdale, California. Unless a specific reference is necessary, these facilities will be referred to individually and collectively as "Edwards Air Force Base."

⁷ In the parlance of the parties, the engineering unit is referred to as the "professional unit," to distinguish it from the "technical unit" also represented by Petitioner. While the "professional unit" descriptor is accurate, the Decision in case 19-CA-15372 did not utilize that descriptor to avoid confusion when analyzing the FSRs' professional status under the Act. To maintain consistency with the usage in that Decision, the existing professional unit consisting of engineers will be referred to as the "engineering unit" in this Decision. The current collective bargaining agreement covering the engineering unit will be referred to as the "engineering agreement."

⁸ The unit in Section 1.1(a) is defined as:

All persons working in [the Employer's] plants in the State of Washington, including persons who are on travel status from such plants, who are classified by [the Employer] 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 Employer] in one of the classifications listed in Appendix B.

In the approximately 65 years since certification, Petitioner has also come to represent a number of other engineers employed by the Employer in different geographic areas and divisions. These employees are addressed in subsequent portions of Section 1.1 of the engineering agreement. Section 1.1(b) recognizes approximately 98 engineers employed in Weber and Davis Counties, Utah. Section 1.1(c) recognizes engineers employed at the Employer's Atlantic Test Center in Florida, although no unit employees are currently employed at this location. Section 1.1(d) recognizes approximately 51 engineers employed in Portland, Oregon. Section 1.1(e) recognizes Petitioner as representative of approximately 280 engineers at several locations in the Employer's Safety, Health and Environmental Affairs (SHEA) division.

The parties are not in agreement regarding whether the SHEA engineers, whose representation was subsequently codified in Section 1.1(e) of the engineering agreement, are part of the larger bargaining unit or constitute a separate bargaining unit covered by one contract. That issue is not, however, before me as part of the instant case. In addition to the dispute over the Section 1.1(e) engineers, the parties are also in dispute regarding the unit placement of approximately 150 engineers located at Edwards Air Force Base, the subject of case 31-UC-311.

Petitioner also separately represents a bargaining unit of technical employees working in Seattle and at Edwards Air Force Base.⁹ The bargaining unit consisting of thousands of the Employer's production workers is not represented by Petitioner.

B. The Employer's Operations

1. General Operations

At the first level of division, the Employer's organizational structure is divided into four major business units: Boeing Commercial Airplanes ("BCA"), which manufactures and sells commercial aircraft; Boeing Defense Services ("BDS"), which manufactures and sells military aircraft and aerospace products; Engineering, Operations and Test ("EO&T") a core engineering group that provides engineering resources and research to the entire company; and the Shared Services Group ("SSG") which contains the business structure of the Employer. All 226 FSRs, including the 92 FSRs at issue in the instant case, are employed within BCA; employees in the engineering unit are employed in three of the four major business units.¹⁰

BCA produces a wide variety of commercial aircraft, both wide-bodied, those having two aisles in the passenger cabin, and narrow bodied, those having a single aisle. The Employer's wide-body aircraft currently in production include the 747, 767, and 777 models, as well as the 787 model expected to enter service in the near future. Narrow body aircraft produced by the Employer include the 737 and 757 models.¹¹ The Employer also produces the narrow body MD-80 and MD-90 models since its merger with McDonnell Douglas in the 1990's.¹² When an

⁹ The parties stipulated that neither is contending in this proceeding that FSRs should be added to the technical unit.

¹⁰ Of the approximately 13,500 engineering unit employees, approximately 8,700 are located in BCA, 2,400 in BDS, and 2,400 in E&OT.

¹¹ The Employer markets a modified 737-700 to compete in the private aircraft market; specially modified aircraft owned by corporations, governments, or individuals, not a common carrier airline.

¹² Since the merger, the Employer has supported McDonnell Douglas aircraft in the same manner it supports its other aircraft. What is of significance here is that the petitioned-for voting group of FSRs interact, interchange, and/or are functionally integrated with non-unit engineers in this support process for McDonnell Douglas aircraft in the same manner the FSRs interact, interchange, and/or functionally integrate with some in the engineering unit who support the Boeing line of commercial planes. However, the parties did not detail in the record the extent of this interaction, interchange, and/or functional integration in the record as it relates to the FSRs and non-unit engineers.

existing aircraft design is updated to a significant degree, the Employer may add an additional model designator, such as the 747-800 model, a recently designed update to the established 747 model.

Within BCA, approximately 89 FSRs are located within the Commercial Aviation Services group, while 3 are located within the Boeing Business Jets subdivision within a sales group in the BCA unit.¹³ Commercial Aviation Services includes both support services for the introduction of new aircraft models, and a Fleet Services subdivision, both of which contain FSRs.

29 FSRs are designated introduction representatives (“intro reps”) and are assigned in varying capacities to the introduction of new models.¹⁴ The other 60 FSRs are assigned to the Fleet Services Technical Customer Support subdivision, which provides engineering and maintenance support to airline customers’ existing fleets. Technical Customer Support contains two organizational groups that include FSRs, Field Service, and Customer Support Engineering. Within Field Service, 37 FSRs are located throughout the United States with airline customers as “co-located” FSRs. An additional eight FSRs are located in the Employer’s Seattle Support Center. 15 FSRs, classified as “controllers” and employed at the Boeing Operations Center (“BOC”) in Seattle, are located within Customer Support Engineering.¹⁵

For ease of review, the classifications of FSR in the voting group are reflected in the following table:

| Classification | Department(s) | Number | Work Location |
|--------------------------------|--|---------------|--------------------------|
| Intro Reps | 787/747-800 Introduction/ Field Service | 29 | Field |
| Co-located FSR | Technical Customer Support- Field Service | 37 | Field |
| FSRs in Seattle Support Center | Technical Customer Support- Field Service | 8 | Seattle - Support Center |
| Controllers | Technical Customer Support - Customer Support Engineering | 15 | Seattle - BOC |
| FSRs | Boeing Business Jets/ Field Service | 3 | Work-at-Home/Field |

The record also contains reference to approximately four additional employees classified as FSRs, working on special projects. However, the record contains no evidence regarding these

¹³ As noted above, the 226 FSRs employed by the Employer are all organizationally located within BCA, approximately 130 are located internationally, however, and are not at issue in the instant case as their work location appears to be outside the Board’s jurisdiction.

¹⁴ Some of the 29 intro reps referenced are currently on loan to other programs.

¹⁵ The record indicates Support Engineering Manager Christopher Chong is on a temporary, but lengthy, assignment as a shift manager in the BOC. Further, while he is identified as a controller at points in the record, the record reveals he has not acted as a controller. For the purposes of this Decision, I have excluded Chong from the discussion of “controllers.”

employees.¹⁶

2. Engineers

In regard to the engineering unit, of primary importance in this case are the engineers in the Customer Support Engineering department. This department works with aircraft in service, as distinguished from the engineering departments that design and develop new aircraft.¹⁷ Approximately 900 engineers in the Customer Support Engineering department support aircraft in service by issuing “service bulletins,” technical documents that are essentially a constantly updated maintenance manual. Further, these engineers respond to specific issues facing customers, submitted to their attention by “service requests,” a document describing a technical issue and requesting a solution. Customer Support Engineering for aircraft produced under the Employer’s name is located in Seattle; Customer Support Engineering for McDonnell Douglas aircraft is located in Long Beach.

Engineers in Customer Support Engineering are organized in several groups: airline support engineers (“ASEs”), service engineers, fleet support chiefs, and service bulletin engineers.¹⁸ Within the department, ASEs are grouped by the customers they support, Service Engineers by their expertise relative to certain systems or parts, and Fleet Support Chiefs by aircraft model.

ASEs are frequently the first engineer contacted by an FSR in the event of a technical issue. ASEs are perhaps best described as the FSRs’ counterpart within the Employer’s engineering support structure. Like a FSR, an ASE is assigned to a specific customer, is familiar with that customer, and is dedicated to resolving that customer’s technical support issues. However, ASEs are not located in the field; rather, they are located at an Employer site for the service engineering department. Further, ASEs in Seattle are in the engineering unit while ASEs located in Long Beach, like all Long Beach engineers, are not represented.

The record reveals that the Employer categorizes customers with aircraft in operation as either first-tier or second-tier, and provides levels of support based on this categorization. First-tier customers are those who are the initial operator of an aircraft.¹⁹ Second-tier customers are those that have purchased a used aircraft. As a general matter, first-tier customers tend to be the larger airlines, and are supported by a co-located FSR at their facility. Second-tier customers are smaller airlines, supported by the Seattle Support Center located in Seattle.

¹⁶ The FSR voting group is referenced throughout the record and this Decision, as consisting of approximately 92 employees. Neither party took a position regarding the four additional FSRs on special projects for the Employer but it appears both parties have excluded these four special project FSRs from the FSRs group at issue herein. Additionally, the 134 FSRs working at locations outside the United States are clearly excluded from the petitioned-for voting group or unit by both Petitioner and the Employer.

¹⁷ The engineers in new aircraft development are referred to in this decision as “design engineers,” they are also referred to in the record as engineers “at the factory.” Those departments responsible for aircraft development are referred to as “Design Engineering.”

¹⁸ Service Engineering is a specific engineering group within Customer Support Engineering, but the witnesses’ use of the term in the record suggests “service engineering” also refers to all of Customer Support Engineering. As used in this Decision, “service engineering” and “service engineers” refer to the Customer Support Engineering department and its employees generally; “Service Engineering” and “Service Engineers” refer to the specific group within the department and its employees.

¹⁹ Airlines either purchase aircraft directly from the Employer or obtain the aircraft through a third party lease agreement, but this difference does not impact on their first-tier status as the initial operator.

C. The Community of Interest Factors

1. Bargaining History

Petitioner has represented a bargaining unit of engineers in Washington State since 1946. In the 1970s, engineers from this bargaining unit were increasingly, temporarily and then permanently, assigned to Edwards Air Force Base, and subsequently the Employer voluntarily recognized Petitioner as the engineers' collective bargaining representative at that location. A similar process was repeated in the 1980s in regard to engineers assigned to Palmdale, California. As the geographic scope of the engineering unit changed, Section 1(a) of the engineering agreement was modified to reflect this scope.

Other engineers came under Petitioner's representation at various points. Petitioner began representing engineers employed in Weber and Davis Counties, Utah, in 1963; at the Employer's Atlantic Test Center in 1972; and in Portland, Oregon, in 1987. In 1999, this Region issued a Decision and Direction of Election in Case 19-RC-13649 that led to a self-determination election among Safety, Health and Environmental Affairs (SHEA) engineers, in a unit covering employees in the Seattle metropolitan area, as well as Spokane, Washington, and Portland, Oregon.

In Case 19-RC-13649, the parties were in agreement that the historical unit represented by Petitioner was an engineering unit, and that for a classification of employees to be included in the unit the employees must perform engineering work. This agreement is reflected by Article 22 of the engineering agreement, which 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 the 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.

Petitioner and the Employer have a number of agreements regarding the manner in which engineers entering and leaving the engineering unit are handled. When an engineering unit employee is assigned to a position in a location outside the bargaining unit for a period greater than 2 years, the employee is removed from the bargaining unit at the time they begin the new assignment, regardless of the expectation of return. The agreement works in the same manner in reverse, if an unrepresented engineer is assigned to a position in the bargaining unit for greater than 2 years, the employee is part of the unit on day one, regardless of whether it is expected the engineer will return to an unrepresented location.

2. Skills, Training, and Job Functions

In order to describe the skills and functions of the FSRs, it is necessary to place them in the context of the Employer's support services. Due to the nature of its product, the Employer has extensive involvement in the customers' use of that product. The Employer has designed a system where, during the life of an aircraft, customers constantly receive technical updates from the Employer's large service organization regarding safe and efficient operation. Customers also have the ability, to a varying degree, to obtain the Employer's assistance in resolving problems with their aircraft. In addition to providing this information, the Employer is also

collecting information on all of its aircraft, monitoring their ownership, configuration, and use. The FSRs, regardless of their specific assignment, are a conduit of information in this exchange between the Employer and its customers.

In the following sections, the skills and job functions of the different FSR job classifications are described in turn. Specific examples of FSRs using these skills to perform their job functions are also contained in a following section addressing the functional integration of the FSRs and the engineering unit.

a. Technical Support Skills and Functions

i. 29 Intro Reps - FSRs

Technical support for a first-tier customer begins at the time an airplane is delivered to the customer. Intro reps are FSRs who travel to a customer's base and provide additional support when a new aircraft model is introduced and delivered. This occurs both when introducing an existing customer to a new model of aircraft, such as a customer which has a fleet of 767s purchases and begins operating several 777s, or introducing an entirely new model, such as the 787. The intro rep is stationed with the customer as its crews, mechanics, and engineers become familiar with the new aircraft.

The intro rep's primary responsibility is what is referred to as the "meet and greet." The record also reveals that after the customer places a new Employer aircraft in service, the intro rep is with the customer's maintenance crew when each new aircraft arrives at the gate. The intro rep then does a visual inspection of the aircraft exterior while the passengers deplane. Once the aircraft is empty, the intro rep enters the aircraft and speaks with the pilots and the cabin crew, answering questions. The intro rep then stays with the aircraft to answer any questions from the customer's maintenance personnel as they prepare the aircraft to depart. Once that aircraft departs, the intro rep proceeds to the next arrival and repeats the process.

The intro reps' secondary responsibility is to assist the customer's maintenance crew on overnight maintenance; assisting the customer with understanding the Employer's documentation and technical documents relating to an aircraft, locating spare parts, and coordinating contact with the Employer's engineering organization. The intro rep may not be the only employee sent to assist in the introduction of a new model of aircraft, and may be accompanied by a co-located FSR and other employees of the Employer, including engineering unit employees serving in the field in a temporary capacity.

ii. 37 Co-Located FSRs

Following delivery, first-tier customers are assigned a co-located FSR as a liaison. Thus, while employed by the Employer, the co-located FSR is located at and works at the customer's site. There, the co-located FSR is expected to develop an understanding of any cultural, political, or other factors that may impact how the customer relates with the Employer. More specifically, the co-located FSR is expected to perform both reactive and proactive tasks. Technical support work is reactive and includes answering questions regarding the Employer's aircraft and providing guidance to the customer's engineers and mechanics when they are troubleshooting a technical issue with an aircraft. Proactive work includes building customer relationships, attending meetings, and acting as a liaison for other employees of the Employer. The FSR's technical support functions are described in this section, while their relationship building functions are described in the following section.

