

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

THE BOEING COMPANY,

Employer,

Case No. 19-RC-15372

and

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

Petitioner.

**REQUEST FOR REVIEW OF REGIONAL DIRECTOR DECISION AND  
CONDITIONAL ORDER**

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Petitioner Society of Professional Engineering Employees in Aerospace, Local 2001 (“SPEEA”) files this Request for Review of the Decision and Conditional Order of Regional Director of Region 19 issued on April 13, 2011 pursuant to the Board’s Rules and Regulations Section 102.67.

### **I. RULE CONCERNING REQUEST FOR REVIEW**

Section 102.67(c) of the Board's Rules and Regulations provides that the grounds for granting a Request for Review include:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party. . .

The Regional Director's decision departs from Board precedent by effectively requiring that a voting group that seeks to join an existing unit of professional engineers must qualify specifically **as engineers** rather than as professional employees generally or in a related profession. Furthermore, the Regional Director miscalculated the percentage of engineers in the voting group by assuming that FSRs for whom Boeing had no educational data did not have an engineering or other professional degree, when Boeing’s own witness testified that no conclusions can be drawn from the lack of data. Additionally, as enumerated specifically below, the Regional Director reached his incorrect legal conclusion by way of numerous factual findings that are clearly erroneous and prejudicially affected the rights of SPEEA under section 102.67(c)(2).

## II. STATEMENT OF THE CASE

The Society of Professional Engineering Employees in Aerospace, filed an RC petition on January 3, 2011, seeking an *Armour-Globe*<sup>1</sup> election in which a group of between 90 and 100 Field Service Representatives (“FSRs”) would choose whether to join an existing bargaining unit of approximately 14,000 professional employees. Region 19 conducted a hearing in Seattle, Washington, covering 12 hearing days from January 19, 2011 through February 3, 2011. The record consists of approximately 1800 pages of transcript and over 150 exhibits.

The FSRs troubleshoot complex technical problems communicated to them directly from customers who have purchased Boeing commercial airplanes. The parties presented evidence on four broadly defined issues. As in all *Armour-Globe* cases, the parties argued whether the petitioned-for group (1) shares a community of interest with the existing bargaining unit and (2) constitutes a distinct, identifiable segment of the workforce (*Warner Lambert, Co.* 298 NLRB 993, 995 (1990)). Additionally, since professionals comprise the existing unit, the parties presented evidence on a third issue, whether members of the petitioned-for voting group also qualify as professional employees as defined in Section 2(12) of the Act, since Section 9(b)(1) of the Act requires consent of professionals for a mixed unit. Finally, the employer contended that the FSR team leaders located with customer engineering personnel in the field were supervisors. To qualify for the *Armour-Globe* election it sought, the petitioner had to prevail on the first three issues enumerated above.

## III. THE REGIONAL DIRECTOR’S DECISION

The Regional Director issued a Decision and Conditional Order dated April 13, 2011, (attached) in which he ruled on only the third issue listed above concerning the professional

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<sup>1</sup> See *Armour and Company*, 40 NLRB 1333 (1942); *Globe Machine and Stamping Co.*, 3 NLRB 204 (1937)

status of the FSRs under Section 2(12) of the Act, holding that the FSRs do not qualify as professionals.<sup>2</sup> In so ruling, the Regional Director conceded (as had the employer) that FSRs meet the first three criteria for professional employees enumerated in Section 2(12) (Decision pages 28-29). Thus, he found that the FSRs' work is predominantly intellectual and varied in character since they cannot perform "touch labor" on the aircraft and face varied, complex intellectual problems corresponding to the service needs of the customer. *Id.* Likewise, the Regional Director acknowledged that the FSRs exercise consistent discretion and judgment in deciding how to bring a resolution to the complex problems they face. (Decision p. 29) Additionally, the Regional Director agreed that FSRs do not perform functions standardized in relation to a given period of time. *Id.* Accordingly, his ruling rests entirely on his erroneous finding that the work of the FSRs is not "of an advanced type in a field of science or learning customarily acquired by an advanced course of specialized intellectual instruction in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from the training in the performance of routine manual, mental or physical processes." (Section 2(12)(a)(iv) of the Act

In concluding that the FSRs are not professional employees, the Regional Director erred both factually and legally as follows:

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<sup>2</sup> Section 2(12) defines a professional employee as

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

1. The Regional Director began his analysis with a significant error, looking at the different job characteristics of five “classifications” of FSRs in isolation, rather than recognizing that this is one job classification with employees who rotate on long assignments among a few different but similar and related jobs. This error – fractionalizing a group that the employer treats as a single unit -- led to an overall analysis including that of the educational background of the FSRs currently in each job assignment as opposed to looking at this background as a whole.
2. Despite conceding on page 28 of the decision that a professional unit need not be limited to only one type of professional, the Regional Director proceeded on page 29 of his decision to conclude erroneously that to qualify as professionals the FSRs must possess knowledge and education of an advanced type **in the field of engineering exclusively**. Thus, in assessing the educational qualifications of the FSRs, the Regional Director only credited as engineers those whom he considered “degreed engineers,” without defining how he reached the conclusion that a particular degree comprises an engineering degree. He disregarded the Bachelor and Master of Science Degrees of numerous FSRs in areas of specialized instruction related to their work in troubleshooting commercial aircraft, such as a Bachelor of Science in Aviation and a Master of Science in Aeronautics.
3. In failing to consider the credentials of those who earned Bachelor and Master of Science degrees in aeronautics-related sciences other than engineering, the Regional Director again erroneously failed to apply the presumption of *Western Electric Co.*, 126 NLRB 1346 at 1349 (1960) that “if a group of employees is **predominantly** composed of individuals possessing a degree in the field to which the profession is devoted,” [***Emphasis supplied***] they qualify as professionals under the Act.
4. The Regional Director erroneously assumed on page 29 of the Decision that the 15 FSRs who did not enter their educational background on the employer’s records had no degree, when, in fact, a Company witness conceded that the lack of data on the Company provided information could not lead to any conclusion about their educational background.
5. The Regional Director erred on pages 29-30 of the Decision in concluding that the FSRs “manifest a bifurcation in educational background between those with engineering and those with mechanical or technical credentials.” Such a bifurcation does not withstand scrutiny because those FSRs with Bachelor and Master of Science degrees in aeronautics-related sciences underwent a “prolonged course of specialized intellectual instruction and study in an institution of higher learning” and have and utilize “knowledge of an advanced type” that is professional, not mechanical or technical. Those who lack such a degree have sufficient experience to qualify as professionals.
6. The Regional Director erroneously found on page 31 of the Decision that the record does not support a finding that those FSRs who hold advanced degrees in fields other than engineering do not use that non-engineering knowledge in performing their work as an

FSR.<sup>3</sup> The record evidence is uncontested that the FSRs who have earned Bachelor or Master of Science degrees in aeronautics related sciences apply the knowledge obtained in obtaining those degrees in performing their work.

7. The Regional Director erred on pages 32 through 33 of the Decision in concluding that the FSRs do not apply knowledge of an advanced type in their daily work activities; that they act merely as a “conduit of information;” or that their more complex work is not required of them, but was merely a “particularly useful contribution.”
8. The Regional Director erred on page 34 of the Decision in concluding that the Company’s documentation describing the FSRs’ duties and responsibilities do not show that performance of the FSR job requires knowledge of an advanced type.
9. The Regional Director erred in concluding on pages 34 to 35 of the Decision that the FSRs do not need knowledge of an advanced type to communicate with the engineers in the engineering department of the customers.
10. The Regional Director erred throughout the decision in defining engineering narrowly based upon a dictionary definition (Decision, p. 31) and by insisting that the FSRs must apply advanced knowledge within that narrow concept of engineering to qualify as professional employees.
11. The Regional Director erred in applying case law based upon brief excerpts from cases which do not compare factually with the present one.

#### **IV. SUMMARY OF ARGUMENT**

The Regional Director’s decision represents a fundamental mischaracterization both of the facts of the case and the law of professional status. His factual errors began with dividing the single classification of FSR into its five possible assignments; continued through adoption of an overly narrow definition of “engineer” in order to find that the FSRs are **not** “engineers” and ended with his mischaracterizing all of the educational and work experience, judgment, discretion and job tasks of the FSRs in respect to whether the FSRs are professional employees under a general rubric of “technical advice,” which is not a labor law term of art. He compounded his factual errors with legal ones, effectively imposing an employer-mandated

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<sup>3</sup> The Regional Director refers to these individuals confusingly, and tellingly, as “non-degreed engineers,” rather than using the more accurate description “FSRs with advanced degrees other than in engineering” and persistently refers to these individuals as having “a technical background.” This is an odd way to refer to a group holding a variety of Bachelor and Masters of Science degrees in aeronautics-related fields.

academic degree as a *sine qua non* requirement for a finding of professional status. He wrongly posited that FSRs for whom the record contains no educational data had no degrees relevant to their jobs, when Boeing's own witness explicitly rejected any such conclusion. He ended by failing in the most fundamental duty of a Regional Director to make a decision that facilitates expeditious resolution of representation disputes by deferring a decision on the basic *Armour-Globe* questions of community of interest and coherence of the voting group and on the supervisory status of the team leaders. His decision should be reversed, and the Board itself should decide those issues which he left unaddressed, acting on the exact record upon which the Regional Director would act were the Board to remand the case.