Co-located FSRs do not, in providing technical support, modify, repair, or otherwise physically alter an aircraft. They are prohibited from performing such work, known as “touch labor,” on an aircraft. Rather, such work is performed by the customer’s mechanics.²⁰ Co-located FSRs also do not independently design engineering solutions to problems identified by a customer. Rather, this is ultimately done by the Employer’s service engineering department. However, co-located FSRs do provide technical guidance such as providing information, discussing problems, and directing the customer’s engineers to existing solutions (e.g., solutions set forth in an Employer service bulletin). Co-located FSRs also assist customers in submitting service requests, the formal mechanism whereby a customer obtains technical support from the Employer.

On their rounds at a customer’s site, co-located FSRs speak with both engineers and non-engineers employed by the customer. The engineers are employed in any number of departments, such as avionics, structures, and electrical. The non-engineers will include employees such the customer’s mechanics, technicians in the customer’s parts department, and the customer’s pilots.

The record also reveals that co-located FSRs have a daily discussion with an “Account Manager” in the Employer’s material management department. The record reveals that each top tier commercial customer is assigned such a manager by the Employer, for the purpose of monitoring the needs of the customer in maintaining a sufficient supply of spare parts.²¹ Further, co-located FSR Hirsch testified that perhaps twice a year he will, in resolving a customer’s service request, see an opportunity for after-market sales, and will forward this information to the Employer’s Commercial Aviation Services Sales Manager.²²

iii. 8 Seattle Support Center FSRs

The Seattle Support Center was opened in 2009 as an efficient way of providing support to the 400 to 500 second-tier customers operating the Employer’s aircraft. The Seattle Support Center staffed only by these eight FSRs, operates 24-hours a day, 5-days a week, in order to match customers’ business hours. The record does not contain the same level of detail regarding examples of technical support provided by FSRs in the Seattle Support Center as it does for co-located FSRs. The FSRs assigned to the Employer’s Seattle Support Center perform essentially the same technical support function as co-located FSRs, but in a different manner. The record establishes, however, that the process is essentially the same, while recognizing that many second-tier customers may not be contractually entitled to technical support of the same level as a first-tier customer.

iv. 15 Controllers - FSRs

The BOC is a 24-hour, 365-day a year facility designed to assist customers worldwide with urgent mechanical or operational issues affecting their aircraft. The 15 FSRs employed in the BOC are referred to as “controllers.” The BOC itself is one large, open room, with the

²⁰ The prohibition on touch labor applies to all classifications of FSR.

²¹ Many of the employees in the Employer’s material management department are members of the technical unit represented by Petitioner. It is not clear from the record whether the “Account Manager” position in the material department is a represented position in the technical unit.

²² After-market sales consists of the sale of additional products to the customer’s existing fleet, as distinguished from the sale of an entirely new aircraft, which appears from the record is the responsibility of a separate Employer sales department. While the co-located FSRs have some limited interaction with the after-market sales department, they are not involved in the sale of new airplanes.

controllers stationed in the middle, surrounded by banks of computers and teams of specialists on the various aircraft systems. Other employees assigned to the BOC include structures engineers, stress engineers, system technicians, and material management technicians.²³ A number of outside contractors, including non-unit engineers, also work in the BOC.

Under the Employer's procedures, if a customer submits a service request that requires a response within 24 hours, the Employer's computerized systems automatically send the service request to the BOC.²⁴ Service requests sent to the BOC are received by a controller who contacts the customer and assesses the problem(s) raised in the service request. The controller may be able to resolve the problem(s) in a manner similar to a co-located FSR, referring the customer to a service bulletin or other existing documents containing a solution. At hearing, it was estimated that 10 percent of incoming service requests could be resolved with only a controller's participation.

If the issue is not resolved by the controller, the controller then follows the Employer's protocol to transfer the issue to one of the functional leads in the BOC. A functional lead (not an FSR position) is the contact person within each group of substantive specialists (i.e. structures, avionics). These employees develop a solution, and if necessary consult with the engineers from other specialties in the BOC, or outside the BOC. The engineers may go back to the controller while developing a solution if additional information is needed from the customer. When a solution has been developed and sent to the customer, the controller is responsible for verifying that the solution resolved the customer's problem.

At hearing it was estimated 60 percent of controllers' time was spent communicating with customers with the remainder spent largely on administrative tasks. These tasks include participating in daily meetings with the other BOC employees, and possibly chairing an additional meeting with Employer management, outside engineers, and others if an issue is in the SIVT process.²⁵

FSR Jack Bennett, who has worked as a controller for the previous 5 years, testified at hearing regarding the details of the problem solving process in the BOC. According to Bennett, when he receives a service request, he first determines whether the request is properly handled by the BOC, a process that may require obtaining additional information from the submitting customer. If the request is not appropriate for the BOC (it does not require an urgent response), the controller will forward the request to service engineering. If the request is properly addressed by the BOC, the controller will then begin the collaborative process to determine who will be involved in resolving the problem with the experts in the BOC; the engineering unit service engineers in the structures group, the technical unit technicians in the spares group, or the technical unit technicians in the systems group.²⁶ The controller and the engineers or technicians will agree on a timeframe for a resolution, which the controller will pass on to the

²³ The structures engineers and one stress engineer are employed by the Employer and are part of the engineering unit. The remaining stress engineers are outside contractors not employed by the Employer. The system technicians and material management technicians are part of the technical unit represented by Petitioner.

²⁴ Customers must contract with the Employer for BOC support services.

²⁵ The SIVT is a computerized system for the submission of service requests, intended to create visibility for high priority service requests, allowing senior management to track the resolution to these requests. Controllers rotate among themselves so that at least one controller is responsible for SIVT requests at all times. Because SIVT service requests are of the highest priority, and involve communication with executive management, this controller works exclusively on these requests.

²⁶ In his testimony, Bennett did not reference the stress engineers (all of whom except for one are third-party contractors) in the BOC.

customer. The controller will also monitor the progress of the resolution and will maintain communication with the customer until the service request is resolved.

v. 3 Boeing Business Jets FSRs

A BBJ FSR will serve in a capacity similar to an intro rep when one of their customers receives an aircraft. The FSR will travel to a customer's location when the aircraft is delivered and assist in familiarizing the customer with the aircraft. After introduction, a BBJ FSR acts in a capacity similar to a co-located FSR, although not physically located with the customer. Private customers are encouraged to contact their BBJ FSR when they have a technical issue with the aircraft. In the record it is estimated BBJ FSRs spend a significant portion of their day (30 to 40 percent) simply returning customer calls and emails, and it is estimated most of these inquiries are likely technical. The BBJ FSR can review the issue with the customer's flight or maintenance crew and, if necessary, submit a service request to the Employer's Service Engineering. BBJ FSRs also provide technical support to third party modification centers licensed by the Employer to modify aircraft to a customer's specifications. If, in performing their modifications, the third party contractors have technical questions, such may be brought to the respective BBJ FSR.

b. Relationship Building Skills and Functions

Co-located FSRs and BBJ FSRs have additional responsibilities regarding their customer, a function generally described as "relationship building." This is the primary focus of the FSRs' proactive work as co-located FSRs' duties includes daily "rounds," attending meetings with customers, and acting as the Employer's liaison with its customers. Specifically, co-located FSRs are directed by the Employer to circulate on daily rounds, speaking to the customer's engineering and other departments for the purpose of building relationships and increasing the Employer's visibility. While reactive problems may be brought to the co-located FSR while on rounds, the primary purpose is relationship building. At hearing it was estimated, depending on the customer, daily rounds may take under an hour to several hours of each co-located FSR's work-day.

Co-located FSRs are also expected to use their knowledge of the customer to assist the Employer's sales employees. The Employer has a designated sales director for each commercial airline customer, and the co-located FSRs and sales director will meet to discuss the customer's needs, sales strategies, and any perceived obstacles to further sales.²⁷

Liaison functions at customer sites include, for example, the FSR may assist with travel arrangements if another employee of the Employer needs to visit the customer's site. The assistance could include meeting and taking the visiting employee to the customer's facility and providing some information regarding the customer to the employee. FSRs can also function in the inverse, accompanying to and acting as a liaison for customer representatives at Employer-sponsored events such as the twice-yearly fleet conferences, where all airlines operating a certain model attend a series of meetings in Seattle or Long Beach.

BBJ FSRs' relationship building activities are not as easily separated from their technical support as with co-located FSRs. Because of the varied customer base each contact by a customer is, even if the question is technical, a relationship building activity. BBJ FSRs also

²⁷ The record is not clear whether this contact is limited to after-market sales, as described earlier, or whether co-located FSRs also meet with sales representatives for new aircraft. Regardless, neither party asserts that the FSRs share any community of interest with the Employer's sales employees.

spend a significant amount of their time visiting customers, 100 to 130 days a year, during which they have an opportunity to build relationships in person.

c. Entry-into-Service and Temporary Assignment Skills and Functions

The FSRs at issue are generally not involved in the design and testing aspect of the Employer's operation. However, the Employer is at the moment in a unique position, preparing to introduce an entirely new model, the 787, at the same time it is introducing a new model of its 747 aircraft, the 747-800. In preparation for entry-into-service of these models, the Employer has recently hired a significant number of additional intro reps. However, the 787's introduction has been delayed and the intro reps are not currently in the field. At the moment, these intro reps are performing pre-delivery tasks and many have been loaned to the 787 and 747-800 programs in various capacities to assist in flight testing the aircraft.

Regarding pre-delivery preparation, Employer flight testing introduces the aircraft to the routine of service, pre-flight checks, flight, and on return post-flight checks, and overnight maintenance. When a new model of aircraft is involved, intro reps' pre-delivery work primarily consists of observing the checks and maintenance during Employer flight testing to gain a working knowledge of the aircraft. The intro reps also become familiar with the support structure behind the aircraft, such as technical manuals and aircraft specific software. The intro reps also attend regular meetings involving the Employer's various departments working on the 787 project to keep informed regarding the status of the program as the aircraft nears delivery.

Those intro reps loaned to the 787 program have been assigned to either the ground operations engineer or flight analyst positions. The ground operations engineer position is included in Petitioner's engineering unit, and each of the FSRs loaned into this position has an engineering degree. Ground operations engineers set the configuration of the aircraft as needed before each test flight. They also accompany test flights, acting as a safety officer or weight engineer, a position responsible for ensuring the aircraft is properly weighted and balanced to stay within testing parameters. On the other hand, the flight analyst position is included in the Petitioner's technical bargaining unit, and the intro reps loaned into this position do not possess an engineering degree. Flight analysts act as assistants to the flight crew during test flights, logging maintenance issues and consulting with maintenance at the conclusion of the flight.

d. Training & Fixed-Period Assignments

From the above, it is readily discernable that all FSRs serve in the function of a technical advisor. The skills necessary to serve as a technical advisor are reflected in the educational background of the FSRs. 38 of the 92 FSRs in the voting group sought are degreed engineers, holding either a master's or bachelor's degree from fields such as Aerospace, Astronautics, Electronic, Mechanical, Metallurgical, and Software engineering. Approximately another third of the FSRs hold a bachelor's or associate's degrees in a field related to engineering such as Aeronautics, Avionics, Aviation Management, Aviation Technology, Design and Graphics, Information Technology, or Physics. The remaining third of the FSRs possess a mix of educational backgrounds, including business and liberal arts degrees, partial college with no

degree obtained, or the record simply does not contain specifics regarding their education.²⁸

In addition to their educational background, all FSRs participate in Employer-sponsored training courses. The record reveals dozens of training programs, ranging from basic safety courses to detailed programs on specific engineering concepts, are completed by FSRs. Whether such training is mandated with any regularity and/or frequency was not detailed in the record but documents indicate FSRs have engaged in relatively extensive training in this regard.

Many of the FSRs are members of Field Service, and as such are subject to unique training requirements. Employees entering Field Service are not hired under the Employer's standard hiring method. Under the Employer's standard hiring method, job openings are posted on the Employer's electronic job board, the Boeing Enterprise Staffing System, accessible by all employees. Applicants apply for the position and are selected for hire by management in the appropriate business unit, division or subdivision. In contrast, when any position in Field Service is open, it is merely posted as a Field Service position, not a specific job title. Applicants do not apply for a specific job, but instead apply to work in Field Service. A management team within Field Service then conducts several hiring interviews, addressing issues raised by a multi-year assignment to potentially distant parts of the world.²⁹ When a candidate is selected for entry into Field Service, they are placed in a specific training program referred to as First Base Training.

First Base Training lasts approximately 90 days, and is completed at one of several designated bases. During the training period, the candidate must utilize the tools of a co-located FSR and complete a checklist of tasks. Candidates also are assigned to the Employer's Seattle Support Center for a period of time to familiarize themselves with the variety of departments in the Employer's organization with which a co-located FSR interacts. At the conclusion of First Base Training, the candidate is either selected to enter Field Service or is rejected.

Once in Field Service, the employee is potentially assigned to any of the Field Service FSR classifications; co-located FSR, intro rep, or assignment to the Seattle Support Center, depending on availability. The co-located FSR position is designed so that the employee rotates through a variety of assignments, after an assignment of ideally no more than 5 years, gaining a variety of experience with different customers in different locations.³⁰ As noted, intro rep assignments are much shorter, typically lasting only a few months.³¹ Field Service utilizes a formalized assignment process that attempts to place existing FSRs with the best match of assignment, but FSRs do have input; when nearing the end of an assignment, FSRs may access upcoming base assignments for which they may apply.

Seattle Support Center FSRs, although located in Seattle, are considered part of the

²⁸ Each classification of FSR has a different job description, and the education requirements differ, yet the job descriptions consistently state the education requirements may be met by an "equivalent combination of education and experience."

²⁹ While only domestic FSRs are at issue in the current case, the Employer's hiring, training, and assignment process for co-located FSRs does not distinguish between domestic and international assignments.

³⁰ While on assignment in the field, co-located FSRs will have a week-long visit to either Seattle or Long Beach to interact in person with the Employer's support structure. If the co-located FSR's customer operates primarily legacy McDonnell Douglas aircraft, the FSR visits Long Beach; other FSRs return to Seattle. The week-long visit is referred to as "business week," and is generally scheduled once every 12 to 18 months.

³¹ Intro reps are based in Seattle, but spend approximately 75 percent of the year on assignment. When not on assignment, they prepare for their next assignment, act as a temporary fill-in for an absent FSR in one of the other classifications, or work on special projects.

Employer's Field Service. As a result, the hiring, training, and assignment process described in regard to co-located FSRs equally applies to Employer/Seattle based FSRs. Like co-located FSRs, each of the eight FSRs in the Seattle Support Center is assigned to a particular large group of customers. While the assignment does not involve relocation as it does for co-located FSRs, it does set the hours of work for the FSR employed in the Seattle Support Center based on the customers' schedules. For example, if an FSR is assigned a set of customers located in Europe, the FSR's work hours will align with the hours of the customers' operations in Europe. By contrast, unit engineers' work hours are not specifically tied to any particular customer or particular set of customer's hours of operations, as they are for FSRs.

Boeing Business Jets is organizationally separate from the Fleet Services division that contains the departments to which the other FSRs belong. However, the three BBJ FSRs are considered part of the Employer's Field Service, so the hiring, training, and assignment process described in regard to co-located FSRs applies. BBJ FSRs are not stationed with a dedicated customer as with a co-located FSR.

Controllers are the only FSRs who are not organizationally part of Field Service. Rather, controllers are part of service engineering within BOC, whose operations are located in Seattle. As a result, the 15 controllers do not participate in the Field Service hiring process or first base training that the other 77 FSRs experience. Rather, controllers are hired directly into the BOC under the Employer's standard hiring procedures.

e. Tools

Almost all FSR functions relate to information; collecting information from the customer, distributing information from the Employer, and facilitating efficient access to information. Accordingly, the primary tools used by FSRs are the telephone and e-mail, but also several proprietary web-based resources developed by the Employer to record or access information. These include the Boeing Communication System, My Boeing Fleet/Toolbox ("My Boeing Fleet"), Field Service Data Store ("FSDS"), and the Significant Issues Visibility Tool ("SIVT").

Boeing Communication System allows customers and FSRs to submit and track service requests. My Boeing Fleet allows access to the Employer's vast store of technical documentation, including manuals and service bulletins. The Employer's many manuals include those with directions regarding normal operations, such as a flight manual, and some specially tailored for problem solving, such as the fault isolation manual. FSDS allows FSRs to update an aircraft's status and log any configuration changes that may be performed by entities other than the Employer.

In addition to being able to access the tools of an FSR, the 15 controllers also utilize the features of the BOC. The BOC contains a large electronic display tracking the progress of all the service requests currently in the BOC, displaying information such as the topic of the request, who is working on the request, and when a resolution is scheduled. As noted above, controllers also have special responsibilities regarding SIVT resolution.

3. Functional Integration

The aircraft designed, manufactured, and supported by the Employer are exceedingly complex. An aircraft contains dozens of tightly packed systems, mechanical, electrical, hydraulic and others, operating at extreme stress and temperature. Further, the Employer has a massive and complex organization, as do many of its customers. In this environment, the

Employer has found efficiency in placing its own employees with its first-tier commercial airline customers, and in other ways having a primary point of contact for customers. These employees, the FSRs in the voting group sought, are able to coordinate contact and the exchange of information between the Employer and the customer's respective service organizations.³²

Because co-located FSRs work with major airlines that possess their own engineering, technical, and mechanical resources, routine issues involving the Employer's aircraft are resolved without the involvement of the Employer. However, if the customer experiences a problem with an aircraft, or wants to notify the Employer of something out of the ordinary, the customer is likely to consult with the FSR. The FSRs have access to Employer tools that may allow them to access an existing solution (service update, technical document, engineering drawing) that the customer may not possess or could not have been able to locate. Further, by being part of the Employer's organization, the FSR has a broader base of contacts who could provide information. So, while the customer's engineering department knows its aircraft, the Employer monitors the same aircraft operated by *any* airline. Thus, the FSR may be able to use Employer resources to identify a fix already developed for another airline, or another airline may have a needed spare part.³³ FSRs' access to this wider breadth of information enhances their ability to resolve their respective customer's issues.

The co-located FSR's ability to resolve problems locally varies greatly by customer, as each customer has its own technical infrastructure and varies in the type of issues brought to the FSR. For instance, the record indicates that co-located FSRs at a base in Minneapolis, Minnesota, resolved 11 percent of technical problems without additional assistance, while co-located FSRs at a base in Fort Worth, Texas, resolved 40 percent of technical problems. When a co-located FSR is unable to resolve a problem locally, either the customer or the FSR will generate a service request and submit it to the Employer's service engineering department.

Specific examples of this technical support work were provided at hearing by several witnesses. These examples illustrate the manner in which the FSRs and service engineering are integrated to provide the customer with a technical solution.

a. Pylon Cracks

Co-located FSR Ross Hirsch described several situations where he assisted his customer with technical issues, one involving a cracked pylon. As described by Hirsch, the customer identified a crack on the left pylon in a 767-300's aft bulkhead, and determined the crack fell outside the standard repair manual for the aircraft. The customer then involved Hirsch, who assisted the customer in attempting to locate a replacement part using the My Boeing Fleet tool. A replacement was not readily available. The FSR and the customer's engineers then explored whether an equivalent part existed on another model aircraft. Such a part did not exist. Thus, it became apparent the pylon could not simply be replaced, but must be repaired, taking the aircraft out of service for a period of time.

³² While this discussion focuses mainly on the co-located FSRs and intro reps, which together constitute approximately 70 percent of the voting group sought, the substance of the work, coordinating contact and the exchange of information between the Employer's and the customer's respective service organizations, is similar for other FSRs. The differences in FSR classifications primarily relate to the manner in which the work is accomplished (in-person as compared to by telephone) and the customers with whom the FSR is working.

³³ Customers generally obtain spare parts from their own supply, but parts not at hand are available from the Employer's material management department. Evidence in the record indicates co-located FSRs spend approximately 10 percent of their time addressing material management issues.

In response, the customer's management considered moving the aircraft to a different location where several 767-300s were undergoing major modifications. The customer hoped to minimize out of service time by combining the repair with additional unrelated modifications. However, in order to fly an aircraft with a recognized issue such as the cracked pylon, the customer must receive "no technical objection" clearance from the Employer. Here, Hirsch discussed the information needed by the Employer for the clearance with the customer's engineer, who created a technical drawing of the pylon to submit to the Employer. Hirsch received the drawing, submitted the information to the Employer using the Boeing Communication System tool, and the following day obtained the clearance for the customer. However, the customer's modification center rejected the idea of performing the modification and repair at the same time, thereby obviating the need for clearance to fly the plane to the customer's modification facilities and resulting in the customer repairing the aircraft at its present location.

Hirsch, who has a MS in Mechanical Engineering, and the customer's engineer, in discussing the problem, developed an idea for a potential temporary fix, essentially a small "bathtub" shaped piece to fit within the confines of the bulkhead and provide the necessary support to the area surrounding the crack. When a service request was submitted to the Employer, Hirsch and the customer's engineer included their proposal, which the Employer approved. However, as the mechanics removed the surrounding housing to prepare to fix the crack, they discovered a series of additional cracks. The customer's engineer reviewed the additional cracks first, and then brought Hirsch to the aircraft to observe the additional damage. Hirsch knew that a service bulletin existed, stating the pylon should be checked for cracking every 1,500 operating hours, but this particular aircraft had significant cracking only 800 operating hours after the last check. Accordingly, Hirsch identified this as a potential issue for the entire 767-300 fleet, escalating the significance of the issue dramatically.

Due to the serious nature of the discovery, Hirsch convened a conference call with the Employer's Service Engineering, Design Engineering, and Safety departments, and with the customer's liaison engineering, engineering management, and managing director of operations. During the call, Hirsch advocated for inspecting all 767-300s, but all parties had input, and ultimately it was determined the next step would be that night to inspect a sample group of ten of the customer's 767-300s of a similar age and service hours.³⁴

During the inspection, two of the ten aircraft were found to have unexpected cracking. A second conference call was convened the following day with the same participants, FAA representatives, and additional engineers from the Employer and the customer. During this call, the Employer's engineers confirmed the problem was not catastrophic, a repair timetable of 20 days was agreed upon, and the inspection was expanded to the entire 767-300 and 767-200 aircraft in service with the customer. During the call it became apparent service engineering was likely to develop a service update shortening the inspection period from 1500 hours to 800 hours.

Following the meeting, Hirsch became concerned that Employer service engineering would issue a service bulletin requiring mechanics to remove sealant, inspect, and reapply sealant at 800 operating hours. Hirsch recognized this would potentially create economic and technical problems for his customer, as reapplied sealant had to set for 24 hours before operating the aircraft. This was not a problem at the 1500 hour point, as the aircraft was out of service and in a hanger for maintenance, but the scheduled maintenance at 800 hours took

³⁴ Most aircraft do not operate overnight and have a period of overnight maintenance, including inspection.

place while the aircraft remained in service. Hirsch recommended a brush-and-repaint solution to Employer service engineering, avoiding the sealant issue, a recommendation that was incorporated in the final service bulletin.

Following the second conference call, Hirsch and the customer's engineers continued to discuss a fix for the problem. They came to an agreement that the pylon was unlikely to be fixed correctly unless it was repaired on the same machine that made the pylon. Consequently, the pylon was removed and sent to the manufacturer (not the Employer), where the repair was completed with the assistance of the manufacturer's on-site Employer representative and representatives from the Employer's service engineering department. Hirsch was not present during the manufacturer's repair.

However, when the pylon returned from the supplier, two more issues arose; one involved aligning fittings and one involved holes that were misdrilled during the customer's installation of the repaired part. Regarding the fittings, when the problem was identified by one of the customer's structural engineers, he approached Hirsch. Hirsch knew of a service bulletin that addressed an equivalent fitting that was adjustable and, after locating some of the equivalent adjustable fittings, provided them to the customer's engineer.³⁵

At the same time, another of the customer's structural engineers contacted Hirsch and requested his assessment regarding whether several holes, drilled in preparation for installation of the repaired pylon, but several 1,000ths of an inch over the maximum allowable deviation, required further attention. Hirsch stated that he would contact the Employer's service engineering department, but he could guarantee the answer would be that the deviation was unacceptable. Hirsch and the customer's structural engineer then located a service bulletin issued by the Employer stating what to do in the event holes were drilled beyond the maximum allowable, and began preparing the fix. When the answer was received from the Employer, stating the deviation was unacceptable, the fix was ready to be given to the customer's mechanics. That fix was implemented and the aircraft returned to service.

b. Slat Asymmetry

Hirsch provided another technical support example involving slat asymmetry. Slats are control surfaces arrayed on the wings of the aircraft, designed to move up and down in unison. When the slats are not moving symmetrically, the cockpit is notified by a warning system. The customer began receiving a number of these warnings, and as a first step contacted the Employer's service engineering department. Service engineering had the customer review any existing service bulletins involving the slats to ensure compliance. The customer did so, but the problem continued.

At this point Hirsch was brought in to work on the problem. He discussed the issue with the ASE assigned to the customer, and they concluded that other airlines possibly could have had a similar experience at some point. Hirsch then utilized My Boeing Fleet to research the possibility. Hirsch found reference to an issue that looked similar, and he contacted the co-located FSR with this other airline. After speaking to Hirsch, that FSR reviewed the situation and reported back that the problem was indeed similar. The other airline had determined in its experience that a connection in a wire harness tended to corrode and give incorrect signals, and that the problem was resolved by replacing the existing connection with a gold plated

³⁵ Hirsch did not recall if this change was of the type that required approval from Employer service engineering. To the extent it did, he contacted service engineering and gained approval.

connection. Hirsch passed this resolution on to his customer, and it was implemented. To Hirsh's knowledge, the problem has been resolved.

c. Inlet Cowl O-Ring

Hirsh also testified about a technical situation involving the heating system for an inlet cowl, a piece on the front of a 767's engine intake. The extreme low temperatures of altitude can cause ice to form on the engine intake, so the cowl around the intake is heated to prevent icing. The system as designed brings excess hot air from the engine to the inlet cowl and directs the hot air to the proper location by a series of holes in the tubing. Hirsch was notified of an issue with the heating system when his customer removed the inlet cowl housing during non-routine maintenance and discovered the tubing to direct the air had fallen off because of a degraded o-ring in the system. The customer's engineering department addressed the acute issue independently, but notified Hirsch because the Employer's maintenance plan documents did not instruct the customer to inspect the o-ring at any point. As the o-ring clearly needed scheduled inspection as it could degrade, Hirsch verified the oversight in the Employer's maintenance plan document and contacted the Employer's service engineering.

Service engineering, through a "relatively young and inexperienced" engineer according to Hirsch, replied that the maintenance plan document did call for inspection. Hirsh explained to the engineer that the document called for a visual inspection of the area, but the o-ring was contained within the cowl substructure, so the scheduled visual inspection could not verify the condition of the o-ring. Service engineering continued to resist changing the maintenance document, so Hirsch submitted an annotated collection of photographs. Service engineering eventually recognized the problem, and added a specialized inspection to the maintenance plan document.

d. Scribe Line

Co-located FSR Robert Hess testified regarding an incident involving a crack in an aircraft's fuselage, referred to as scribe line damage, where he acted as a technical advisor. As described by Hess, he was contacted by one of the customer's structural engineers, who requested Hess view a crack that had been discovered in one of the customer's 737s. Hess viewed the crack, recognized the situation as serious, and took pictures and measurements. With the customer's engineers, he compiled a report and submitted it to the Employer's service engineering department using the Boeing Communication System. Service engineering contacted Hess with additional questions, but at a certain point, service engineering determined the problem was serious and complex enough to have the affected piece of the fuselage removed and sent to the Employer in Seattle for further testing. After testing, the details of which were outside the knowledge of Hess, it was determined that some maintenance was being performed with metal tools instead of wooden or plastic, and that the metal tools caused microscopic fractures that over thousands of pressurizations and depressurizations expanded into the crack initially reported to Hess. Hess did not indicate any further involvement with the issue.

e. Wingtip Lights

Employer engineer David Topping testified about a technical problem regarding the wingtip lights on the 777-200 and 777-300 models.³⁶ According to Topping, the covers to the lights, which protect the internal electrical components from exposure to the elements, tended to become damaged over time. When this occurred, the aircraft could not be operated until repaired, not because the lights were a critical function, but because the lack of a cover exposed the aircraft's electrical system to the elements.

Although the record does not disclose exactly how the Employer's service engineering came to work on the problem, it appears a customer brought the issue to the Employer and a team of engineers, including Topping, worked on the problem. Topping testified that during the process, the customer's co-located FSRs informed service engineering that, from the FSRs' observations, the problem was due to the sealant on the covers degrading. Based on the FSRs' observations, service engineering developed a fix to replace the sealant. The co-located FSRs, however, returned to service engineering and informed them that the proposed fix, a 48-hour process to be done in the field, presented both economic and technical problems to customers. The economic problem arose because the 48-hour process meant the aircraft had to be taken out of service, whereas the technical problem involved a complex fix for remote customer locations with limited maintenance capabilities. The FSRs proposed a short-term fix, essentially leaving the light non-functioning but securing the cover with tape to avoid time-consuming re-sealing.