## V. ARGUMENT

### A. **The FSRs are a single job classification, whose members perform rotating assignments. The work of the classification, and its professional status, should be judged on the classification as a whole, not on the different assignments.**

The Regional Director erred from the start by focusing overly narrowly on the individual job functions of each FSR assignment, which he erroneously described as five different classifications. The employer created a single classification of FSR under a single job code (GEC7-GEB) with a single set of job descriptions (Employer's Exhibits 21 through 23); that single classification has approximately 5 different possible assignments.<sup>4</sup> All FSRs rotate through those assignments every 4 to 5 years, so that each FSR must have the skills to perform all aspects of the job. (Employer's Exhibit 20 page 1, and Tr. p. 201 for a description of hiring procedures for BBJ FSR).

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<sup>4</sup> For the remainder of this Request for Review, SPEEA will call the job classification Field Service Representative (FSR) and when talking about specific job assignments it will use the specific terminology such as Co-located FSR, FSR Controller, FSR Boeing Business Jets (BBJ) and FSR Intro Rep.

Under the Boeing Salaried Job Classification (“SJC”) system, Boeing develops a job code for each group of employees based upon similarities of purpose, (Occupation and then Discipline), the tasks performed, (Job Family) and accountability (Level). (Union Exhibit 9, page 6) Boeing has assigned all FSRs the job code GEC7-GEB. (Employer Exhibit 132) The initial G indicates that the occupation is product support. (Tr. p. 1544, Plunkett)<sup>5</sup> The E signifies Field Service. *Id.* The C7 further defines the job family or the tasks performed by FSRs. *Id.* Finally the designation GEB is the Skills Management Code (SMC) which demonstrates the knowledge, skills and abilities that FSRs must have to perform their work. The SMC Code is a further refinement of the definition of work the FSRs perform and the requirements of their job. Their single common SMC shows that FSRs constitute one classification, regardless of the several assignments which any one FSR may work at a given time. (Tr. p. 1543–47)

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

The salary ranges of the various classifications depend upon accurate job codes, since Boeing creates Salary Reference Tables which define salary ranges based upon the accurate placement of jobs within the SJC. (Union Exhibit 9, page 56) As Boeing points out, “Proper job classification is crucial to the effectiveness of pay within Salary Reference Tables (SRTs). Salary Reference Tables are constructed based on the assumption that people are properly

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<sup>5</sup> In this respect, the FSRs share their job purpose with ten occupations in the SPEEA professional bargaining unit listed in Joint Exhibit 1, Appendix B, page 70, the occupation codes for which are also G.

classified for the work they are doing.” *Id.* All FSRs are paid based upon the same Salary Reference Tables. (Employer Exhibit 132)

The Skill Team Leader or Enrolled Manager of skill management codes monitors the skills of employees within his jurisdiction to make sure they comply with the level necessary to do the jobs within that code. (Tr. p. 1546-47, Plunkett) They play a role in layoff situations to insure that employees with skills necessary to maintain the employer’s operations remain on the payroll<sup>6</sup> and they are involved in discussions concerning compensation or the Salary Review Tables for employees within the skill management code. *Id.* Thus, by grouping FSRs together within the same skill management code, Boeing has defined them as an identifiable and distinct segment requiring the same skills, ability and training.

Mike Didonato testified that the job descriptions (Employer Exhibits 21-23) underwent close scrutiny and revision within the past few years, and accurately reflected the job duties of FSRs, in a process that included focus groups of FSRs that validated the words of the description. (Tr. p. 157-58, Didonato) The same job descriptions cover FSR Controllers. (Tr. p. 334-35, Rund) William Koperek, Manager of Boeing Business Jets, (BBJ) testified that the Level 5 FSR working as his subordinate spends more than 50% of his time doing job duties described in Employer Exhibit 23. (Tr. p. 390, Koperek)<sup>7</sup> David Bizar, Field Service Introductions Manager, testified that Employer Exhibits 22 and 23 accurately describe the skills and attributes that a person needs to spend at least 50% of his time as a 787 FSR Intro Rep. (Tr. p. 529, Bizar)

All FSRs except FSR Controllers are hired using the same process. The Regional Director properly found that all FSRs received the same training with the exception of FSR Controllers.

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<sup>6</sup> All FSRs are in the same SMC when deciding who gets laid off (Tr. 1546-1548).

<sup>7</sup> Additionally, the Mentoring Program for BBJ Reps provides that the working conditions for those employees are “no different than commercial aircraft field service operations.” (Union Exhibit 1, page 2).

He also correctly found that FSR BBJ Reps, FSR Intro Reps and co-located FSRs all are subject to the same rotating assignments between these various positions. (Employer Exhibit 20) He concluded that FSR Controllers were not part of this process. However, he ignored the uncontroverted testimony that FSRs from all assignments may spend time working as FSR Controllers between assignments and that there has been at least one instance of an FSR transferring into the FSR Controller assignment. (Tr. p. 316-17, Rund)

Given all the similarities, the evidence does not allow analyzing the various FSR assignments independently with the theoretical possibility that some may be considered professional and others non-professional. Since each of the FSRs might find him or herself performing any of the assignments, if any of the assignments is properly characterized as professional under the Act, then all FSRs must be considered professionals.

**B. The Regional Director utilized an overly narrow definition of “engineer” to find that the FSRs are not “engineers.”**

The Regional Director defined engineering in the context of this case as applied science. (Decision, p. 31) Putting aside whether that definition is accurate in light of all the evidence from engineers about what engineering really is<sup>8</sup>, the Regional Director did not then apply his own definition in analyzing the educational background of the employees. An examination of the job titles of the numerous FSRs with a Bachelor or Masters of Science degree that does not include the word “engineering,” shows that the overwhelming majority, 16, contain either the word “Aeronautics,” “Aeronautical” or “Aviation.” (This figure includes the four FSRs on the chart who are currently working on loan in the SPEEA professional bargaining unit whose

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<sup>8</sup> The testimony shows that engineering is being able to analyze complex problems by breaking them into smaller parts and critical thinking. (Tr. p. 1210-11 Plunkett and Tr. p. 1718 S. Hirsch.) In performing these tasks, engineers may, or may not, be engaged in what the Regional Director describes at Decision p. 31 as “the application of science and mathematics to properties of matter and sources of energy in nature to make them useful to people.”

degree titles may not include those words.) Aeronautics is "a science dealing with the operation of aircraft." Alternatively, it is the "design and construction of aircraft." (The American Heritage Dictionary of the English Language Houghton Mifflin Company, 1976) Aviation is "the operation of heavier-than-air aircraft" or "airplane manufacture, development, and design." (Merriam-Webster on-line dictionary, [www.m-w.com](http://www.m-w.com).) These are applied sciences, and are "engineering" within the Regional Director's own definition.<sup>9</sup>

**C. The FSRs need not be engineers at all to qualify as professionals in a unit with engineers, and the Regional Director erred in failing to conclude that they are professionals under governing law.**

Analysis of whether employees meet the "knowledge of an advanced type" criterion in Section 2(12)(a)(iv) of the Act focuses on the nature of the work performed, rather than individual qualifications of employees. *Aeronca, Inc.*, 221 NLRB 326 (1975). The Board has recognized that if a majority of the employees have professional degrees in the field to which the profession is devoted, the Regional Director must presume that the work requires "knowledge of an advanced type" thus filling the fourth element of the statute. *Western Electric Co., supra*<sup>10</sup>

Thus, while SPEEA contends that the FSRs are engineers, the statute only requires that they all be professional employees to qualify for inclusion in the professional unit without a *Sonotone* election.<sup>11</sup> The Act does not require that all employees in a professional unit be of the same profession. *See e.g., General Dynamics Corp.*, 213 NLRB 851 (1974), (Board included systems analysts with a group of engineers in a professional unit); *Loral Electronics*, 200 NLRB

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<sup>9</sup> All of this information, and that about to be discussed, is found on charts created from the information in Employer Exhibits 111-118 are attached to this Request for Review as Attachment A. The years of service showing on this attachment comes directly from the work histories of each employee, Employer Exhibits 103-110. However, it represents years with the Employer and will not reflect any comparable experience with a different employer.

<sup>10</sup> "Section 2(12) does not require that 'knowledge of an advanced type' be acquired by all professionals in the unit." *Arizona Public Service Co.*, 310 NLRB 477, 482 (1993)

<sup>11</sup> *Sonotone Corp.*, 90 NLRB 1236 (1950).

1019 (1972); *Divco-Wayne Corp.*, 122 NLRB 162, 164-165 (; *Chrysler Corp.*, 154 NLRB 352 (1965). The Regional Director recognized that fact as part of his analysis of the *Loral* case on page 28 of his decision but then ignored it for the remainder. It also does not require that they have degrees at all, let alone engineering degrees. *A fortiori*, if the FSRs perform work as set forth in the first three professional criteria, and that work requires knowledge of an advanced type as required by the Act, degrees in areas used on the job all must be considered in determining whether the *Western Electric* presumption applies. Thus, as the evidence shows the FSRs to be professionals, it was error for the Regional Director even to consider separately whether they are “engineers.”

**1. The majority of the FSRs have formal, relevant professional degrees and Boeing recognizes them as engineers.**

The Regional Director relied on Employer’s Exhibit 27 to arrive at the conclusion that the voting group consisted of 92 FSRs (Decision page 3 in general and fn 7, and page 29). He concluded that 38 of those 92 are “degreed engineers.” (Decision, p. 29)<sup>12</sup> He further found that 26 FSRs “have an educational background either not clearly identifiable as an engineering, mechanical or technical field, or do not have an educational background contained in the record.” *Id.* An examination of employer Exhibits 111-118, employee profiles that contain the educational background of the FSRs, shows that 15 of the FSRs on Employer Exhibit 27 did not enter any data concerning their educational background, and the record is silent with respect to them. They appear on a chart in Attachment A.

The record demonstrates clearly that the employees enter their own educational data into the employer maintained record. (Tr. p. 855, McKinney) The employer offered no explanation

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<sup>12</sup> On page 5 of the decision, the Regional Director found that 34 FSRs have at least a bachelor’s degree in an engineering field. On page 29, he finds that there are 38 such FSRs, and it is not clear, based on the entire record, that **either** number is correct.

for why 15 FSRs entered no data. Nevertheless the Regional Director concluded that these 15 employees did not have engineering degrees in calculating “40 percent of the unit are degreed engineers” and, further, that the (asserted) 60% lacking engineering degrees should be lumped together as lacking “professional degrees.” (Decision page 29)

This is several levels of wrong—first, as a simple exercise in data analysis, it is incorrect: Where no data was entered, even Ms. McKinney, the relevant employer witness, conceded that we know nothing about that FSR’s educational background and no conclusions can be drawn from the lack of data. (Tr. p. 858, McKinney)<sup>14</sup> Accordingly, we should simply eliminate the 15 FSRs without data from any analysis. The analysis must be done looking at only those employees – the 77 (92 minus 15) for whom the record contains data from which percentages can be derived -- and the Regional Director’s unwarranted assumption significantly skewed his findings.

While various sources of data in the record may contain slightly different numbers,<sup>15</sup> an analysis of the Regional Director’s own figures leads to the conclusion that degreed engineers make up nearly a majority of the voting group. Thirty eight degreed engineers out of a group of 77 on whom the record contains data equals nearly 50% of the voting group, not the 40% that the Regional Director repeatedly asserted.

More significantly, though, lumping together those who lack engineering degrees with those who lack any professional degrees at all and those on whom we have no data is profoundly misleading. Of the 93 FSRs included in Employer’s Exhibit 27, 33 have degrees with the word

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<sup>14</sup> Q Okay. So the most we can say about Mr. Lohse is we don’t know what his educational background is?  
A Correct.

<sup>15</sup> The Union offered evidence that the voting group consisted of 99 FSRs in Union Exhibit 16. The Regional Director relied on Employer’s Exhibit 27 to conclude that 92 FSRs occupied the proposed voting group. The actual count from Employer’s Exhibit 27 is 93 FSRs, not the 92 found by the Regional Director, even excluding Christopher Chong. (Decision, page 3 fn 9) The charts in Attachment A reflect the actual count in Employer’s Exhibit 27.

“engineering” in their titles and 20 have Bachelor or Master of Science degrees in fields described by their titles as relating to their job duties as FSRs. **This means that 53 have Bachelor or Master of Science degrees with titles including at least one of the following words or phrases: engineering, aeronautics, aviation, aircraft, information or design technology, design & graphics technology, electronic technology, and physics.** Five of the employees have at least a bachelor degree in fields other than engineering or science/aeronautics/aviation/information or design technology. Nine employees have associate’s degrees, seven of which are in technology/engineering or aviation management. Of 11 with data but showing as not having a degree of any kind, seven have science/technology/aviation emphasis either in classes taken or certificates obtained.

Furthermore, **the record clearly shows that Boeing itself regards employees as engineers if they have earned Bachelor of Science degrees without the word “engineering” in their titles.** On page 1000 of the transcript, Robert Hess testified that Field Service Representatives John Syme, Kevin Luo, David Tarr, and Lynol Amero were currently temporarily on loan to SPEEA professional bargaining unit positions as Ground Operations Engineers. The Employee profiles for those individuals attached as part of Attachment A and included within Employer’s Exhibit 113 demonstrate that Mr. Syme has Bachelor of Science degrees in Information Technology and Electric Electronic Technology. Mr. Luo has a Bachelor of Science in Aeronautics. Mr. Tarr and Mr. Amero have Bachelor of Science degrees in Design and Graphics Technology, both from Brigham Young University. Thus, Boeing recognizes that some Bachelor and Master of Science degrees which omit the word “engineering” are, nevertheless engineering degrees, and employees with those degrees function as loaned engineers in the SPEEA professional bargaining unit. As is argued above, the vast majority of

those Bachelor and Master of Science degrees held by FSRs that lack the word “engineering” in their title contain words akin to “aeronautics”.

Furthermore, the Regional Director erred in concluding on page 31 of the Decision that those whom he persistently describes as “non-degreed engineers” who hold advanced degrees in other fields do not use their advanced training and knowledge in performing their work as an FSR. The record dictates to the contrary. It defies logic to conclude that employees with advanced degrees in aviation and aeronautics would not use the knowledge and analytical skills learned in earning those degrees in troubleshooting problems with airplanes whether or not those degrees qualify as “engineering” degrees.<sup>16</sup> SPEEA presented two witnesses who attested to that obvious principle. Jack Bennett has a Bachelor of Science and a Master Of Science, both in aeronautics. (Tr. p. 1274) He testified that he uses his BS and MS degrees help him to understand the customers’ problems when they contact him in his job as a FSR Controller, and in devising responses to communicate with them. (Tr. p. 1296-98) It demeans the value and the very purpose of higher education to assert that employees performing work in the very field of their educational endeavor do not apply that education in their work.

Thus, when correctly analyzed, the educational data in this record shows that the *Western Electric* presumption clearly applies. Approximately 68 percent of the employees for whom data is available have at least a bachelor degree in engineering or related fields of science/aeronautics/aviation/information or design technology.<sup>17</sup> **To assume that FSRs with degrees in related fields meet the first three criteria of Section 2(12)(a) of the Act (as the**

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<sup>16</sup> While avoiding any discussion of the numerous FSRs with degrees in aeronautics and aviation, on page30 of the decision the Regional Director focuses his discussion of this issue on the one FSR with a bachelor’s and master’s degree in physics. He should have concentrated on the relevance of the degrees held by the vast majority of FSRs with titles omitting the word “engineering” instead of singling out the lone physics graduate. In any event, principles of physics are directly involved in the flight of airplanes, and such a degree would be relevant to the tasks of an FSR.

<sup>17</sup> 98% of all FSRs for whom the record contains data have specific educational training in technology, engineering, design or science.

**Regional Director accepts) but that they achieve those work characteristics *without using the knowledge which they acquired through a prolonged course of specialized intellectual instruction and study in an institution of higher learning in professionally relevant fields is very nearly nonsensical.*** The Regional Director's analysis in this area is both clearly erroneous as a matter of fact and involves the misapplication of clear Board precedent.

**2. The FSRs have, and are required to have, knowledge and experience that render them professionals in aeronautics, independent of their degrees.**

Employees can be professional even if they do not have post-secondary degrees. For example, in *Twentieth Century-Fox*, 96 NLRB 1052, 1055 (NLRB 1951) the Board found that readers were professional employees even though the employer did not require them to have a college degree and that while some college education was preferred, the equivalent knowledge obtained through experience was acceptable. What the employer really required was that the readers “have a fairly wide knowledge of literature and some talent for writing.” *Id.*

In the instant case, there is a parallel basic standard: FSRs, whatever their formal education, have to have wide knowledge of how airplanes are put together, operated, and repaired. Even without the *Western Electric* presumption, the FSRs would be considered professionals under the precedent of *Twentieth Century-Fox*. In *Sonotone* itself, the Board found that senior draftsmen were professional employees even though they were only required to have a high school education and some additional technical education was preferred. *Id.* at 1240.

The statute requires that professional knowledge be of a sort “**customarily** acquired” through higher education. The degree is not the *sine qua non*; the **knowledge** is. Even if (as inaccurately found by the Regional Director) a majority of the FSRs had acquired such

knowledge through training and experience below the college level, that would not disqualify the group from being professionals under the Act.<sup>18</sup>

Since a high percentage of the FSRs (68%) have acquired advanced knowledge by obtaining a Bachelor's or Master degree in a field related to their functions as FSRs, SPEEA will limit the balance of this portion of the discussion of experience to the remaining 30% or so. Of the 11 employees with no degree at all, the average experience is 25 years. The person with the least experience has 5 years; the next least experienced person has 21. Of those with associate's degrees, the average experience is 17 years and except for 3 people with 0, 2, and 6 years,<sup>19</sup> the least experienced person has 19 years. Of the 5 with degrees unrelated to engineering/science/technology/aviation, the average experience is 24 years, with the least experienced having 22 years.