The suggestion was implemented, and permission was obtained for a deviation so that the aircraft could operate without a functioning wingtip light. The FSRs were also involved in the long-term solution, working with a vendor to develop an additional clear protective cover, which prevented the sealant from degrading, and thereby alleviating the root cause of the problem. The details of the FSRs' participation in the vendor's process are not contained in the record.

f. Tire Pressure Gauge

Deputy Fleet Chief Topping also testified regarding a change in a 777 tire pressure gauge that was assisted by a co-located FSR. An Employer multi-disciplinary review committee (Design Engineering, Service Engineering, and Fleet Support Engineering) faced a problem wherein the gauge was repeatedly failing because two connectors, between the tire gauge to the cockpit display, were separating.³⁷ The committee's initial recommendation was to increase the torque on the connection, to prevent the separation from occurring. According to Topping, it was the FSR for the customer involved who noticed that the gauge would sometimes restore functionality on its own after the airplane was on the ground for a long time. The FSR reviewed the situation and recommended to engineering that perhaps the metals in the connector were thermally reacting and beginning the separation on their own, and that instead of simply increasing the tightening, the connector should also be held with safety wiring. According to Topping, the FSR's recommendation was incorporated into the final engineering solution.

³⁶ At the time of the pre-election hearing in 19-RC-15372, Topping occupied the position of Deputy Fleet Chief and was a member of the engineering unit.

³⁷ The details of how the problem came before the committee and how the committee was called together, are not contained in the record, but the Employer's response to the problem is consistent with it receiving a service request.

g. Restrictor Valve

Intro rep Andrew Somers testified regarding a specific problem he faced while in the field as an intro rep with a customer receiving an aircraft order of 27 777-300s.³⁸ According to Somers, within the first few days of operation, at least one crew reported that, when in flight, a galley drain was backing up and flooding part of the aircraft's passenger compartment. The report was first delivered to maintenance when Somers was not on site, and the customer's maintenance crew independently removed the drain, found a broken wire, and replaced the broken wire. The flooding happened again on the next flight. Contacted at this point, Somers began troubleshooting with the customer. They flushed the drainage system and checked the heating and insulation elements in the system. The aircraft was placed in simulated flight mode in an attempt to replicate the situation. Somers also reviewed the relevant maintenance manual and the fault isolation manual. Failing to find a solution locally, a service request was generated and sent to the Employer.

Employer representatives in service engineering, in consultation with Design Engineering, worked with Somers and the customer to identify the problem, a restrictor valve that was freezing in flight. Service engineering developed the temporary fix of locking the valve open, but a team was dispatched to the airline to continue to work on the problem. That team's involvement and resolution of the problem eventually extended beyond Somer's assignment as an intro rep with that customer.

h. Meetings

ASE Dominique Fontana and Deputy Fleet Chief Dave Topping, both members of the engineering unit, described their coordination with the FSRs for executive review meetings, which are meetings with the customer's executives and engineers, and technical review meetings, which are with the customer's engineers. Both Fontana and Topping testified that prior to each of these meetings, the FSR will participate in developing an agenda, developing solutions and reviewing the presentation. During the meetings the FSRs and the representatives from service engineering are active participants.³⁹

In her testimony, Fontana also described the FSRs' role in technical support from the perspective of the ASE. She described how service engineering, usually the ASE, has a daily phone call, Monday through Friday at 8:00 a.m., to prioritize service requests, and a Friday "issues meeting" with the FSR designed to coordinate problem solving for the customer. She described her position as essentially similar to that of a co-located FSR, but located with the Employer. According to Fontana, both FSRs and ASEs are advocates of the customer in the Employer's organization, and they work together whenever they are solving a problem for the customer.

4. Contact and Interchange

The previous sections addressing the FSRs functions and the functional integration of the Employer's technical support system have illustrated much of the contact between the FSRs and the engineering unit. Taken as a whole, the record identifies co-located FSRs have daily contact with service engineering in their morning call, several additional regularly scheduled

³⁸ The example provided occurred while Somers was on assignment in Southeast Asia. Only domestic FSRs are at issue in this case, but the example is illustrative and the location is not material.

³⁹ The regularity and/or frequency of these meetings were not clearly set forth in the record but it would appear that the regularity is significant.

phone meetings, and additional contact based on the number of service requests submitted, which FSR Hirsch estimated averaged perhaps 3 to 4 per week.

Those FSRs who work in the field return to Seattle, or Long Beach, regularly. FSRs spend 1 week per year, "business week," in Seattle or Long Beach visiting the service engineers with whom they interact, and their management. Intro reps return to Seattle and work for several months after concluding a field assignment.

Regarding interchange, the record demonstrates transfers both temporary and permanent, and both to and from the voting group sought and the engineering unit. Temporary transfers into the FSR position, also referred to as FSR "backfills," are commonly filled by engineering unit positions such as ASEs. The record reveals engineering unit positions have backfilled approximately 70 percent of FSR vacancies between 2006 and 2011.

Regarding temporary transfers by FSRs into engineering unit positions, this also takes place. As indicated above, 7 of the 29 intro reps are currently assigned to the ground operations engineer position, a position in the engineering unit. The record also contains other anecdotal evidence. Hess, for example, testified that following completion of his first base training in 2001, he served as an ASE for several months. On the other hand, the record also reveals that approximately another 8 of the 29 intro reps are currently/temporarily assigned to work in the technical bargaining unit, as flight analysts.

Regarding permanent transfers, the record reveals approximately 20 percent of FSRs previously held positions within the engineering unit prior to their FSR position. The record does not contain information regarding FSRs leaving their FSR position to take permanent positions in the engineering unit. Further, the record does not contain evidence showing the number or percentage of employees who permanently transferred from non-engineering positions into FSR positions or of FSRs who have permanently transferred into non-engineering positions.

5. General Working Conditions

a. Pay

The Employer utilizes the same Salaried Job Classification (SJC) system for all salaried employees, which includes all FSRs and the employees in the engineering unit. The SJC system results in each classification of salaried employee having a four digit alphanumeric job code; the code reflects the position's purpose, the tasks performed, and the amount of accountability. The first two letters in a job code are referred to as the "occupation," and the second two (which includes a number and a letter) the "job family." In addition to a job code, each salaried employee also has a numeric level within their respective position, with each increasing number designating an increase in ability. Job codes and levels are cross-referenced with the appropriate salary table to determine an employee's salary. The salary tables incorporate four geographic regions, to reflect the different cost of living in those regions.

All FSRs are classified under the same job code, GEC7, where the "GE" designates an employee performing product support in Field Service and the "C7" designates a specific job family within BCA and a level of accountability. FSRs are employed at levels 3, 4, and 5, dependent on ability. Several engineering unit classifications are also "G" classifications, including: "GB," Engineering & System Support Analysis; "GF" Retrofit, Repair, Modification and Maintenance; "GJ" Engineering Customer Support; "GK" Flight Operations Services; and "GL"

Integrated Support Planning & Management.⁴⁰

The record further reveals that several technical unit positions are also classified in the GB, GF, GJ, GK, and GL occupations, as well as “GD” Technical Publications, and “GG” Customer Training occupations. In total, 17 technical unit positions have or begin with the “G” designation.

The record contains evidence regarding salary ranges for both the FSRs and the engineering unit in the aggregate. In the Seattle metropolitan area, FSRs at level 3 have a salary minimum of \$54,000, a mid-point of \$77,000 and a salary maximum of \$96,000. At level 4 FSRs have a minimum salary of \$69,000, a mid-point of \$98,000 and a maximum salary of \$123,000. At level 5 FSRs have a minimum salary of \$87,000, a mid-point of \$124,000 and a maximum of \$155,000. Some co-located FSRs in higher-cost areas are compensated on a salary table approximately 3 percent higher; some in lower-cost areas are compensated on a salary table approximately 3 percent lower.

Eight classifications in the engineering unit are paid on the same scale as FSRs. For example, level 4 maintenance engineers in the Seattle metropolitan area, have a minimum salary of \$69,000, a mid-point of \$98,000 and a maximum salary of \$123,000, identical to that of level 4 FSRs. One classification of engineer is paid at a lower rate than FSRs, and approximately 30 classifications are paid at a higher rate; approximately 11 to 15 percent higher than FSRs. Several engineering unit positions also have a level 6, which correlates to higher pay, resulting in the highest paid engineers earning approximately 25 percent more than the highest paid FSRs.⁴¹

For the purpose of overtime and premium pay, controllers receive the same treatment as employees in the engineering unit. Both groups, while salaried, receive \$6.50 an hour plus straight time for all hours over 40 in a week and shift differentials for second, third, and weekend shifts. FSRs are salaried employees and appear exempt from overtime requirements as administrative employees under the Fair Labor Standards Act (FLSA).

b. Benefits

FSRs receive the same benefits as employees in the engineering and technical units, including medical, early retiree medical, dental, short-term disability, long-term disability, life insurance, and others.⁴² The Employer also operates several defined-benefit and defined-contribution retirement plans. Eligibility and participation in these plans vary, with date of hire being the primary factor.

⁴⁰ Ten classifications in the engineering unit begin with a “G” designator: GBA1, Engineering & System Support Analysis System Support Engineer; GBA2, Engineering & System Support Analysis Maintenance Program Engineer; GBA3, Engineering & System Support Analysis Maintenance Engineer; GFD1, Retrofit, Repair, Modification and Maintenance Retrofit & Repair Engineer; GJF1, Engineering Customer Support Customer Support Engineer; GJF2, Engineering Customer Support Service Engineer; GKF4, Flight Operations Services Flight Operations Engineer; GKF5, Flight Operations Services Flight Technical Data Engineer; GKF6, Flight Operations Services Flight Simulator Design Engineer; and GLG1, Integrated Support and Planning & Management Support and Planning and Management Engineer.

⁴¹ As may be expected based on the Employer’s system, changing the geographic region does not significantly change the results. The highest earning engineering unit employee in Southern California earns approximately 22 percent more than the highest paid FSR in Southern California.

⁴² The parties stipulated that the benefits listed are identical for FSRs and the employees in the engineering unit.

c. Hours of Work

FSRs work varying schedules which are largely dictated by customer needs rather than the Employer's needs. For instance, co-located FSR Hirsh testified that he works 9 days every 2 weeks, and 9 hour days beginning at 7:30 a.m., while his fellow co-located FSR at the same customer site works a later schedule, which expands the hours an FSR is available to the customer during its operations and/or when its needs are likely to be greatest. Co-located FSR Creighton testified that he works between 7:00 a.m. and 4:00 p.m. at his assigned customer location so that his hours conform to those of the customer's airline engineers.

The 29 intro reps work long hours when on assignment, usually working shifts of over 12 hours and weeks of over 5 days, followed by a period of recuperation when the assignment is complete. Intro rep Somers testified he typically works 12 to 16 hours per day, 7 days a week for 3 months when he is on assignment.

The Seattle Support Center operates 24 hours a day as it services customers worldwide. The eight FSRs assigned to the Seattle support Center match their hours of work to cover the working hours of their customers. The BOC is similarly a 24-hour operation, and the FSRs and engineering unit employees in the BOC work the same variety of schedules.

d. Work Location

As noted above, FSRs are dispersed over a wide geographic range; co-located FSRs alone are assigned to over 20 separate locations in the United States outside of Seattle. At the time of the hearing, approximately 40 to 43 percent of FSRs were located at work locations outside Seattle.⁴³ With the exception of the 15 controllers, all FSRs are part of the Employer's Field Service division. Therefore, the unique procedures utilized by Field Service in hiring, training, and assignment play a significant role in determining the work location of many FSRs. As noted above, the Employer also has assigned the vast majority of its FSRs to customer locations outside the United States but neither party asserts those foreign located FSRs should be included in any unit found appropriate herein. The BBJ FSRs also work out of their respective homes, rather than from an Employer location.

The engineering unit employees are largely located in the Seattle area and at Edwards Air Force Base. However, unit engineers also include employees in Utah, Oregon, and in Washington outside the greater Seattle area. Engineers on travel status from these covered locations are also included, and the record indicates engineering unit employees are temporarily assigned to other locations. The Employer's Domestic Temporary Assignments (DTAs) can last up to 2 years in length.

For example, in April of 2010, provided as a sample, 69 (approximately .5 percent) of the employees in the engineering unit were on DTA outside the regular boundaries of the engineering unit: 28 employees in South Carolina, 22 in Eastern Washington, 12 in Texas, 3 in Maryland, 2 in Pennsylvania, 1 in Arizona, and 1 in Kansas. In October of 2010, also provided as a sample, 64 employees in the engineering unit were on DTA outside the regular boundaries of the engineering unit: 20 employees were on DTA in Eastern Washington, 14 in Texas, 14 in Maryland, 11 in South Carolina, 2 in Arizona, 2 in Hawaii, and 1 in Pennsylvania.

⁴³ The 40 – 43 percent figure is artificially low because the documents in the record identify the "work location" of the intro reps as Seattle. While this is accurate due to the current state of the 787 and 747-800, in practice intro reps spend most of their working time in the field. If the intro reps are considered to have a work location outside Seattle, then the percentage of FSRs with work locations outside Seattle would be between 50 percent and two-thirds of the FSRs.

In addition to the engineering unit of approximately 13,600 employees, the Employer additionally employs 21,000 plus unrepresented engineers employed outside the contractually defined geographic scope of Petitioner's engineering unit. These non-unit engineers include the Employer's McDonnell Douglas operations in Long Beach, California where FSRs also interact and have contact with non-unit engineers and others in providing support services for customers of McDonnell Douglas aircraft, as with Boeing aircraft. However, the parties did not detail the extent and nature of such interaction, contact, interchange, and/or functional integration with these unrepresented engineers. Presumably, FSR interaction, contact, interchange, and/or functional integration with unrepresented engineers in the McDonnell Douglas operations are similar in nature and extent to the community of interests factors at issue here with regard to the FSRs and engineering unit.⁴⁴

e. Length of FSR Assignments

While it is not abundantly clear from the record, the parties in their briefs appear to agree that the Employer limits the length of time (e.g., 5 years) all FSRs serve in any one position, at any one location, and/or with any one customer.⁴⁵ The purpose of such limits is to insure that FSRs move about and acquire new experiences, knowledge, and skills beneficial to advancing the Employer's Field Service operations and/or objectives. The parties did not submit evidence to establish that the Employer requires engineering unit employees or unrepresented engineers to change assignments after a specified time anywhere near the extent and nature required of FSRs.

6. Common Supervision

Shared supervision is limited within the FSR group, and very limited between FSRs and the engineering unit. In regard to the FSRs, first line supervision is varied.

The 37 co-located FSRs report at the first level to one of three Regional Directors: Regional Director Morgan Standbridge in Dallas, Texas; Regional Director James Russell in San Francisco, California; and Regional Director Carlos Barrea in Seattle, Washington.⁴⁶ The Regional Directors in turn report to Mike Didonato, Director of Field Service. Didonato reports to the Vice-President of Technical Customer Support Division. The eight FSRs in the Seattle Support Center are similarly part of Field Service and report to the same supervisory hierarchy as the co-located FSRs. At none of the levels noted above do FSRs share supervision with engineering unit employees.