The combination of relevant degrees and extraordinary experience common in the FSR group makes the question of whether a degree is "required" largely irrelevant. Nonetheless, the Regional Director's conclusion that it is significant that FSRs are not "required" to have either an engineering degree or bachelor's degree (Decision, page 5) is mistaken. Employer Exhibits 21-23 are the job descriptions for the three levels of FSRs. All three have paragraphs that list "typical" education or experience.<sup>20</sup> Given the nature of the work which will be discussed in detail below and the actual education backgrounds of the FSRs, "typical" must be given the normal meaning of "combining or exhibiting the **essential** characteristics of a group." Merriam-

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<sup>18</sup> "All the employees considered under this subhead have either a college degree in a specialized field of **science or the equivalent in training and experience.**" [*Emphasis supplied*] *S. S. White Dental Manufacturing Co.*, 109 NLRB 1117, 1120 (1954)

<sup>19</sup> With respect to these three people, the few years of experience reflect only time spent with Boeing and do not reflect any prior similar experience with other employers. Employer Exhibit 21.

<sup>20</sup> The law, like the employer, allows experience to be substituted for education. *Chrysler Corp.*, 154 NLRB 352 (1965); *S. S. White Dental Manufacturing Co.*, *supra*

Webster on-line dictionary, [www.m-w.com](http://www.m-w.com) [Emphasis supplied].<sup>21</sup> While there is no degree **requirement** for the FSRs, it is significant that they “typically” have one.

**3. The judgment and discretion in performance of complex tasks required of the FSRs establishes that they have knowledge of an advanced type in a field customarily acquired through higher education.**

Finally, the Board law shows that the nature of the judgment and discretion **actually exercised** by a group of employees informs the evaluation of the nature of the knowledge **required** to do the job. “Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through a prolonged course of study at specialized schools.” *Aeronca Inc.*, 221 NLRB 326, 327 (1975). *Virtua Health, Inc.*, 344 NLRB 604, 609-610 (2005). An employee who regularly uses significant judgment and discretion in complex technical areas is likely using technical knowledge of an advanced type that is customarily acquired through higher education. As will be shown in more detail below, that is exactly the kind of judgment and discretion used by FSRs.

The cases relied upon by the Regional Director are consistent with the law set forth above. In *The Express-News Corp.*, 223 NLRB 627 (1976), the Board found that journalists were not professionals. In so doing, it noted that members of the proposed bargaining unit had only a “handful” of journalism degrees with other kinds of degrees being no more than general in background. *Id.* at 629. In *Ryan Aeronautical Co.*, 132 NLRB 1160 (1961), the Board found that the group consisted predominantly of degreed engineers and the *Western Electric* presumption applied. Since people without such degrees held the same positions, the Board noted that even those without degrees had “several years of schooling and a minimum of four, some as much as 10, years’ experience.” *Id.* at 1163. In *Chrysler Corp.*, 154 NLRB 352 (1965),

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<sup>21</sup> “Section 2(12) does not require that “knowledge of an advanced type” be acquired by all professionals in the unit.” **Error! Main Document Only.***Arizona Public Service Co.*, *supra* at 482

the Board's analysis was much like that made above with respect to the nature of the degrees/education of the members of the proposed bargaining unit. It concluded that all of the employees in the disputed classifications were professionals. The record in that case showed that only 9 of the total of 27 of those employees had engineering degrees or degrees in "related fields such as mathematics or industrial technology." *Id.* at 355. Of the remaining 18 employees, 9 had an average of 2 years of institutional training in some form of engineering and 1 had 4 years of general college training. Importantly, all had "substantial training and experience," with 4 having between 17 and 20 years of experience. *Id.* at 356.

**D. To the extent that engineering training is relevant to the FSRs' professional status, the record establishes that they receive engineering training at Boeing, and many without engineering degrees nonetheless had such training before Boeing.**

At page 31 of his decision, the Regional Director contends that the record contains no evidence that FSRs receive any training in engineering functions after becoming FSRs. This conclusion is wrong as a matter of fact. The educational histories of the FSRs show a number of examples of training that they receive from Boeing in the following areas: Service Bulletin Engineering, Engineering & Product Integrity, Manufacturing Engineering Fundamentals, Tool Engineering Concepts, Engineering View, Boeing Production System (BPS) Basics Engineering, Airplane Configuration Engineer (ACE) Processes, Product Engineering Process & Application, Introduction to Engineering Material Review Board, MRB Engineering Elec., Maintenance Engineering Validation Training, Engineering Quick Change Basics(WEBSPOT), Engineering Quick Change for Quality(WEBSPOT), Engineering Standards/General Overview, Engineering Standards/Material Standards, Engineering Standards/Drafting Standards, Engineering Standards/Design & Drafting Overview, Engineering Standards/Subject Index, Engineering Process and Engineering Standards/Executive Perspective. (Employer Exhibits 111-118)

Furthermore, this misstatement ignores the substantial training and experience the FSRs must have in order to get hired into these positions in the first place. (See Employer Exhibits 21 – 23) That is why the first base training focuses on understanding the Boeing organization. Those that are hired for this position already have the professional training and education that is needed for the job.

The Regional Director made clearly erroneous factual conclusions about the education and training of the FSRs and misapplied existing Board precedent. His decision should be reviewed and reversed.

**E. The Employer's own documents describing the duties and competencies of FSRs demonstrate professional status.**

The Regional Director concluded that the nature of FSR work is not professional in that it does not require the advanced knowledge necessary under the Act. His factual analysis failed to acknowledge the extensive evidence that **the employer itself expects these employees to meet professional standards** and to display knowledge of an advanced type as set forth in Section (12)(a)(iv). The analysis cannot ignore the employer's own job descriptions (Employer's Exhibits 21 through 23) because that is the evidence least tainted by the parties' positions in this very proceeding. **This is how the employer itself characterizes this single FSR classification when the only significance of that characterization is that it needs to be accurate. The employer's exhibits, ignored almost in their entirety by the Regional Director, reinforce the professional nature of the FSRs' jobs at every turn.**

The FSR job descriptions were entered into evidence, typified by Employer Exhibit 22, the description of Level 4 FSRs.<sup>22</sup> All three of the job descriptions characterize the "typical" education of an FSR as having either a bachelor's or a master's degree with varying levels of

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<sup>22</sup> All generic individuals will be referred to from here on in the masculine.

experience. At level 4, the typical FSR, in addition to his bachelor's degree, has 10 or more years of experience, and in addition to a master's degree has 8 or more years of experience.

According to the employer's description of the classification, a Level 4 FSR "Develops and implements recommendations to improve operational performance. Validates or reviews effectiveness of company provided solutions, takes corrective action and develops recommendations for process/product improvement." He "[r]egularly contributes to the development of new job practices, techniques, and standards [and is] Recognized as a job expert within the department/organization." The Level 4 FSR "[d]evelops solutions to complex problems that require ingenuity and innovation [and] [e]nsures solutions are consistent with organization objectives." He "[p]erforms work with minimal direction and exercises considerable latitude in determining objectives and approaches to assignments."<sup>23</sup> **These are characteristics and responsibilities of workers whose education and experience is at the professional level, typically but not necessarily supported by academic training of the sort referenced in Section 2(12)(a)(iv).**

As set forth in Employer's Exhibit 22, the fundamental competencies for all three levels of FSR are the same, and include the ability to "[p]robe[] for and provide[] information to clarify situations. . . "Consistently recognize[] a wide range of complex, specialized issues, problems, or opportunities in own workgroup, across the organization and with external customers; determine[] whether action is needed. . . . Regularly integrate[] complex information from a wide variety of sources; detect[] complex trends, associations, and cause-effect relationships. Consistently create[] relevant options for addressing problems/opportunities in achieving desired outcomes. Formulate[] clear decision criteria; evaluate[] options by considering implications and

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<sup>23</sup> A Level 3 FSR typically has less experience and education; a Level 5, more. However, the basic characteristics of the work performed at all three levels are the same.

consequences; choose[] an effective option. . . . Consistently identify[] and fill[] gaps in information required to understand the strategic issues. Organize[] information and data to identify/explain major trends, problems, and causes; compare[] and combine[] information to identify underlying issues. Generate[] and consider[] extensive options for actions to achieve a long-range goal or vision; . . . select[] the strategy most likely to succeed. Identif[y] the key tasks and resources needed to achieve objectives. . . .Skill and ability to: collect, organize, synthesize, and analyze data; summarize findings; develop conclusions and recommendations for appropriate data sources with clients, customers and/or suppliers. . . . **The extensive, specialized ability to use established physical, mechanical, or scientific principles and perform appropriate tests to identify and solve problems encountered on the job.** This includes the ability to locate and isolate the problem, identify possible solutions, and select approaches that are practical and effective.” *[Emphasis supplied]*

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

"knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction . . ."

Other employer documents confirm the professional status of the FSRs. See, e.g., attached Employer Exhibits 6, 7, 8, 9<sup>24</sup>; 12; 24; 29<sup>25</sup>; 30; 79; and 87.