The 29 intro reps do not report to the Regional Directors in the manner of a co-located FSR or a Seattle Support Center FSR. Rather, intro reps report to Field Service Introductions Manager Dave Bizar. Bizar is part of the 787/747-800 Entry-into-Service organizational structure and does not supervise any engineering unit employees. At the time of the hearing, seven intro reps were on loan to the engineering unit and, in these loaned positions, share common supervision with engineering unit employees. The eight intro reps on loan to the

⁴⁴ The record further reveals that co-located FSRs not only tailor their work schedules to that of their respective customers, co-located FSRs also tailor their work attire and security practices and forms of identification to meet customer norms, policies and/or procedures.

⁴⁵ That is, the limits are not just applicable to the 37 co-located FSRs assigned to customer sites in the United States and the approximately 134 co-located FSRs assigned to customer sites located outside the United States but are applicable to the remaining 55 FSRs in the petitioned-for voting group.

⁴⁶ Whether the 12 Team Lead FSRs constitute a first line of supervision for co-located FSRs is an issue here and is addressed in the following section.

technical unit share common supervision with technical unit employees.

The 15 controllers in the BOC are not part of Field Service, but service engineering, and therefore report to that supervisory hierarchy, ultimately reporting to Director Lynne Thompson, who is responsible for service engineering in Seattle and Long Beach. At the first level, the controllers in the BOC are supervised by a shift manager, who supervises not only the controllers, but also BOC engineering unit and technical unit employees on any given shift. However, the controllers also have a designated manager, Rick Cates, who is responsible for scheduling only the controllers.

The three BBJ FSRs located in the Employer's sales organization are distant from the other FSRs organizationally. While their duties may be similar, they do not share common supervision below the very top levels of management with other FSRs and at any significant level with engineering unit employees.

Due to the large size of the engineering unit and the complexity of the Employer's organization, many layers of supervision exist between various employees in the engineering unit. For example, Petitioner notes the engineering unit employees supervised by supervisor Michael Douglas Brunner and the engineering unit employees supervised by supervisor Ward Edward Barcafer do not have a common supervisor until eight levels of supervision above them.

D. Team Lead FSRs' Duties and Responsibilities⁴⁷

Twelve co-located FSRs and one intro rep are classified by the Employer as Team Lead FSRs. Where more than one co-located FSR is placed with a customer, one FSR in that team is designated the Team Lead FSR.⁴⁸ The number of FSRs working with a Team Lead varies, one Team Lead FSR works with 5 other FSRs, but many work with only one or two.⁴⁹

Team Lead FSRs perform the work of a co-located FSR, as previously described, but they also have additional responsibilities. According to Director of Field Service Didonato, who supervises the Regional Directors who in turn supervise the co-located Team Lead FSRs, the additional responsibilities of the Team Lead position include: assigning work including scheduling; ensuring the customer base operates in compliance with the Employer's policies and procedures; and ensuring FSRs' professional development. In addition, according to Didonato, the Team Leads also make recommendations to the Regional Directors in regard to performance evaluations and discipline. The Team Lead is the primary point of contact at the base for the Employer's management.

1. Assign/Schedule

Didonato acknowledged that the "normal" or "root" basis for assigning work at a customer base is to divide the work by aircraft model; each FSR has responsibility for certain

⁴⁷ Testimony regarding Team Lead's duties and responsibilities was largely provided by Director of Field Service Didonato, Regional Director Morgan Standbridge, Team Lead FSR Paul Creighton, and FSR Hirsch.

⁴⁸ The record does not address the details of the intro rep Team Lead FSR position.

⁴⁹ Team Lead FSR Thana Alusi in Atlanta, Georgia, is on-site with a team of 5 other FSRs. Team Lead Timothy Ranta in Tulsa, Oklahoma, and Danny Bays, in Tukwila, Washington, are each on-site with 3 other FSRs. Team Leads Gary Small in Louisville, Kentucky, Michael Wieland in Memphis, Tennessee, and Eric Root in Dallas, Texas are each on-site with 2 other FSRs. Team Leads Eugene Fales in Fort Worth, Texas, Paul Creighton in Minneapolis, Minnesota, and Michal Kocian in Houston, Texas, are each on-site with one other FSR. Co-located FSRs in Miami, Florida (Clive Green), Elk Grove, Illinois (Michael Heit), and SeaTac, Washington (Bruce Flothe), while identified as Team Leads, presently are not working with any other FSRs in their respective locations.

models used by the customer. However, Didonato also stated the Team Leads will decide how to “divide the work up amongst the FSRs,” or in the alternative, if they do not actually assign the work, they will set up the system whereby work will be distributed. Didonato also testified that if an emergent issue needed immediate attention and the FSRs were in disagreement regarding work assignments, the Team Lead FSR would have final say. Regional Director Standbridge described the assignment process as a collaborative process between him and the Team Lead FSR at the customer base, which in turn leads to the Team Lead deciding, based on a “judgment of the skill set that they have, what the [FSRs] particular strengths and weaknesses are...,” what work to assign to the employees at the base. However, no concrete examples of Team Leads exercising independent judgment in regard to assigning or scheduling are detailed in the record.

Moreover, FSR Hirsch testified that when he initially arrived at his current assigned customer base, he discussed with his Team Lead, the only other FSR assigned to this base, how work would be assigned. Specifically, they agreed to work staggered schedules and simply address all issues that were raised during their scheduled time. FSR Creighton’s testimony was similar. While Didonato referenced scheduling as an additional duty of the Team Leads, the record appears to reflect that the actual process in practical application is a collaborate process involving the FSRs located at the customer site. However, that collaborative process is further limited or restricted in that assignments are determined in significant part at the customer site by the customer’s scheduling and operational needs.

2. Evaluate/Hire

In regard to performance evaluations, Director of Field Service Didonato described a process in which the Employer’s Regional Director conducts the evaluation and decides what rating an FSR should receive under the Employer’s performance management process. That rating factors into an FSR’s annual salary determination. The record does not elaborate or detail what other factors are considered in the salary determination. In any event, the Regional Director relies on the Team Lead’s assessment or input regarding whether the FSR has “achieved goals and objectives,” although the Team Lead FSR does not make an actual recommendation. Regional Director Standbridge testified that when he assesses FSR performance, he always seeks the Team Leads’ input due to their first hand knowledge of an FSR’s performance. However, Team Lead Creighton testified he does not evaluate the other FSRs with whom he works. Moreover, the Employer provided no concrete examples of Team Lead’s effectively impacting the job status of FSRs with respect to their annual performance evaluations or salary determinations.⁵⁰

Didonato and Standbridge further testified regarding the Team Leads’ role in evaluating trainees upon their concluding the mandatory 90-day First Base Training program applicable only to FSRs. The nature of First Base Training is such that it works as a probationary period for new FSRs. At the end of training, a trainee could be accepted or rejected for a permanent FSR position. The record reveals that the Team Lead FSR completes an “assessment of scoring,” which plays a role in whether a trainee is accepted or rejected. Didonato testified the Team Lead could make a recommendation to the Regional Director and Field Service management, but Didonato was not aware whether any Lead ever actually made a recommendation of this nature. Standbridge testified the Team Lead completes an on-site assessment that is reviewed by the Regional Director and Field Service management. However, the Employer did not provide testimonial or documentary evidence detailing the full

⁵⁰ Creighton has been a Team Lead FSR since about July 2008.

extent and nature of the review conducted by the Regional Director and/or by Field Service management. Further, the record does not reveal whether the Employer's Regional Director and/or Field Service management are able to effectively negate a positive or negative assessment of a trainee's training performance by a Team Lead in terms of whether a trainee is accepted or rejected for a permanent FSR position. Indeed, there are no concrete examples in the record of a Team Lead effectively accepting or rejecting a trainee following the conclusion of the FSR training program.

3. Discipline

While Didonato ascribed a similar role to the Team Leads in regard to discipline as with the evaluation process described above (i.e., providing the Regional Director with information on which the Regional Director takes action), the Employer did not provide concrete examples of this role, whether the role resulted in effective recommendations, and/or whether independent investigations beyond the Team Lead's role were involved. Moreover, Lead FSR Creighton testified he does not discipline or recommend discipline regarding the other FSRs with whom he works.

4. Train

Team Lead FSRs assist in First Base Training. Specifically, Standbridge testified the Leads are provided a syllabus or checklist of tasks to complete with a FSR trainee during the training process. Team Lead Creighton testified in detail regarding training he provided a FSR trainee. According to Creighton, during training he primarily helped the trainee become familiar with the Boeing Communication System and the Employer's various manuals, and oversaw a project provided to the FSR trainee by the customer's engineers. As described by Creighton, the customer operated 747s that were delivered at two different times, and that had interchangeable, but different, headsets at various doors in the aircraft. During routine maintenance, the headsets had become mixed and the customer wanted a record of the headsets' native positions. The FSR trainee used the Employer's illustrated parts catalog and developed a matrix that displayed the requested information. Creighton and the FSR trainee presented this information to the customer and the customer was satisfied.

III. Analysis

A. Parties' Respective Positions

Petitioner seeks an *Armour Globe* election, whereby the voting group of non-professional FSRs would decide whether to be represented by Petitioner in the existing bargaining unit of engineering professionals. Petitioner argues an *Armour Globe* election is permissible here because the FSR voting group is an identifiable and distinct segment of the workforce and also shares a community of interest with the existing engineering bargaining unit. Further, Petitioner also seeks a *Sonotone* election among the existing engineering bargaining unit to determine whether they wish to include the non-professional FSRs in the existing unit, as I found in my Decision and Conditional Order in Case 19-RC-15372 that the FSRs are not professional employees within the meaning of § 2(12) of the Act.

The Employer opposes an *Armour Globe* election on the basis that a community of interest does not exist between the voting group of FSRs and the engineering unit. The Employer also argues an *Armour Globe* election is inappropriate because the FSRs are not engineers and are outside the geographic scope of the engineering unit. I consider these

arguments properly considered within the community of interest framework and have addressed them accordingly below. Moreover, the Employer is willing to proceed to an election in a stand-alone unit composed only of the petitioned-for FSRs.

B. General Legal Standards

The typical question presented in a Board election is simply whether employees wish to be represented by a labor organization. However, the Board will, under some circumstances, conduct an election that asks employees a question regarding unit placement, referred to as a self-determination election, or an *Armour Globe* election, as *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937) and *Armour & Co.*, 40 NLRB 1333 (1942), form the basis for this line of Board decisions. An *Armour-Globe* self-determination election permits employees sharing a community of interest with an already represented unit of employees to vote whether to join that unit. See also *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990).⁵¹

Although the Board will usually determine first whether the petitioned-for employees constitute a separate appropriate unit, the Board has also held that a self-determination election is the proper method by which a union may add unrepresented employees to an existing unit, if those employees share a community of interest with unit employees and constitute an identifiable, distinct segment so as to comprise an appropriate voting group. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

Here, neither party contests whether the petitioned-for voting group of the Employer's FSRs working and employed in the United States, constitute either an identifiable, distinct segment so as to comprise an appropriate voting group (Petitioner's position) or a separate appropriate bargaining unit (Employer's position). Indeed, based on the record as a whole, I find that the petitioned-for FSRs do constitute an identifiable, distinct segment of the workforce such that their participation in an *Armour Globe* election is appropriate, assuming, arguendo, they share a sufficient community of interest with the existing unit of professional engineers represented by Petitioner.

In light of the above, I now move to an analysis of the community of interest issue.

C. Community of Interest Factors

In determining whether a proposed unit is appropriate for collective bargaining, consistent with § 9(a) of the Act, the Board's "focus is on whether the employees share a 'community of interest.'" *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 9 (2011), quoting *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). In determining whether a group of employees possesses a community of interest, the Board examines such factors as:

⁵¹ Another instance where the self-determination process is commonly used is in regard to bargaining units consisting of "professionals" as defined by § 2(12) of the Act. § 9(b)(1) of the Act prohibits the inclusion of professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. A *Sonotone* election, so named after the lead case, *Sonotone Corp.*, 90 NLRB 1236 (1950), is held to meet the requirements of § 9(b)(1). In a *Sonotone* election, the professional employees are asked first whether they desire to be included in a group composed of nonprofessional employees, and second, their choice with respect to a bargaining representative. If the professionals answer "Yes" to the first question, their votes are to be counted with those of nonprofessionals. If the answer is "No," their votes would be counted separately to decide which labor organization, if any, they wish to represent them in a separate unit. *Centralia Convalescent Center*, 295 NLRB 42 (1989). The *Sonotone* election therefore determines both the representation question and the unit placement question regarding a mixed unit of professionals and non-professionals.

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment and are separately supervised.

Specialty Healthcare at 9; quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002). "Bargaining history" is not often enumerated as a traditional community of interest factor. Unlike the other factors, bargaining history does not exist in every case, but where it does exist, the Board has been clear that bargaining history is a relevant and substantial factor in the community of interest analysis. *Canal Carting, Inc.*, 339 NLRB 969 (2003); *Ready Mix USA, Inc.*, 340 NLRB 946 (2003). Accordingly, I will also consider the factor of bargaining history in reaching my findings below.

Before turning to an analysis of the community of interest factors listed above, I note Petitioner relies heavily on the Board's decision in *Lockheed Aircraft Corp.*, 202 NLRB 1140 (1973). There, the Board addressed the appropriateness of a self-determination election among professional and non-professional employees in the aircraft industry, and as such it has some appeal as an analogous case. However, in *Lockheed* the Board merely addressed the statutory question of whether § 9(b)(1) of the Act, dealing with professional employees, precluded the election sought. The Regional Director in the *Lockheed* case found a substantial community of interest between the existing unit and the voting group and only prohibited the election on the basis of § 9(b)(1).⁵² In addressing the community of interest, the Board stated in passing "That the employees in these two classifications share a substantial community of interest with engineering unit employees...is amply supported by the record," and indeed would have found them an accretion absent the bargaining history.⁵³

While *Lockheed* does involve a petition for an *Armour Globe* election, an existing engineering unit, and the aircraft industry, these similarities alone are not enough to make that case controlling here. Specifically, the facts related to the community of interest factors in *Lockheed* are distinguishable from the record in the instant case. Moreover, the statutory nature of the *Lockheed* analysis precludes application to the record before me. However, because *Lockheed* is central to Petitioner's arguments, in the following sections I have noted where the facts of *Lockheed* and the instant case diverge.