It is astounding that the Regional Director did not even mention any of the exhibits just discussed in coming to his conclusion. SPEEA understands that in many cases reliance on a single employer-generated job description is often improper. But all of the employer-created documents described above are consistent in their descriptions, and some have a higher reliability factor given how they were developed. They are consistent with the testimony, and should not have been ignored.

**F. The FSRs routinely perform professional and engineering functions, without regard to specific academic degree.**

There was copious evidence not only that the FSRs perform professional work on a regular basis and interact with the professional unit on that basis, but also that their work is comparable to that of the existing professional unit in skill, difficulty, and reliance upon advanced learning.

**1. The FSRs routinely use engineering and professional skills.**

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<sup>24</sup>Employer Exhibit 9 directs co-located FSRs "that **as engineers** and technicians, FSRs should develop and maintain a professional attitude toward problem solving in the field." [*Emphasis supplied*]

<sup>25</sup>Employer Exhibit 29 and Union Exhibit 8 (pages 21-22) talk about the roles and expectations specifically of FSR Controllers. Skill requirements are to be an "engineering or technical generalist as appropriate." At the beginning of the AOG (airplane on ground) process, they must "determine if an issue is AOG and help determine if the issue will be worked within BOC." As with the positions covered in the general job descriptions discussed above, the FSR Controllers have to collect all relevant information and then "**provide expertise to help the BOC functional lead determine the best 'go-ahead plan' for resolution of each issue.**" [*Emphasis supplied*]

The functional lead is often an engineer covered by the SPEEA professional collective bargaining agreement. (Tr. p. 1311, Bennett) It is hard to conceive of what expertise the FSR Controller could provide the functional lead without a professional level understanding of the technical engineering issues.

The testimony of Dave Topping, Deputy Fleet Chief in the SPEEA professional bargaining unit, provided example after example about how FSRs have used engineering and professional skills parallel to those of the current bargaining unit to contribute to what could be characterized as “engineering” solutions. Other witnesses provided similar evidence. For example, Mr. Topping described an issue with a retractable landing light as to which the FSR found the solution in an overlooked provision in a service bulletin. (Tr. p. 1366-67.) Topping described another instance when an FSR noticed a problem with an auxiliary power unit that had not been foreseen by any of the engineers and could have been a significant safety problem. (Tr. p. 1373-74.) In another instance, the FSR was attempting to teach reliability engineers how to use all of the data on the 777 and, while doing so, followed a trail of engineering messages and directives to urge the airline engineers to inspect the component, an action that prevented a possible component failure that could have led to the loss of the plane. (Tr. p. 1774-75.)

When faced with an issue related to the lenses on a wing tip’s lights falling off, the FSR noted that the normal fix was too expensive and often impossible to use at remote locations; took specific measurements that were communicated to the Seattle engineers that allowed a new procedure to be developed; proposed a temporary fix so the plane could get back to the base where the permanent fix could be completed; and worked with the vendor to develop a new clear protection over the sealant and method for applying that new tape. (Tr. p. 1376-78.)

When a problem developed on the 777 tire pressure indicating system, engineers in Seattle recommended a solution that did not work and the FSR provided an engineering fix that recognized the results of temperature change on the metal parts, an instance of the use of applied science. (Tr. p. 1378-80) (This was, of course, the very definition of engineering propounded by the Regional Director.)

In another instance, Boeing engineering had made a change in the size of cargo hold blowout panels. However, an FSR noticed that the panels were not holding up very well and realized that that was because they were made out of a thinner material. When this was communicated back to the Boeing engineers, they went back to the old material and original thickness. (Tr. p. 1380-81.) It was the FSR who noted the engineering problem.

Union Exhibit 2, a communication log relating to matters handled by FSR Ross Hirsch, discloses an incident that illustrates the breadth of professional and engineering expertise expected of the FSRs.<sup>26</sup> Described at length in the transcript at pp. 901 – 935, Mr. R. Hirsch's involvement with identifying and solving a critical problem with cracks in a pylon in a Boeing plane's aft bulkhead exemplified professional responsibilities and activities from first to last, beginning with his attempt to address a problem that was brought to him by the customer engineer because the latter couldn't solve it, progressing through modifications of the basic service bulletin based in some measure on Mr. R. Hirsch's recommendations, and ending with Mr. R. Hirsch locating materials needed to ensure an exact fit for the specific pylon whose cracks had started the long chain of engineering discussions and fixes.

Similarly, while the pylon issue was acknowledged to be atypical, it was not dissimilar to a more common type of problem Mr. R. Hirsch described in addressing a cowl heating issue that was caused by the failure of an O-ring. (Tr. p. 943-48) When service engineering told him he was wrong, he "put together a very detailed package of photographs of the --200 and the --300, annotating showing where this elastimer is, showing where it breaks to make a package so that the engineer back there would actually understand the problem." The task card was changed. (Tr. p. 943-48) The Regional Director minimized this testimony by claiming that the annotated photographs were not technical drawings of the type made by an engineer. The most obvious

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<sup>26</sup> Because two "Mr. Hirsches" testified, SPEEA will identify them as either R. (Ross) or S. (Scott)

question is how the Regional Director can draw such a conclusion without evidentiary support, but the bigger point is the kind of knowledge and experience R. Hirsch needed in order to solve this entire problem, not just whether the annotated photographs are technical drawings done by engineers.

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

(Tr. p. 951-54)

The scribe line incident described by FSR Robert Hess, dismissed by the Regional Director as no more than him taking pictures and measurements and sending them back to service engineering without use of any professional expertise (Decision, p. 31-32), is more properly viewed as another incident of the exercise of professional skill and judgment by an FSR. Mr. Hess, who surely knows better than the Regional Director, specifically testified without contradiction that he used his engineering training and experience as a design engineer to be able to gather and communicate effectively the data to the Employer.<sup>28</sup>

As a final example, potable water tanks on the 777 were delaminating. The FSR contributed to the discussions with engineering in Seattle to help design a new indication system

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<sup>28</sup> “Using my A&P license, my education in that, and my engineering work as a Design Engineer, and even though my initial time and my Field Service training footprint, and also at my other experiences at the other operators -- my short time at different operators.” (Tr. p. 1068). “I think I used my entire skillset of data gathering, of collaboration talking with the customer engineers, using my engineering judgment, to put together a package that I was hoping that they would be able to glean enough data from at the time, to be able to come up with a repair. . . .” (Tr. p. 1069)

and also pointed out how cleaning methods being used by the airline may have been responsible for the delamination. (Tr. p. 1382-83.)

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

In other uncontested evidence of the integration of the FSRs into the professional processes at Boeing, R. Hirsch testified about the new procedures being developed for validation of service bulletins. (Tr. p. 967-68, 1049) Validation is a function performed under the SPEEA professional contract. (See Joint Exhibit 1, Section 22.1(a), "evaluation of Company products or processes . . .")<sup>29</sup>

Employer Exhibit 6 references changes in maintenance and operational procedures. R. Hirsch testified that customers sometimes complain to an FSR that a maintenance procedure is incorrect. Initially, the FSR will review the procedure in light of the customer's complaint. If the FSR concludes that the customer is wrong, he explains that to the customer.<sup>30</sup> If his independent analysis, using his own discretion and judgment, shows that the procedure is

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<sup>29</sup> Over the shoulder validation is also mentioned as part of the FSR job in Employer Exhibit 81, p. 9. Since FSRs are not actually supposed to touch the plane, this over the shoulder validation is exactly what an engineer would do.

<sup>30</sup> Can one seriously believe that the customers would accept such an explanation from someone they don't view – and are not presented to them by Boeing -- as “professionals”?

incorrect, it will it be sent to Seattle. (Tr. p. 989) This evidence was similar to the testimony of Dave Topping, who testified that FSRs have to filter suggestions that come from an airline engineer. They have to validate it or enhance it before it moves up to the fleet support level where he works. (Tr. p. 1446) Accordingly, airline engineers bring problems they cannot solve to the FSRs. (Tr. p. 889) Again, it is not plausible that FSRs would be trusted either by the customers or by Boeing itself to engage in this level of discretionary decision-making if they were not viewed, portrayed, and accepted as professionals applying knowledge of an advanced type.

Presenting an overview of his testimony, R. Hirsch (an employee with Boeing or its predecessor since 1979 (Tr. p. 869)) and one of the FSR degreed engineers described what he learned in engineering school (Tr. p. 877), and attested to engaging in activities that he would describe as engineering 70% of his day. (Tr. p. 878) His coworker at his Dallas base is **not** a degreed engineer, but uses the same analytical and decision-making skills as Mr. Hirsch as a regular part of his job. The expectation of Boeing is that they are each capable of performing all duties of an FSR. Boeing permits no difference in the allocation of work between them based upon Mr. R. Hirsch's engineering degree. (Tr. p. 876)

Similarly, FSR Paul Creighton explained that all FSRs do the same job and one cannot tell from working with them who has an engineering degree and who does not. (Tr. p. 1664) Dominique Fontana, a member of the current professional bargaining unit as an Airline Support Account Manager or Airline Support Engineer, (ASAM/ASE) identified a number of FSRs with whom she has worked. The employee profiles show that one, Kent Cummings, does not have an engineering degree, but Ms. Fontana communicates with him no differently than she communicates with any of the other FSRs. (Tr. p. 1255-56)

Andrew Somers, an FSR Intro Rep, also explained that the Boeing collaborative process involves a real exchange of ideas not just unilateral instructions from the engineers to the FSRs. (Tr. p. 1470-71) R. Hirsch confirmed that Employer Exhibit 22 (discussed above) described exactly what he does and that his engineering background allows him to perform his job effectively. (Tr. p. 888)

While much of the evidence was recited by the Regional Director in his decision, he describes it largely as instances of “a co-located FSR acting as a technical advisor in detail.”<sup>31</sup> (Decision, p. 11). As noted above, it is misleading to attach any specific work to “a co-located FSR” as opposed to the classification of FSR in general. More importantly, it is impossible to discern how the Regional Director divided the world between “technical adv[ice]” and professional work for purposes of the Act, and the Regional Director provides no explanation as to why a “technical advisor” who teaches engineers engineering is not, himself, either an engineer or, at least, a professional. While the term “technical advisor” seems to suggest a “technical employee,” the latter is a classification under the Act while the former is not. An employee with the sophistication to advise professional employees in their own field of professional competence clearly qualifies, himself, as a professional.

Despite all of this evidence, consistent as it was with the Employer exhibits discussed above, and with no support in the record, the Regional Director declared that “Clearly, some of the FSRs are degreed engineers and they use this knowledge in making some recommendations. Further, there is no evidence the Employer discourages or prohibits this input to its Service Engineering process. However, I would note that this input is not *required* of FSRs, and there is

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<sup>31</sup> The Regional Director adopted the employer’s term “technical advisor” in several places, apparently in contradistinction to perceived “professional advice.” See Decision, p. 10, 11, 14, 31, 32, 35. While the Regional Director indicates at p. 10 that he is simply utilizing the employer’s description of the FSR job, the employer’s usage isn’t a term of art, certainly for purposes of labor law. There is no magic to the term “technical” that distinguishes it from “professional” in the context of the employer’s job descriptions.

no evidence that the inability to contribute in this manner prevents the 60% of non-degreed engineers from being fully effective FSRs and carrying out the work assigned to and expected of them.” (Decision, p. 32) This declaration turns the actual evidence on its head, and might more properly been stated as a note that “there is no evidence that the degreed engineers are any more effective in carrying out the work assigned to and expected of FSRs than are the remaining FSRs, whatever their specific degree or experience.”

**2. The witnesses most knowledgeable about the relationship between the jobs of the professional bargaining unit and the FSRs testified that the jobs are closely related, involving the FSRs in professional work.**

The Regional Director also ignored the unrebutted testimony of FSR Creighton who has held two positions in the professional bargaining unit concerning the relationship between the skills and expertise of the professional unit as compared to the FSRs. He testified that, in terms of technical expertise, the FSR job is more demanding than both of the engineering jobs he held previously.<sup>32</sup> This contrasted with his testimony about the jobs he held in the SPEEA technical bargaining unit. In each of those jobs, the work was **not** varied, it did **not** involve the exercise of

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<sup>32</sup> Q You had a number of positions -- or at least two positions within the Professional Bargaining Unit in SPEEA, right?

A Just --

Q I count -- Service Engineer --

A Yes.

Q -- And Sales Support Engineering, is that correct?

A That's correct.

Q Were both of those positions in the Professional Bargaining Unit in SPEEA?

A Yes.

Q In terms of technical skills, which positions were more demanding, your positions within the Bargaining Unit as a Sales Support Engineer and Service Engineer or Field Service Representative?

A Field Service Representative.

Q Can you explain your answer please?

A Well, you're out on your own basically -- I mean -- you're basically working by yourself or with maybe other Reps also. You're in -- you know -- you see your boss once a quarter, you're in ready contact with Seattle, but you do -- when problems do arise, you have to make a judgment -- you don't have a Manager you can go to and say hey, should I do this -- or somebody -- you can contact another Rep maybe. You can go to your Regional Director by phone, but I think in the amount of engineering work we have to do as Reps, the interfacing with the customer directly, every day and under extreme circumstances sometimes when there is an issue that's keeping an airplane out of service, those we never faced in either Sales Support or Service Engineering. (Tr. p. 1653-1654, Creighton)

judgment and discretion and it did **not** require any advanced training. He performed these jobs before he got his engineering degree and did not use any engineering in doing them. (Tr. p. 1632-38)

Further, the hearing was replete with testimony demonstrating the close relationship between members of the current unit and the FSRs as well as between their jobs. Ms. Fontana noted that Union Exhibit 4, a Boeing PowerPoint presentation about her job, accurately describes her position as an “in-house” FSR. (Union Exhibit 4, p. 6, Tr. p. 1155, Fontana) She testified that both she and the FSRs do many of the functions listed throughout that exhibit. It was common for her, when describing what she did in her job, to say that the FSRs do the same functions.<sup>33</sup>

Finally, Scott Hirsch, manager of the Airline Service Engineers, testified to the duties of those members of the SPEEA professional unit in a description which also fits the job duties and responsibilities of FSRs. Mr. Hirsch testified that he relies on his ASEs to analyze solutions that are offered and provide value instead of just passing along what comes to their desks. (Tr. p. 1719-20) If the ASE (like an FSR) knows a solution is incorrect, then the ASE (like an FSR) challenges the people providing the solution, by which he meant that when it does not meet the customer's needs the ASE (like an FSR) has to go back to the service engineer or the design engineer and question them in detail in an effort to get a better solution. *Id.*

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

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<sup>33</sup> Looking at Section 22.1 of the CBA, Ms. Fontana described how her job requires her to research the development of solutions and evaluate processes. (Tr. p. 1259) She also described how the standards for being a professional set forth in that section all apply to her job (Tr. p. 1260), a description that applies to the nearly-identical functions of the FSRs.

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

**G. The FSRs are not technical employees.**

The Regional Director effectively found the FSRs to be technical employees. It is odd, then, that he ignored the testimony of Paul Creighton, who is uniquely qualified to contrast technical work from professional at Boeing; he has held positions in each of the professional and technical bargaining units, as well as working now as an FSR. The Regional Director does not even acknowledge his testimony, cited above and properly summarized as characterizing the progression of technical complexity, discretion and judgment in his work as moving from the technical unit, through the SPEEA professional unit, and **up to** FSR, where he has had to exercise the most complex and professional judgments. (Tr. p. 1632-40; 1654)

Andrew Somers' testimony confirms that of Mr. Creighton. He is currently on loan to a job covered by the SPEEA technical contract, and testified that this job is much more routine than his FSR Intro Rep role. He regularly exercises judgment and discretion in his FSR Intro Rep job and only occasionally does so in his current job. In his FSR Intro Rep role he uses his Bachelor of Science in Professional Aeronautics degree a lot, but only a little bit in his current job. (Tr. p. 1486-94)<sup>34</sup>

Due to the delay in the introduction of the Boeing 787 and 747-800, Boeing has loaned some FSRs into SPEEA existing technical and professional bargaining unit positions. At page 30 of the decision, the Regional Director relies on that fact to conclude that all FSRs perform at the level of the technical bargaining unit in their regular FSR jobs. All that this evidence shows is that the Employer temporarily put some FSRs in technical positions while their jobs as FSRs awaited the introduction of new aircraft. It does not mean that the employees loaned to the

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<sup>34</sup> The Regional Director cites (and presumably credits) some of Mr. Somers' testimony, but doesn't mention this.

technical unit are not professional employees when performing as FSRs. Nothing prohibits the employer from putting non-represented professional employees into these positions. The work history of Mr. Somers, Employer Exhibit 105, shows no change in his compensation when he was loaned from his FSR position to that of flight analyst (except that he is now eligible for overtime given the nature of his work). He did not have his pay reduced nor changed to hourly. The most that can be said about those loaned to technical positions is that the Employer felt it needed them there.

At page 33 of the Decision, the Regional Director states that FSRs are not working with what he characterizes as engineers' tools. His finding is a curious admission that "the nature of modern engineering is such that much of the calculation and design is computer assisted," combined with an uninformed and an unsupported assertion that, "if the FSRs were required to apply engineering knowledge, I would expect they would be given tools to facilitate calculation and design, rather than the tools of communication." [*Emphasis supplied*] He apparently did not understand that access to My Boeing Fleet gives access to all kinds of data, much of it highly technical.