1. Bargaining History

In the instant case the Employer argues, on three grounds, that the bargaining history of the parties' precludes an *Armour Globe* election. The grounds are: (1) the bargaining history establishes a defined geographic scope to the existing unit of engineers; (2) the bargaining history establishes the unit consists exclusively of engineers; and (3) bargaining history should be given greater weight than the other community of interest factors. I have addressed these three arguments in turn. In this section on bargaining history, I have also addressed a waiver argument raised by Petitioner and attributed to the Employer.

⁵² The existing unit in *Lockheed* was a mixed professional and non-professional unit; accordingly the *Sonotone* election potentially present here was not at issue in that case.

⁵³ Petitioner states on brief "*Lockheed* establishes (the seemingly self-evident point) that non-professionals can share a 'substantial community of interest' with engineers despite [the difference in their professional status]." That two such groups *could* share a community of interest is not in dispute.

As for the Employer's first argument, the Employer notes that in its infancy, the existing bargaining unit was limited and/or defined by its geographic scope, Washington State, and the sole exception, Edwards AFB, occurred only because employees were transferred from Washington State to Edwards AFB. In support of this argument, the Employer further notes that when an engineer transfers between represented and unrepresented positions, geography is the factor that determines the engineer's representation status. The Employer concludes that because the voting group sought would expand the geographic scope to a nationwide basis, it is inappropriate.

I do not find the Employer's argument regarding geographic scope conclusive as it relates to the bargaining history factor. Simply put, bargaining units are not required to remain static and unchanging. An *Armour Globe* election can, by its nature, bring unrepresented employees into an existing unit, and the mere fact that a bargaining unit has had a certain characteristic for a period of time does not, alone, weigh against allowing such an *Armour Globe* election. However, while I do not find geographic scope a compelling argument in regard to bargaining history, I have relied on a similar argument regarding geographic scope in reaching my conclusion in analyzing below the community interest factor of functional integration.

Second, the Employer argues that the bargaining history of an engineers-only unit precludes the addition of the voting group of non-engineers; I similarly find this is not conclusive by itself. It may be that engineers and non-engineers simply do not share a sufficient community of interest to warrant expanding the existing unit to include FSRs; this is obviously a critical determination. Such an assessment, however, is influenced by other community of interest factors. Again, in the *Armour Globe* context, the historical limitation of the bargaining unit to engineers is not, of itself, determinative of the future complement.⁵⁴

In support of this second argument, the Employer cites cases where an engineering unit has been found an appropriate unit, as a basis for excluding non-engineers. However, the issue is not whether an engineer-only unit could constitute an appropriate unit. Rather, the issue here is whether the inclusion of the FSR voting group in the existing engineering unit is inappropriate based on a community of interest analysis.⁵⁵ Thus, I find the Employer's cited cases fail to support that bargaining history alone warrants dismissing the instant petition.

Third, in making the above arguments, the Employer cites a number of cases that stand for the principle that traditional community of interest factors are of lesser cogency where a history of meaningful bargaining has developed, and that compelling circumstances are required to overcome the significance of bargaining history. *Canal Carting, Inc.*, 339 NLRB 969 (2003); *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993). While the Employer is correct in regard to the principles involved in those two cited cases, such principles were applied to facts significantly distinguishable from the instant case.

⁵⁴ This is also true in this case, where Petitioner seeks a *Sonotone* election in addition to an *Armour Globe* self-determination election. The *Sonotone* aspect of the election would be required because of the engineers' professional status, not their mere engineer status. Accordingly, if I had directed an election, the engineers would have had an opportunity to vote regarding whether to include the non-professional FSRs in the existing professional unit. In short, these election procedures were devised to assure employees the "fullest freedom in exercising th[e] rights guaranteed by the Act." 29 U.S.C. §159(b).

⁵⁵ As the Board recently stated in *Specialty Healthcare*:
Too often, parties in representation proceedings misunderstand this aspect of the statutory standard. They mistakenly cite prior cases holding that a particular unit is appropriate as support for the proposition that a different proposed unit must be inappropriate. We reiterate today that such a conclusion does not follow.
Id. at 6, fn. 11.

In *Canal Carting, Inc.*, the employer employed two bargaining units of drivers; petitioner had represented one of the units for over 30 years, and by its petition sought to represent the employees in the other unit. *Id.* However, the other unit's representative intervened, claiming its collective bargaining agreement constituted a contract bar, but the Regional Director found in favor of the petitioner after noting plant-wide units are presumptively appropriate and applying a community of interest analysis. *Id.* The Board reversed on the basis that the community-of-interest and plant-wide unit tests are generally applicable only when delineating units of previously unrepresented employees, not when assessing historical units that have had long periods of successful collective bargaining. *Id.* The Board specifically directed that rather than apply a community-of-interest analysis, the Regional Director should have considered whether compelling circumstances warranted disturbing the historical bargaining units. *Id.*

Children's Hospital of San Francisco, an unfair labor practice case involving a withdrawal of recognition in a successorship situation, placed the question before the Board of whether a unit of registered nurses at only one of the Employer's two facilities constituted an appropriate bargaining unit. *Id.* at 920. The Board specifically found that bargaining history in this instance was controlling, the represented unit was an appropriate unit, and the Employer's argument that the only appropriate unit was one encompassing all registered nurses on both campuses was without merit. *Id.*

In *Canal Carting* and *Children's Hospital*, the unions and employers involved had established bargaining relationships. Here the voting group has been historically unrepresented. As such, the Employer's citation to the general principles of *Canal Carting* and *Children's Hospital* are of little probative value in the very specific *Armour Globe* and *Sonotone* context here. In sum, I find the Employer's cites in support of its third argument to be inapplicable to the record before me.

Having addressed the Employer's arguments, it is necessary to address a contract-based waiver argument the Petitioner attributes to the Employer. Petitioner notes in the representation case 19-RC-13649, the Employer specifically asserted that the effect of the recognition language of Article 1.1(a) and the job classifications of Article 22 (at the time Article 11), in effect at that time, was to waive Petitioner's future right to represent employees in other job classifications in the engineering unit. In that prior representation case, Petitioner countered that a waiver of future representation rights must be more explicit than mere exclusion. Consistent with Petitioner's position, in the Decision and Direction of Election that issued in 19-RC-13649, it was expressly found that the Board has in the past directed *Armour Globe* elections in voting groups of specifically excluded employees.

It does not appear that Employer is re-asserting a contract waiver argument in the instant case. If it had, however, the present circumstances would require me to reject the argument. See *UMass Memorial Hospital Medical Center*, 349 NLRB 369 (2007).

In sum, the Employer has made the bargaining history of the engineering unit central to its arguments. On balance, however, I find the bargaining history is essentially a neutral factor, in that it does not give particular weight to either side in their arguments regarding a community of interest between the voting group sought and the engineering unit. In this respect, I do not lightly disregard approximately 65 years of bargaining history during which the existing unit was composed only of professional engineers. Rather, I find that such a history should not forever prohibit employees from the fullest freedom in exercising their representational rights guaranteed by the Act.

2. Skills, Training and Job Functions

The record indicates a significant portion of the FSRs, the co-located FSRs and BBJ FSRs at a minimum, are engaged in the dual job functions of technical advisor and relationship building. The technical work includes answering questions regarding the Employer's aircraft and providing guidance to the customers' engineers and mechanics when they are troubleshooting a technical issue with an aircraft. Relationship building includes building customer relationships, attending meetings, and acting as a liaison for other employees of the Employer. Conversely, intro reps, controllers, and FSRs in the Seattle Support Center are only involved in the technical half of this equation.

In regard to the technical advisor function, some similarities exist with the engineering unit. The skills of the FSRs, in the most general sense, are intellectual and focused on problem solving, similar to the engineering unit. I recognize FSRs, like engineers, are prohibited from "touch labor" on aircraft, and perform no manual or physical tasks. Further, the technical knowledge of the FSRs is demonstrated by their undisputed ability to resolve at least some of the technical issues brought to their attention independently, without contacting service engineering.

Some of the specific examples in the record demonstrate the similarities with the engineering unit. Further, some of the FSRs are degreed engineers and they use the skills gained from that education and their experience in engineering in making certain recommendations. For example, when Hirsch developed the "bathtub" fix with the customer's engineer, he was applying engineering knowledge. Similarly, in regard to Hirsch's tire pressure gauge example, the ability to recognize the thermal interplay of the components likely relied on engineering knowledge of the type possessed by the employees in the engineering unit.

However, when viewed in whole, the evidence demonstrates even when acting as technical advisors, the FSRs serve a different function than the engineering unit. Specifically, when problems are brought to FSRs, they act as a conduit of information, providing information, discussing problems, directing the customer's engineers to existing solutions, and assisting customers in submitting service requests. Further, although FSRs work in conjunction with the Employer's and customer's engineers, they do not independently design engineering solutions to problems identified by a customer. FSRs are not required to apply science and mathematics to design, manufacture, test, operate, and service aircraft in the manner required of engineering unit employees.

Moreover, the skills used by FSRs in the technical advisor role are primarily communication skills, rather than the science and mathematical skills of the engineering unit, as demonstrated by the tools used by FSRs and the specific examples in the record. The tools of an FSR -- telephone, e-mail, Boeing Communication System, My Boeing Fleet, FSDS, SIVT -- are communication tools, used primarily to send and receive information, to facilitate research, and access information. FSRs do not perform mathematical calculations, make technical drawings, or otherwise perform functions associated with the engineering unit work. I recognize that the nature of modern engineering is such that the much of the calculation and design is computer assisted, but if the FSRs were required to apply engineering knowledge, they would be given tools to facilitate calculation and design, rather than the tools of communication.

The specific examples related to the FSRs' technical advisor function further demonstrate that the FSRs and the engineering unit employees are utilizing different skills. In regard to the pylon cracks issue, FSR Hirsch attempted to locate a replacement part, explored

whether an equivalent part existed on another aircraft, submitted the request for the “no technical objection” statement from service engineering, convened several conference calls with engineering departments, and informed Service Engineering that they did not fully realize the difficulties faced by an 800 operating hours check for such cracks. In each of these instances, however, Hirsch’s primary function appears to be conveying information to the Employer’s engineers, or locating information for the customer’s engineers. It does not appear he is actually applying engineering principles, but instead is facilitating communication. Regarding the scribe line, inlet cowl o-ring, slat asymmetry, and wingtip lights examples, the point is the same; almost all FSR functions relate to information, collecting information from the customer, distributing information from the Employer, and facilitating efficient access to information. This constitutes a different function, employing a different skill set, than the engineering function of the engineering unit.

For those FSR classifications that are expected to develop customer relationships, the co-located FSRs and BBJ FSRs who comprise approximately 40 percent of the voting group, such duties constitute a significant additional function not shared with the engineering unit. The record reveals co-located FSRs’ daily rounds, primarily designed to build relationships, take between 5 and 20 percent of each work day. In addition to devoting a portion of each day to relationship building, co-located FSRs also have occasional periods of this activity exclusively; for example when accompanying their customer to meet with the Employer for a week. While the record does not contain the same level of detail regarding the BBJ FSRs’ relationship building activities, the record does indicate BBJ FSRs spend 30 to 40 percent of their day simply communicating with customers. While the subject matter of the communication may be technical, it can be presumed at least some portion of this time is spent in building positive relationships with the customer. Similarly, the record reveals BBJ FSRs spend approximately 30 percent of the time visiting customers on-site. Again, at least some portion of this time is spent in building positive relationships with the customer, not on purely technical tasks. The record reveals insufficient evidence to establish that employees in the engineering unit utilize work-time and/or similar relationship building skills to any significant degree in their work.

Comparing the education and training of the FSRs to the engineering unit supports the conclusion that the FSRs serve a different function. Certainly similarities exist, as a significant number of FSRs have engineering degrees, and FSRs take employer sponsored courses on engineering topics. This is to be expected, however, in that FSRs are operating in a very technical environment. The Employer produces a very complex and expensive product which its customers operate nearly continuously. When a problem arises, the FSR needs to be able to speak the language of the engineers in order to quickly assess the problem in order to communicate with service engineering. What I find more notable, however, is that a significant number of FSRs do not have engineering degrees, yet are able to function apparently quite well as FSRs. Further, almost all FSRs are in Field Service and participate in the 90-day First Base Training, which focuses on the communication aspects of the FSR position.⁵⁶ In short, while FSRs and the engineering unit are part of a unified process when addressing technical issues, they serve separate functions in reaching a common purpose. Where relationship building functions exist, the skills of the FSRs and engineering unit diverge to an even greater extent.

Petitioner asserts a similarity of skills and job purpose is evidenced by the FSRs sharing a partial job code designation with ten classifications in the engineering unit. I do not find this

⁵⁶ FSRs in training are given a set of tasks to complete in order to pass First Base Training, but again these are tasks related to communication and working with the Employer’s and customers’ engineers, providing information, discussing problems, and directing the customers’ engineers to existing solutions. The First Base Training tasks do not require the FSRs to independently design engineering solutions to customer problems.

argument persuasive, first because a title alone is not demonstrative of the work actually performed, and second because underlying the codes is minimal similarity between the asserted classifications. In particular, the FSRs do not share the GEC7 job code with any employees in the engineering unit; Petitioner's argument is based only on the shared first letter, "G." While some of the engineering positions that begin with the "G" designator work closely with the FSRs, such as the service engineers, other engineering positions have little in common with the FSRs or the other engineering classifications, for example the Flight Simulator Design Engineer. Even the "G" engineer classification sharing the most with the FSRs, the service engineers, have many skills and functions distinct from FSRs as described previously. I also note Petitioner's shared job code assertion is equally applicable, if not more so, to employees in the technical unit. Based on the above and the record as a whole, I find Petitioner's assertion regarding shared job codes to be of little value in discerning a shared community of interest.

Petitioner asserts the similarities in skills, training, and job functions in *Lockheed* are comparable to the instant case. The voting group positions in *Lockheed* included the producibility cost coordinator-engineering and producibility cost analyst-engineering positions, both of whom accumulated data from sources such as engineering cost handbooks, parts lists, and time standard manuals, and provided that data to engineers. The petitioned for group of voters in *Lockheed* also maintained and trained others in the use of these materials. None of the employees in the voting group position had a degree in engineering, but all of the employees in the voting group had taken employer-sponsored training in subjects related to engineering. Some of the cost assessment skills utilized by the cost-coordinator-engineering and cost analyst-engineering positions were also used by producibility and value engineers, part of the existing unit, in their function of examining and evaluating designs in order to make proposals for cost reductions and improvements.