Union Exhibit 23, at page 3-5, contains a list of the information available to FSRs and what they are trained to use. (Tr. p. 1668, Creighton) It shows the following: Aircraft Maintenance Manual, Aircraft Readiness Log, Airplane Flight Manual, Built-In Test Equipment Manual, Component Maintenance Manual, Data and Services Catalog, Dispatch Deviation Guide/MEL/CDL, Fault Isolation Manual, Fault Reporting Manual, Illustrated Parts Catalog, Maintenance Tips, Master Minimum Equipment List, Minimum Equipment List, Operations Manual, Standard Overhaul Practices Manual, Standard Wiring Practices Manual, Structural Item Interim Advisory, Structural Repair Manual, System Schematics Manual, Wiring Diagram

Manual, Fleet TEAM Digest (previously Fleet Issues Summary Report), Fleet TEAM Resolution Process Bulletin Board and Fleet TEAM Emerging Issues. These are the “tools” of the modern engineer not of technical employees. (Tr. p. 1668-75) These are not mere communication tools, they are technical data. Some of these are not easy to use or understand.<sup>35</sup>

**H. Applying the facts as actually supported by the record to the law, as correctly described, the FSRs fit cleanly into the professional category under the Act.**

Taking all of these facts as actually supported by the record, *The Firestone Tire & Rubber Co.*, 181 NLRB *supra* at 831-832 provides what may be the closest analogous positions to FSRs. In that case, the Board concluded that the Chemical Engineer-Compounding, the Senior Engineers and the Junior Engineer were all professionals based on the following:

The Chemical Engineer-Compounding analyzes each problem from a chemical viewpoint and then reaches a decision as to what changes are to be recommended or made to correct the problem. As part of his job he must evaluate formulas and specifications, modify present formulas and specifications as required, issue instructions for off-standard materials, make certain that specifications are being maintained in production areas, correct defective practices, and evaluate the product at all stages from raw material to finished product.

The Senior Engineer directs the analysis of any defects and determines the corrective action to be taken, coordinates with the plant engineer when dealing with any malfunctions, breakdowns and/or changes in operations, inspects tire molds before their use and issues instructions for revision of tire molds, and works with the other departments in developing changes in materials, equipment, cures, and procedures designed to improve quality and/or reduce cost, waste, seconds, or scrap.

The employees in each of these classifications are faced with a wide variety of problems and are required to exercise judgment and discretion in solving these problems. . .

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<sup>35</sup> “Well, the Boeing drawing system is -- can be very difficult -- it’s because you have -- it contains all of the airplanes ever made -- that particular model ever made and they are tabbed with various customers so you have to know where to go to get the customer tab -- you know -- the identification and so he’s searching parts lists and then the drawings themselves sometimes there will be -- there can be hundreds of pages and in his case we do with My Boeing Fleet -- we have some better filtering now where he could go and put in the operator’s three letter designator, put in the part number and get a pretty good print out of what he needed -- a pretty good indication of what he needed, but then he’s got to go through and make sure that he’s selecting the right components and matching them up correctly.” (Tr. p. 1652-1663, Creighton)

(Footnotes omitted.) While not identical to FSRs, there is much overlap of kinds of duties and it is undisputed that FSRs are “faced with a wide variety of problems and are required to exercise judgment and discretion in solving these problems.”

The cases relied upon by the Regional Director that focus on the nature of the work are distinguishable, like those that focused on the educational background of the employees. In *Avco Corp.*, 313 NLRB 1357 (1994), the Board began its analysis by noting that in cases where it has found engineers not to qualify as professionals, "they generally performed routine work and in virtually every case did not have College engineering degrees. *Id.* at 1358. It then held that those employees in the plant engineer II job classification were professionals, noting that they did no hands-on maintenance work, their work was primarily intellectual and varied over a wide range including coping with physical disasters to analyzing needs of a new building to advising trades people in the performance of their tasks. *Id.* at 1362.

In *General Dynamics Corp.*, 213 NLRB 851 (1974), the Board found that the position of Senior Service Engineer was not a professional position. The Regional Director in that case described their duties as writing publications to assist customers "particularly in the use of its aircraft products." They also maintained historical data concerning delivered aircraft, conducted examinations of accidents and incidents involving the employer's equipment and provided some assistance in product liability legal actions. *Id.* at 863. The Regional Director then listed several positions that the board also found to be nonprofessional:

engineering documentation analyst, engineering documentation representative, engineering documentation specialist (determine vendor document submission compliance); engineer drawings checker (check documents for compliance with Employer's standards); engineer illustrator ("artistically oriented" employees that execute technical drawings at direction of design engineers and draftsmen); equipment engineer (maintenance and research related to the maintenance of certain specialized equipment); manufacturing engineer (assessment of whether present facilities meet future production needs); senior materials and process

engineer (create manufacturing specifications and instructions); and tool engineer (design and fabrication of specialized tools).<sup>36</sup>

(Decision, pages 27-28.) For some of these, it is clear from the description provided by the Regional Director that they have nothing to do with the kind of work performed by FSRs. Engineering documentation analyst, engineering documentation representative, and engineering documentation specialist are little more than contract compliance positions. An engineer drawings checker is a document checker. An engineer illustrator is an artist. An equipment engineer performs hands-on maintenance. *General Dynamics, supra.*, at 865. Being a manufacturing engineer “entails having knowledge of [the Employer’s] present facilities and how they are being used.” *Id.* at 866. A senior materials and process engineer look much like service bulletin engineer at Boeing that is in the existing professional unit. (Tr. p. 921)<sup>37</sup> The senior materials and process engineer has only minimal participation in problem solving meetings, unlike that primary function of FSRs. *General Dynamics, supra.*, at 866.

The Regional Director relied heavily on *Loral Electronics, supra* He concluded that FSRs were "particularly analogous" to nonprofessional marketing managers in *Loral* Like so many other things in the decision, this conclusion is flatly wrong. First and foremost, the Board's discussion of marketing managers in *Loral* does not mention anything about whether **any** had **any kind** of degree, despite the fact that there are numerous references to the educational backgrounds of the individuals, when discussing **other** job classifications. The only conclusion that can be drawn from this absence is that not a single one of the marketing managers had such a degree. Next, there is no indication what it really meant when the Board said that these

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<sup>36</sup> For most of these positions, the Board's description of their work is at best sparse and provides little guidance in the instant case.

<sup>37</sup> Q And who is responsible for writing the service bulletin?

A Service Bulletin Engineering.

Q Is he or she a licensed engineer?

A Yes.

individuals "prepare technical data in connection with bids and technically assist Engineering Division personnel working on bids." Since the bid process with the military in which *Loral* was engaged is, in and of itself, a highly technical process, it is entirely conceivable that reference was simply to understanding the process and had nothing to do with the technical information related to what the engineers were doing. Given the fact that these were all marketing people, that is the most likely conclusion.

- I. The Board should take review and decide all remaining issues not addressed by the Regional Director , including whether the FSRs share a community of interest with those in the SPEEA professional unit, whether the FSRs constitute a distinct segment of the workforce, and whether the FSR team leaders are supervisors.**

If the Board reverses the Regional Director's determination and finds that the FSRs are professionals, the questions of whether they have a sufficient community of interest with the existing unit for an election, and constitute a distinct, identifiable segment of the workforce, would still remain, as would that concerning the alleged supervisory status of the team leaders.<sup>38</sup> And under the circumstances, the Board should take review on those questions, and decide them based on the extensive existing record rather than ordering a remand to the Regional Director to make a determination.

Any case in which a group of employees seek a self-determination election to join an existing professional unit presents three, rather than the basic two, questions. As with any petition for an *Armour-Globe* election, the Board must consider whether the petitioned-for group shares a community of interest with the existing bargaining unit and constitutes a distinct, identifiable segment of the workforce. (*Warner Lambert Co., supra*) Where professionals

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<sup>38</sup> The Regional Director acknowledges this when he states that he "do[es] not find it necessary to address the substance of Petitioner's and Employer's additional arguments [relating to traditional *Armour-Globe* election criteria] at this time, but will instead address these issues in a Supplemental Decision, if necessary." Decision, p. 2

comprise the existing unit exclusively, the Board must determine whether the group to be added is professional. However, declaring that the professional question is the “threshold” one (Decision, p. 24), the Regional Director did not decide whether the FSRs have a community of interest with the existing unit or constitute a distinct, identifiable segment, but instead suggested that the Petitioner might invoke a cumbersome and novel two-part election process as a prerequisite even to getting a decision on the basic *Armour-Globe* questions. In fact, the three issues are of equal significance, and any one might have been deemed a “threshold” question or, more properly, each could have been decided by the Regional Director in the seven weeks it took him to issue his decision.<sup>39</sup> Had he done so, the Petitioner and Board would have had the benefit of his analysis now without the delay of a remand. Since he failed to do so, the policies and purposes of the Act suggest that the Board should decide those issues on the fully-developed record rather than impose additional delay.

No cases directly address when the Board should remand, and when it should decide an issue itself. Many factors suggest, however, that a decision would be preferable to a remand in a case of this nature. First, the petition was filed on January 3, 2011. A lengthy and detailed hearing extended from the middle of January through early February. The decision from the Regional Director didn’t issue until April 13, 2011, 100 days after the petition had been filed.

This already marks a considerable delay, as compared to the median 40 – 45 days **from petition**

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<sup>39</sup> In a curiously misleading observation, the Regional Director writes at pp. 23-24 of his decision that the union “argued extensively. . . that the record supports finding the community of interest and identifiable and distinct factors are met” and “[o]nly at the end of its argument [adds] that the FSRs . . . are professionals . . . and engineers.” Thirty-one of the 73 pages of the Petitioner’s brief are addressed to the professional status of the FSRs, reflecting the close balance among the issues. And there is, in fact, an overlap between the “professional” and the community of interest issues, insofar as the similarity and interchange of work between the FSRs and unit members tends to buttress the professionalism of the former. The Company’s brief addressed factual issues in a mix of community of interest and professional status factors for its first 52 pages, and professional status in a few pages in the middle of its argument (Employer’s brief, pp. 64 – 74).