Thus, I recognize that Petitioner's reliance on *Lockheed* indeed has some appeal. In *Lockheed* none of the non-professionals had the same educational background as the engineers, whereas here a significant portion of the FSRs do have engineering degrees. Like the FSRs in the instant case, the non-professionals in *Lockheed* had taken engineering related training courses. While not an exact parallel to the relationship between the non-professional employees and producibility and value engineers in *Lockheed*, the present case does include similar comparisons such as the ASE and co-located FSR, where the skill set and function overlap is present. However, I find here, that such arguments more clearly support the factor of functional integration, discussed below, rather than of similar skills, training, and job functions. Indeed, the point remains that such overlap, while occurring is certainly not a required skill set or function of the FSR position. Most persuasive in this regard is the fact that customer service and facilitating communication regarding technical problems are the primary skills and functions required of FSR, while the primary function of engineering unit employees is to regularly apply engineering disciplines to the research, design, development, test, and/or evaluation of Employer products. This point is driven home by the fact that a significant number of FSRs have not been shown to possess an engineering degree or background prior to becoming an FSR.

In view of the above and the record as a whole, I find the consideration of the employees' skills, training, and job functions weighs against finding a community of interest between the voting group sought and the engineering unit.

3. Functional Integration

Petitioner asserts the functional integration of the FSRs and engineering unit are amply demonstrated by the critical role FSRs play in the technical support function, an exchange between the Employer's engineering departments and the customer. Petitioner highlights the specific examples of technical guidance solving customer problems in the record in support of this position. I agree with Petitioner that the record contains strong evidence of an integrated technical support process, and as I acknowledged previously, FSRs are a critical conduit of information in this process. Absent anything else, this would be strong evidence of a community of interest between the FSRs and the engineering unit. To view only these examples is, however, a micro-view that ignores several realities. First, the scope of the engineering unit is less than nationwide, that engineers in service engineering for McDonnell Douglas aircraft in Long Beach are not part of the engineering unit, while the scope of the voting group sought is nationwide. Second, the FSRs assigned internationally interact with service engineering in Seattle and Long Beach. Viewed at a macro-level, it is apparent that there is an incongruity between the engineering unit and the voting group sought, and I find this incongruity makes functional integration a neutral factor.

I do acknowledge Petitioner's point that the Employer's technical support mechanism for airline customers is a highly integrated process. The record contains a great many examples that demonstrate the integrated nature of the problem solving process. Again, in regard to the pylon cracks, FSR Hirsh requested a "no technical objection" statement from service engineering, convened several conference calls with engineering departments, and informed service engineering that they did not fully realize the difficulties faced at an 800 operating hours check, each step representing the back and forth between service engineering's role and the FSR's paramount role as the customer's advocate. Moreover, the inlet cowl o-ring example and the back and forth with service engineering that occurred in that instance, further demonstrates how the Employer's process works at its best; an FSR with the plane and the customer's engineers can explain to the Employer's service engineers the shortcomings of a technical drawing. In each of these examples I fully acknowledge that the extensive communication between the FSRs and service engineering, up to and including jointly developed solutions, demonstrates functional integration. While the examples in the record are provided by co-located FSRs, it is also reasonable to conclude that a similar level of integration is present for the BBJ FSRs, Controllers, and FSRs in the Seattle Support Center.

However, the weight of the evidence also harms Petitioner's argument, because anything that can be said regarding the FSRs' functional integration with the engineering unit can also be said regarding engineers *outside* the engineering unit. It is critical to remember in the instant case that the engineering unit is not coextensive with all the engineers employed by the Employer. Indeed, the approximately 13,600 engineers in the engineering unit only represent about a third of the engineers employed by the Employer. Many of these unrepresented engineers presumably do not come into contact with the FSRs and therefore are not particularly relevant to the instant analysis. However, the parallel service engineering department in Long Beach for McDonnell Douglas aircraft is very relevant to the instant analysis, as it represents a group with whom the FSRs are equally integrated, but are outside the engineering unit.

In my assessment this incongruity in scope diminishes the weight to be given Petitioner's evidence of functional integration. The record does not establish a percentage of assistance the FSRs receive from represented service engineers in Seattle and unrepresented service engineers in Long Beach. What I find critical, however, is, assuming a customer operates both

Boeing and McDonnell Douglas aircraft, a FSR may take a service request from their customer on a Boeing aircraft and perform their role within the Employer's technical support system working exclusively with represented engineers in Seattle. On the very next service request, that FSR may repeat the same function with the unrepresented service engineers in Long Beach. Where FSRs distribute work based on the model of aircraft, an FSR working exclusively with McDonnell Douglas aircraft may perform the technical support function repeatedly without the involvement of represented engineers.

Moreover, I note that the 37 co-located FSRs regularly work with the Employer's material management account managers, a non-engineering or technical position, to insure the FSR's assigned customer has a sufficient supply of necessary parts. Further, the 15 controller-FSRs work in the BOC with outside engineering contractors, and positions in the technical unit represented by Petitioner.

The evidence in the record is primarily a detailed description of the technical support services provided by the Employer to its commercial airline customers. Engineering unit employees in service engineering and the FSRs play a critical role in this integrated process. This is, however, ultimately a micro-view of what is a much larger system, a system that involves not only the unrepresented service engineers in Long Beach, but also the FSRs assigned internationally. When that system is viewed at the macro-level, it is apparent that many other groups of employees involving significant numbers are equally involved in the same support process.

I find the FSRs in the voting group are not, as Petitioner posits, a final unrepresented piece of this technical support process and as such, I find functional integration is a neutral factor.

4. Contact and Interchange

The record contains evidence of frequent contact between FSRs and employees in the engineering unit. Co-located FSRs are in regular telephone and email communication with service engineers, as frequently as every day and at a minimum several times a month. Co-located FSRs also have regular face-to-face contact with service engineering for "business week" when represented and unrepresented engineers respectively attend the annual week long meeting in Seattle or Long Beach. Similarly, intro reps have telephone and email contact with service engineering when in the field, and regularly return to Seattle to work alongside engineering unit employees for a period of time before returning to the field. Seattle Support Center FSRs and BBJ FSRs are also in contact with service engineering on a regular basis. Contact is a particularly strong factor in regard to the controller-FSRs in the BOC, who work side by side with, among others, engineering unit employees and appear to have nearly constant contact.

A lack of contact may be balanced by evidence of interchange, temporary or permanent transfers, with the qualification that the Board has traditionally given permanent transfers less weight than temporary transfers in assessing a community of interest. *Ore-Ida Foods, Inc.*, 313 NLRB 1016 at 1021, fn. 4 (1994). Here, the record contains significant evidence of interchange, both temporary and permanent. Regarding temporary assignments, eight intro reps were on temporary assignment to the 787 program as ground operations engineers, a position in the engineering unit, at the time of the hearing. There is also anecdotal evidence from Hess about filling in as an ASE in a temporary capacity while an FSR. The evidence of the inverse is better quantified with evidence demonstrating 70 percent of FSR temporary vacancies between 2006

and 2011 were filled by employees in engineering unit. There is also significant evidence of permanent interchange, although one-sided, as approximately 20 percent of FSRs previously held positions within the engineering unit prior to their FSR position.

On balance, the record demonstrates significant contact and interchange, and I find this factor does support finding a community of interest as Petitioner asserts. I would note, however, that the contact and interchange here is not as strong as in *Lockheed*. In *Lockheed*, almost the entire voting group worked in the same room as engineers in the existing unit, and the record contained detailed examples of the employees in the voting group working in close contact on shared projects with the unit engineers. Further, there was very significant evidence of both temporary and permanent transfer, and “an apparent line of progression” from the non-professional positions to classifications represented by petitioner in the existing unit.⁵⁷

Here, only the 15 controllers, a relatively small portion of the FSRs, have any contact with the engineering unit on a level approaching that present in *Lockheed*, and the controllers here also lack the interchange present in *Lockheed*. While the record indicates some movement from the engineering unit to the FSR position, such transfers do not appear as significant as the movement in *Lockheed*. While a direct comparison is impossible because the cases quantify the movement differently, it is clear that the movement here is largely in only in one direction. Further, I also note the temporary transfer of 8 intro reps into positions in the technical unit represented by Petitioner.

While the evidence of contact and transfers appears stronger in *Lockheed*, here I find based on the above and the record as a whole, this factor weighs in Petitioner’s favor and supports finding a community of interest between the FSRs and engineering unit.

5. General Working Conditions

In the instant case the parties argue regarding the community of interest between the FSRs and the engineering unit based on a number of working conditions, including pay, benefits, hours of work, and work location.

I recognize some similarities exist in regard to working conditions. FSRs and the employees in the engineering unit have the same benefits and are salaried employees in the same pay system. I do note, however, that these are working conditions shared with many employees of the Employer, not necessarily working conditions exclusive to the FSRs and the engineering unit. Additionally, when some of the similarities are examined in detail, significant differences are found. For example, while FSRs and engineers in the engineering unit are paid on the same scale, their actual pay is, on whole, 11 to 25 percent lower than the employees in the engineering unit.

Other significant differences exist as well. FSRs in the field match their dress code to the customers’ code and honor the customers’ security and/or identification process. Without addressing the specific work schedules described in the record for FSRs, it is apparent the FSR hours of work are dictated by the customers’ needs, while the Employer largely retains control over the hours of work for employees in the engineering unit.

⁵⁷ At the time of the Regional Director’s Decision in *Lockheed*, the voting group consisted of 13 employees. In the approximately 5 years prior to the Decision, 11 employees had advanced from positions in the voting group to positions in the existing unit. Three employees in the voting group had acted temporarily in existing unit positions for periods of 9 months to a year. Again, I further note the existing unit was composed of both professional and non-professional employees, i.e., the voting group would be voting whether to be represented and included in an existing mixed unit.

I find work location to be another important working condition as it relates to the community of interest analysis for two reasons. First, the FSRs in Field Service and in the field have a fundamentally different work location than the engineering unit employees working at the Employer's facilities. FSRs' field work, in turn, generates other significant differences as noted above (i.e., dress code, security and identification procedures, and work schedules). Second, as touched on earlier in the functional integration section, the instant petition seeks an election in a voting group dispersed over many locations and geographically disparate from the work location of a vast majority of the engineering unit employees. While I have found the Employer's arguments regarding geographic scope unpersuasive as they relate to bargaining history, I do find the different geographic scope of the voting group sought and the existing unit to be a relevant consideration here.

Petitioner, recognizing that work location constitutes a significant difference between field employees like FSRs and the engineering unit, highlights the DTAs of the engineering unit as similar to the FSRs' field assignments. However, DTAs pale in comparison when considered relative to the size of the engineering unit. On the other hand, a significant number of FSRs face permanent assignments for about 5 years at customer sites. Indeed, under normal circumstances with both intro reps and co-located FSRs in the field, between 50 – 66 percent of FSRs are in the field, while the DTAs highlighted by Petitioner represent less than half of one percent of represented engineers.

The record also reveals that FSRs are generally subject to mandatory reassignment after fixed periods, such as co-located FSRs who change positions about every 5 years. Further, the Employer can and does assign FSRs to one of the approximately 134 FSR positions at customer locations outside the United States. There is no assertion such a dramatic, regular, and frequent reassignment is a regular condition of employment for engineering unit employees. These differences reinforce that almost all FSRs are part of Field Service, for an Employer with a worldwide presence, and these differences lead to radical changes in FSRs' working conditions depending on assignment, thereby significantly distinguishing FSRs' working conditions from the existing engineering unit's working conditions.

In view of the above and the record as a whole, I find the general working conditions of the FSRs relative to the engineering unit, support the Employer's position. The similarities present here in benefits are outweighed by the differences in pay and, most importantly, work location and the working conditions relating to location. I recognize not all FSRs work with the customer, but for the significant portion that do, being located with the customer has a profound effect on the myriad number of everyday working conditions, from hours of work to dress code. Even for the smaller portion of FSRs who are not working at a customer location, these FSRs' work schedules are largely set to accommodate customers' hours of operations.

6. Common Supervision

The instant case involves a large engineering unit and a widely distributed voting group of FSRs, with little common supervision between them. Outside the notable exceptions of the controllers in the BOC and intro reps temporarily assigned to engineering unit positions, there is little common supervision between the FSRs and the engineering unit. The lack of common supervision is evidenced by Petitioner's argument on this point. Petitioner argues not that the FSRs and engineering unit employees share supervision at the first level, but rather that some employees in the existing unit have less common supervision than the FSRs and the engineering unit.

Put another way, Petitioner asserts the parties have a history of successful collective bargaining, even though the Brunner and Barcafer example in the record demonstrates eight levels of supervision before engineering unit employees supervised by these two share a common supervisor. Comparatively then, Petitioner argues the three, four, or five layers of supervision between the FSRs and engineering unit are minimal.

I do not find, however, that this sort of comparative analysis is properly applied to the common supervision factor when conducting a community of interest analysis. The size of the Employer's organization makes for an unusual number of supervisory layers, and while the Petitioner's comparative argument is perhaps accurate, I do not find it to be relevant. Such an argument misses the point that employees who share a common supervisor at the first or perhaps second level are more inclined to have common interests in the workplace, in regard to that supervisor or otherwise. In an organization this large, whether employees share a common supervisor at the fourth or eighth level would seem to have little impact on their workplace concerns, and accordingly has little import here.

Petitioner also argues that in *Lockheed* the engineers and non-professionals in the voting group shared common supervision "in some but not all cases." This is true, but it also fails to capture the degree of common supervision in *Lockheed*. There, the employees in the voting group and existing unit were joined in working groups supervised by a single supervisor. Accordingly, the employees in the voting group and existing unit had shared supervision at the first level. That is not the case here, outside the BOC, and is again a reason why the community of interest analysis in *Lockheed* is inapplicable to the instant case.

On balance, I find the lack of common supervision between the FSRs and the engineering group weighs against Petitioner's position.

7. Conclusion Regarding Community of Interest

In the sections above I have analyzed in turn the bargaining history; skills, training, and job functions; functional integration; contact and interchange; general working conditions; and shared supervision of the FSRs and the engineering unit. I have concluded that the skills, training, job functions; general working conditions; and lack of common supervision weigh against finding a community of interest. I have acknowledged that the contact and interchange between the voting group and the existing unit favors finding a community of interest. I have found bargaining history and functional integration to be neutral factors in reaching my conclusion.

Having taken these factors together, for the reasons stated, I have concluded the FSRs and the engineering unit do not share a community of interest sufficient to make the petitioned-for *Armour-Globe* election appropriate. In doing so I have applied the Board's community of interest analysis, with particular attention to the Board's recent revisiting of that analysis in *Specialty Healthcare*. In regard to the legal analysis I have also addressed the primary cases cited by the parties and, in turn, explained why the cases, whether *Canal Carting*, *Children's Hospital*, or *Lockheed*, can be distinguished and are not conclusory in this instance.