The Regional Director’s comment reinforces how unreasonable it was for him to decide only the professional status issue: The parties each recognized that the issues are intermingled and that no one of these issues is a threshold. The artificial division the Decision imposes undercuts the validity of a decision on **any** of the factors.

**to election** which has been the Board’s benchmark standard for over a decade. This insures that the case will not meet Strategic Goal No. 1 of the Fiscal Year 2010 Performance and Accountability Report to “resolve all questions concerning representation impartially and promptly,” as measured by the percentage of cases resolved within 100 days of the filing of the petition. If the decision is accepted for review, of course, the employees are looking at considerably more delay, even without a remand. “One of the major policies of the Act, which the Board is duty bound to effectuate, is the expeditious resolution of questions concerning representation. To adhere mechanically to procedural rigor in the particular circumstances of this case would only thwart that policy.” *International Ladies' Garment Workers' Union*, 137 NLRB 1681 (1962)(The Board ordered that challenged ballots be opened before the challenges were resolved, in light of the likelihood that the employees had voted to unionize.)<sup>40</sup> And, unlike the situation in *ILGWU*, there is no “procedural rigor” in this case which counsels remand. While there may be a common **practice** of remanding undecided issues to the Regional Director, there is no rule that requires it, nor is there any reason in this case to permit it.

Thus, referral of election decisions in the first instance to Regional Directors is, itself, a discretionary act by the Board. The statute calls for **the Board** to determine an appropriate bargaining unit, not for Regional Directors to do so. 29 U.S.C. § 159. In the early days of the Act, the Board decided representation questions directly itself. See e.g., *Beaver Mills-Lois Mill*, 1 NLRB 147 (1936). This practice was gradually supplemented by the Board specifically ordering Regional Directors to investigate and hold hearings (See e.g., *Acme Paper Box Co., Inc.*, 20 NLRB 146 (1940) or direct appointment by the Board of Trial Examiners, a practice that

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<sup>40</sup> “The expeditious processing of petitions filed pursuant to the Act represents one of the most significant aspects of the Agency’s operations. The processing and resolution of petitions raising questions concerning representation, i.e., RC, RM, and Regional Director petitions, are to be accorded the highest priority.” NLRB Casehandling Manual, Part Two, Representation Proceedings, Section 11000.

continued for decades. See e.g. *Acme Die & Machine Company*, 59 NLRB 958 (1944); *Aluminum Ore Co.*, 70 NLRB 268 (1946); *Parker Brothers and Co., Inc.* 119 NLRB 139 (1957); *Baltimore Gas and Electric Co.*, 138 NLRB 270 (1962); *Bowman Transportation, Inc.*, 166 NLRB 982 (1967); *American Automobile Association*, 172 NLRB 1276 (1968).<sup>41</sup> In 1961, the Board formally delegated authority to the Regions to process petitions and conduct elections,<sup>42</sup> modified by the ability of Regional Directors to transfer cases directly to the Board, a practice that still exists under 29 C.F.R. § 102.67(h). Thus, there is no statutory bar to the Board deciding a representation issue without the benefit of a decision by a Regional Director.

Neither is there any practical barrier. The record on the standard *Armour-Globe* criteria was fully developed, and the parties have fully briefed the issues. As the Board has noted in the past, this is enough reason for the Board to address these criteria itself. “The Regional Director did not address the question of whether M.S.C. of East St. Louis and Revco D.S. Inc. constitute a single Employer, whose operation of numerous retail outlets meets the Board's jurisdictional standards. However, this question, was addressed by the parties in the hearing herein, and was treated in their briefs both to the Regional Director and to the Board, and we find the evidence sufficient to decide this issue.” *Revco*, 226 NLRB 493 (1976). *Cf. Witteman Steel Mills, Inc.*, 253 NLRB 320 (1980) (Although the Acting Regional Director had failed to make a finding on the unit placement of laboratory technicians because he believed the petition was premature, the Board decided the issue based on the existing record); *University of Chicago Library*, 205 NLRB 220 (1973), *enf'd* 506 F.2d 1402 (7<sup>th</sup> Cir. 1974). In the latter CA case alleging Section 8(a)(2) violations by putative supervisors, the ALJ had dismissed the complaint in its entirety without

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<sup>41</sup> These cases are not cited for their substantive relevance, but only to illustrate the evolution of the Board's procedure.

<sup>42</sup> See 26 FR 3611. As the cases cited reflect, this procedure was not always followed during the 1960s.

addressing the merits of the charge, looking only at the uncertain supervisory status of the individuals whose actions gave rise to the complaint. The Board, reversing the judge, wrote that

[the ALJ] stated that the nine employees in issue herein [the alleged supervisors] have the right to have the Board decide the question of their supervisory status, and that the issue of the supervisory status of the other librarians still in dispute should properly be the subject of a representation proceeding. **While we agree that a representation proceeding is the preferred method of determining supervisory status, we cannot ignore the fact that a charge alleging unlawful domination and interference on the part of the Employer was filed, the General Counsel issued a complaint, and a hearing was held at which the issues were litigated.** In these circumstances, we can perceive no justification for dismissing the complaint without reaching the merits. The employees have the right to be free from employer interference and assistance in the formation of their labor organization. To summarily dismiss the complaint without considering the nature of the conduct involved does not further the policies of the Act.

[Emphasis supplied]

To similar effect, in *Greyhound Lines, Inc.* 235 NLRB 1100 (1978), the ALJ faced an issue which, he said, was a novel one – To what degree could voluntary recognition be challenged on grounds that some employees were excluded who would have been included under Board law? He found that there were a number of analogous legal standards which he could apply and, indeed, determined first of all that “The unit cannot be challenged at all in this manner.” However, he went on:

Having arrived at this conclusion, I could drop the unit question and proceed on to the question of card misrepresentation. However, **due regard for the positions advanced by the parties, including the past and present positions of the General Counsel and the amount of time, effort, and expense which has gone into the hearing of this case, militate in favor of consideration of other possible approaches, which consideration follows.** [*Emphasis supplied*]

*Id.* at 1105.

In addition to deciding without a remand all issues concerning the propriety of an *Armour Globe* election, the Board should decide an additional issue raised at the hearing but left undecided by the Regional Director, whether the FSR Team Leaders are supervisors. The same

reasons which militate against a remand on the  *Armour Globe*  issues should prompt the Board to decide the supervisory issue as well. The parties made a full record on that issue and the hearing and addressed it in their briefs to the Regional Director. To expedite the entire matter, the Board should decide all issues rather than remanding any of them.

An initial decision by the Regional Director on **all** the issues presented by an election petition is more a convenience than a necessity – because of the (nominally) non-adversarial nature of the hearings, it is considered unnecessary for the decision-maker to hear witnesses testify in person in order to evaluate their credibility, and the Board and the Regional Director therefore confront the same written record, with no advantage to the Regional Director in evaluating that record. If the  *Armour-Globe*  issues are remanded, there is a significant risk that the Regional Director’s decision, whatever it is, will itself be subject to a new Request for Review, and there is little benefit to the Board in having a Regional Director opinion to rely on, as the legal standards are well established, and the issues are almost entirely factual (and set forth in the existing record).

## **VI. CONCLUSION**

The Regional Director erred by not deciding all of the issues before him, including all issues bearing on whether the Petitioner merited an  *Armor Globe*  election, and the supervisory issues posed by the Employer. The Board should now review and decide all of the issues. To do otherwise would unduly delay and complicate the proceedings.

The Regional Director erred factually and legally in his application of clear Board precedent concerning the characterization of professional units when employees holding professional degrees related to their work predominate, but do not represent the full complement of employees. When correctly calculated and without rewarding the employer for its failure to

maintain complete records on the educational backgrounds of its FSRs, approximately 68% to 75% of the FSRs earned a professional Bachelors or Masters of Science degrees in a field relating to aeronautics. The employer regards the vast majority of those degrees as engineering degrees. The work of the FSRs corresponds to the professional status indicated by those degrees. Thus, that work is of an “advanced type” qualifying the FSRs as professionals within the meaning of Section 2(12(a)(iv) of the Act.

The Board should not permit the Regional Director’s error to survive and spread. The Board should take review and should clarify that employees seeking to join a professional unit do not need a *Sonotone* election if they qualify as professionals, regardless of fine distinctions whether they belong to a particular profession based upon an artificial dictionary definition.

Dated this 11<sup>th</sup> day of May, 2011.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of May, 2011, I electronically filed the **REQUEST FOR REVIEW OF REGIONAL DIRECTOR DECISION AND CONDITIONAL ORDER** through the National Labor Relations Board website system which will send notification of such filing to the following e-mail addresses:

Executive Secretary  
National Labor Relations Board  
Washington, D.C.

and I hereby certify that I have served the document to the following as indicated:

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