In sum, the record supports finding that the voting group and election sought in this case turn largely on the extent of Petitioner's organizational efforts rather than on the structure of the

Employer's workplace.⁵⁸ The Board recently noted the significance of the structure of the workplace in making community of interest determinations:

It is highly significant that, except in situations where there is prior bargaining history, the community-of-interest test focuses almost exclusively on how *the employer* has chosen to structure its workplace. As the Board has recognized, "We have always assumed it obvious that the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination." *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1951). In other words, in determining whether employees in the proposed unit share a community of interest, the Board both insures that they can be fairly represented by a single representative and that bargaining will occur within boundaries that make sense in the employer's particular workplace. This is true not simply because most of the facts at issue (lines of supervision, skill requirements, wage rates, etc.) are established by the employer, but also because the lines across which those facts are compared are typically drawn by the employer: lines between job classifications (as here), departments, functions, facilities, and the like.

Specialty Healthcare, 357 NLRB No. 83, fn. 19 (2011).

Here, the parties have largely focused on the existing unit of engineers and the voting group of FSRS, isolated in significant part from the larger structure of their actual workplace. However, I find that focus fails to accurately reflect the larger manner in which the Employer has structured the workplace in which these two groups of employees work. Specifically, the record reveals that the actual workplace structure is significantly larger in geographic, operational, and functional scope and includes significant numbers of unrepresented engineers, internationally placed co-located FSRs,⁵⁹ represented and probably unrepresented (Long Beach) technical unit employees, independent contractors or contracted engineers, certain sales related employees, and more. I am equally mindful that in appropriate unit determinations § 9(b) states that my decision in this case must reflect a purpose that "assures employees the fullest freedom in exercising the rights guaranteed by this Act" but that portion of the Act further states in the same sentence that "the unit appropriate for the purposes of the collective bargaining shall be the employer unit, craft unit, or subdivision thereof"

In sum, I find that Petitioner seeks to effectively merge two groups of employees which would require the Employer to conceivably bargain in a unit lacking boundaries that make sense in the Employer's particular workplace. In view of the above and the record as a whole, I further

⁵⁸ § 9(c)(5) of the Act states "In determining whether a unit is appropriate for the purposes specified in subsection 9b) [of this section] the extent to which the employees have organized shall not be controlling. The Board has effectuated the 9(c)(5) provision denying unit requests where the only apparent basis was the extent of the petitioner's organization of the employees. However, it has held that extent of organization may be taken into consideration as one of the factors in unit determination, together with other factors, provided, of course, that it is not the governing factor. *NLRB v. Quaker City Life Insurance Co.*, 319 F.2d 690 (4th Cir. 1963); *Metropolitan Life Insurance Co. v. NLRB*, 380 U.S. 438 (1965).

⁵⁹ Neither party argues that the exclusion of the 134 co-located FSRs from the petitioned-for voting group prejudices Petitioner's positions in this case. In view of the limits of the Board's jurisdiction, I similarly find such an exclusion does not undermine Petitioner's positions and arguments herein. See *Range Systems Engineering Support*, 326 NLRB 1047, 1048 (1998) (upholding determination that Board lacks jurisdiction over U.S. citizens permanently working at American company's foreign facility). Rather, any reference I make herein to internationally placed FSRs is for purposes of revealing the nature and extent of the Employer's operations and workplace structure and for highlighting relevant and/or material community of interest factors.

find that the petitioned-for voting group of non-professional FSRs does not share a sufficient community of interest with the existing professional unit of engineers.

D. Supervisory Status of Co-located Team Lead FSRs

§ 2(3) of the Act excludes any individual employed as a supervisor from the definition of "employee." § 2(11) of the Act defines "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.

In *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006), the Board, citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001), iterated its three-part test, which finds individuals to be statutory supervisors if:

- (1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., "assign" and "responsibly to direct") listed in § 2(11);
- (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment"; and
- (3) their authority is held "in the interest of the employer."

To qualify as a supervisor, it is not necessary that an individual possess all of the criteria specified in § 2(11), instead, possession of any one of them is sufficient to confer supervisory status. *Lakeview Health Center*, 308 NLRB 75, 78 (1992).

The Board has also established that the burden to prove supervisory authority, by a preponderance of the evidence, is on the party asserting it. *Croft Metals, Inc.*, 348 NLRB 717, 721. (2006). See also *Loyalhanna Health Care Associates t/d/b/a Loyalhanna Care Center*, 352 NLRB 863 (2008). Here, that burden rests with the Employer. "Purely conclusory" evidence is not sufficient to establish supervisory status; and a party must present evidence that the employee "actually possesses" the § 2(11) authority at issue. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Finally, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The Employer asserts the Team Lead FSRs are statutory supervisors because they: assign/schedule work, evaluate in regard to performance evaluations and hiring, and make recommendations regarding discipline.⁶⁰ Petitioner asserts the Team Leader title is unofficial and merely used as an administrative convenience, and that the Employer has failed to demonstrate the Team Lead FSRs possesses any of the § 2(11) indicia. I find, for the reasons stated below, that the Employer has not met its burden regarding demonstrating supervisory status in regard to the Team Lead FSRs.⁶¹

⁶⁰ The Employer also asserts the Team Lead FSRs are responsible for compliance with the Employer's policies and procedures and FSRs' professional development. These responsibilities are not addressed separately as they are subsumed within the considerations of discipline, evaluation and training.

⁶¹ Intro Rep John Lynch, assigned to the 747-800 entry-into-service program in Palmdale, is designated as a Team Lead FSR. The record does not contain evidence specific to Lynch and his duties, other than he is on-site in this program

1. Assign

"Assignment" is defined as the "giving [of] significant overall duties, i.e., tasks, to an employee", as well as "designating an employee to a place (such as a location, department, or wing), [and] appointing an employee to a time (such as a shift or overtime period)." *Oakwood Healthcare*, 348 NLRB 686, 689 (2006). However, every instruction in the workplace is not an assignment; "significant overall duties" do not include "ad hoc instructions to perform discrete tasks;" these instructions are considered "direction" of a non-supervisory nature. *Id.* Similarly, working assignments made to equalize work among employee's skills, when the differences in skills are well known, are routine functions that do not require the exercise of independent judgment. *Providence Hospital*, 320 NLRB 717, 727, 731 (1996), *overruled in part by Oakwood Healthcare*, at 686, fn.29. The Board has defined the statutory term independent judgment in relation to two concepts. As an initial matter, to be independent, the judgment exercised must not be effectively controlled by another authority. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006). Thus, where a judgment is dictated or controlled by detailed instructions or regulations, the judgment would not be found to be sufficiently independent under the Act. *Id.* The mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices. *Id.* The Board further found that the degree of discretion exercised must rise above the routine or clerical in order to constitute independent judgment under the Act. *Id.*

Regional Director Standbridge testified that "assignment" as it related to Team Lead FSRs, could involve assigning actual work or devising a method for all assignments. An example of the latter includes each FSR being assigned a particular model of aircraft. Standbridge also testified that the assignment process could be collaborative in nature but he failed to detail the full extent and nature of his role in that process with the Team Leads. FSR Hirsch testified regarding an actual method of assigning work utilized at his customer's location, whereby the FSRs work staggered shifts to accommodate the customer's operations and each FSR is responsible for any issues that arise during their respective scheduled hours. Director of Field Service Didonato testified that if an issue requiring immediate attention arose and the FSRs were in disagreement regarding work assignments, the Team Lead FSR would make the determination. However, there is no evidence in the record that this type of disagreement actually occurs, that significant factors are considered in resolving the disagreement, and/or whether such considerations truly involve the exercise of independent judgment.

In sum, the witnesses, to the extent they address assigning or scheduling of work, do so in conclusory fashion without elaboration on the factors considered or by providing concrete examples to shed light on the nature and extent, if any, of independent judgment involved in such assignments or schedules. Indeed, Didonato testified regarding a "normal" way of dividing work, which suggests perhaps the determination is guided by Employer detailed instructions. In his testimony, Standbridge referenced a "strengths and weaknesses" assessment, which suggests perhaps any division of work is routine or clerical in nature. In this regard, I note field assignments last about 5 years, suggesting after an introductory period, assignments become fairly routine and/or clerical as FSRs strengths and weaknesses become readily apparent. Moreover, the record reveals that the Employer assesses the FSRs strengths and weaknesses prior to making field assignments.

with one other FSR. Based on the circumstances of this assignment and the evidence regarding what Team Leads do, I find it reasonable to assume that the nature of Lynch's Team Lead duties and responsibilities are similar to the other co-located Team Lead FSRs duties and responsibilities addressed herein.

As the party asserting supervisory status, it is the Employer's burden to demonstrate the Team Lead FSRs assign employees and exercise independent judgment in such assignments. In view of the above and the record as a whole, I find that the Employer has not met its burden of establishing that the Team Lead FSRs possess the authority to assign employees within the meaning of Section 2(11) of the Act.⁶²

2. Evaluate/Hire

§ 2(11) of the Act "does not include 'evaluate' in its enumeration of supervisory functions. Thus, when an evaluation does not, by itself, affect the wages and/or job status of the employees being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor." *Harborside Healthcare*, 330 NLRB 1334, 1334 (2000). See also *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999). Similarly, documenting substandard performance without making recommendations on further action is not supervisory authority. *Regal Health & Rehab Center*, 354 NLRB slip op. at 11 (2009); *Dean & Deluca New York*, 338 NLRB 1046, 1048 (2003).

Here, the evidence shows the Regional Director evaluates the FSRs, and that this evaluation does impact on the FSRs' wages. The supervisory question then is whether the Team Lead FSRs make a recommendation to the Regional Director in regard to the evaluation. Regional Director Standbridge testified that although the Team Lead FSR does not make an actual recommendation, he always asks the Team Lead their opinion in making judgments regarding the performance of a FSR. Didonato similarly stated a Regional Director will rely on the Team Leads' assessment of whether the FSR has "achieved goals and objectives," but that the Regional Director is the decision maker. No documentation of any recommendation or other role in the evaluation process is contained in the record. Creighton testified he does not evaluate or make a recommendation in regard to the FSRs with whom he works. In light of the unsupported and conclusory assertions of Didonato and Standbridge, and the contrary assertion of Creighton, I do not find the evidence regarding evaluation supports the Employer's position regarding supervisory status.

The evidence similarly does not support a finding of supervisory status based on the assessment that occurs at the end of First Base Training. Didonato and Standbridge both agreed that the Team Lead FSR collects information that is then reviewed by a Regional Director and Field Service management and that the decision to accept or reject a FSR trainee was made by this level of management. It appears that the only information collected from the Team Leads merely verifies whether the FSR trainee successfully completed the First Base Training syllabus. It may be that some level of discretion goes into the First Base assessment, as the term "scoring" is used in the record, suggesting some assessment. However, the record lacks any detail or explanation in this regard. While Didonato testified the Team Lead could, if he elected to do so, make a recommendation to management, there is no testimonial or documentary evidence in the record of this ever happening.

In view of the above and the record as a whole, I find that the Employer has not met its burden of establishing that the Team Lead FSRs role in evaluations/hiring is tantamount to possessing any of the indicia of supervisory authority listed in § 2(11) of the Act.

⁶² To the extent Creighton made an assignment when he gave the FSR trainee the headset project, Creighton maintained he simply handed the project over. According to Creighton, the only independent judgment used in that process was the FSR trainee electing to develop a matrix for the customer.

3. Discipline

The only reference to Team Lead FSRs engaging in discipline of other FSRs is Didonato's testimony the Leads provide the Regional Director the information on which the Regional Director takes action. Specific examples are not provided in the record, and Creighton asserts he does not discipline the FSRs with whom he works. Further, there is no written discipline or any other documentation in the record supporting this assertion. Thus, the record reveals insufficient evidence to support the Employer's position that Team Lead FSRs discipline or effectively recommend the same. In light of the sparse record in this regard, I find that the Employer has not met its burden of establishing that the Team Lead FSRs possesses the authority to discipline or to effectively recommend the same within the meaning of § 2(11) of the Act. See *Williamette Industries, Inc.*, 336 NLRB 743, 744 (2001).

4. Train

The Board has found that training employees does not, without more, evidence § 2(11) supervisory authority. See *S.D.I. Operating Partners*, 321 NLRB 111 (1996); *Ohio River*, 308 NLRB 686, 716 (1991). Training can, however, constitute a secondary indicia of supervisory authority, and while not dispositive in the absence of a showing of one of the enumerated § 2(11) criteria, secondary indicia may be relevant to supervisory status determinations. *Training School of Vineland*, 332 NLRB 1412 (2000).

The record contains two potential "training" issues. First, that the Team Lead FSRs oversee the FSRs' participation in the Employer's training program. There is no evidence in the record that the Team Lead FSRs report non-compliance or otherwise forward information relating to non-compliance to the Regional Director or others. As such, it is difficult to envision how the Team Leads' role in overseeing training could rise to the level of § 2(11) authority.

The record does contain a specific example of a Team Lead FSR assisting in First Base Training; Creighton's example with the FSR trainee and the headsets. However there, the trainee successfully completed the task relating to the headsets. Thus, this example fails to shed light on what would have occurred had the trainee failed the task and/or on what role, if any, the Lead would have played regarding such a failure. Specifically, the example fails to shed any light on what if any role Creighton would have played in documenting the trainee's failure and whether Creighton would have submitted a recommendation related to the trainee's failure.

Based on the above and the record, I find that the Employer has not met its burden of establishing that the Team Lead FSRs' role in training constitutes indicia of supervisory authority defined in § 2(11) of the Act.

5. Conclusion Regarding Supervisory Status

I have considered the Employer's arguments and the record as whole regarding the Team Lead FSRs' asserted assignment of work, evaluation of employees in regard to performance evaluations and hiring, recommendations regarding discipline, and the Lead's role in training. On the basis of the foregoing, I find that the Employer has not met its burden of demonstrating that the Team Lead FSRs possess indicia of supervisory authority as defined in § 2(11) of the Act.

IV. CONCLUSION

Based on the foregoing, the entire record, and having carefully considered the parties' arguments, I make the following findings: the FSRs do not share a sufficient community of interest with the engineering unit to warrant their inclusion in a combined unit and the Team Lead FSRs do not possess indicia of supervisory authority as that term is defined in § 2(11) of the Act. I have not addressed the third issue raised by the parties in this matter, namely the order of election, as it is moot in light of my finding regarding the lack of a sufficient community of interest between the petitioned-for FSRs and the existing unit of professional engineers. Accordingly, I shall dismiss the instant petition.

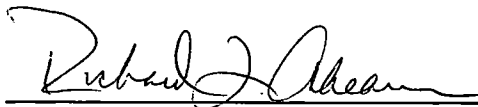
V. ORDER

IT IS HEREBY ORDERED that the instant petition be, and it hereby is, dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **5:00 p.m. (EDT) on November 15, 2011**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile. ⁶³

DATED at Seattle, Washington on the 1st day of November, 2011.



Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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⁶³ To file a request for review electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available at www.nlr.gov under the E-file tab.