

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

THE BOEING COMPANY,

Employer-Petitioner

and

Case No. 31-UC-311

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

Union

**THE BOEING COMPANY'S REQUEST FOR REVIEW
OF THE ACTING REGIONAL DIRECTOR'S
SUPPLEMENTAL DECISION AND ORDER DISMISSING PETITION**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL HISTORY.....	2
III.	SUMMARY.....	2
IV.	FACTS	6
A.	A Brief Summary of the Company’s Business.....	6
B.	Program Execution and Facility Administration	7
1.	Program Execution.....	7
2.	Facility Administration	8
a.	Cost centers.....	8
b.	General Company-wide administration	10
c.	Historical Edwards/Palmdale administration.....	10
1)	Prior to 1976	10
2)	July 1976 to December 1996	10
3)	December 1996 – The acquisition of Rockwell’s aerospace interests	11
4)	August 1, 1997 – Merger with McDonnell Douglas.....	13
5)	Since July 1998 - Creation of the HDAIT	14
d.	Administration of Edwards/Palmdale prior to HDAIT.....	16
e.	Administration of Edwards/Palmdale after the creation of HDAIT	17
1)	Terms and conditions of employment for Edwards/Palmdale professional and technical employees.....	18
2)	Number of employees at Edwards/Palmdale and Puget Sound	19
3)	Loan ins and Loan outs	20
4)	Corporate-wide organizational changes occurring since 2009	21
C.	The bargaining history supports an historical exclusion.....	22
D.	The Union admits it does not represent all professional and technical employees at Edwards/Palmdale.....	23

V. ANALYSIS.....	25
A. Legal standard for requests for review.....	25
B. The Acting Regional Director failed to comply with the Board’s remand by dismissing the Petition	26
C. The Acting Regional Director failed to consider that newly hired professional and technical employees at Edwards/Palmdale have not met the eligibility requirements of the at-issue bargaining units since the creation of HDAIT	27
D. The Regional Director improperly concluded that the accretion doctrine does not apply in this case	28
E. The Acting Regional Director’s decision could lead the effective certification of units by an arbitrator that do not meet the statutory requirements of Section 9(a).....	31
F. The Acting Regional Director failed to properly apply established Board precedent in determining multi-facility bargaining was appropriate between Edwards/Palmdale and Puget Sound	32
1. The record evidence does not support the Acting Regional Director’s conclusion that Puget Sound shares day-to-day supervision of professional and technical employees at Edwards/Palmdale	34
2. The record evidence does not support the Acting Regional Director’s conclusion that interchange between Edwards/Palmdale and Puget Sound is sufficient to justify multi-facility bargaining	37
3. The Acting Regional Director erred in finding the distance between Edwards/Palmdale and Puget Sound does not weigh against multi-location bargaining	39
4. The Acting Regional Director did not comply with established Board precedent when he failed to consider the Union’s non-exclusive bargaining relationship with Edwards/Palmdale professional and technical employees when determining the appropriateness of multi-location units.....	40
G. The unit as defined by the Acting Regional Director does not conform to any of the Company’s administrative or organizational structures	46
VI. CONCLUSION.....	47
CERTIFICATE OF SERVICE	49

TABLE OF AUTHORITIES

Arthur Sarnow Candy Co.
306 NLRB 213 (1992) 32, 41, 42, 44

Bowie Hall Trucking
290 NLRB 41 (1988) 36

Carr-Gottstein Foods Co., Inc.
307 NLRB 1318 (1992) 30

Catholic Healthcare West
344 NLRB 790 (2005) 37

Developmental Disabilities Institute, Inc.
334 NLRB 1166 (2001) 29

Dixie Belle Mills
139 NLRB 629 (1962) 34

Don Mendenhall
194 NLRB 1109 (1972) 32, 41

Esco Corp.
298 NLRB 837 (1990) 34

Geo. V. Hamilton, Inc.
289 NLRB 1335 (1988) 30

Goski Trucking Corp.
325 NLRB 1032 (1998) 32, 41, 42

Hilander Foods
348 NLRB 1200 (2006) 35, 38

J&L Plate, Inc.
310 NLRB 429 (1993) 34

Kansas Power & Light Company
64 NLRB 915 (1945) 32, 41, 42, 44

Laboratory Corporation of America Holdings
341 NLRB 1079 (2004) 46

Makin Hats
332 NLRB 19 (2000) 32, 41, 42, 44

<i>Manufacturing Woodworkers Association of Greater New York</i>	
194 NLRB 1122 (1972)	32, 41, 42, 44, 45
<i>New Britain Transportation Co.</i>	
330 NLRB 397 (1999)	34, 35
<i>Nott Company</i>	
345 NLRB 396 (2005)	30
<i>Passavant Retirement and Health Center</i>	
313 NLRB 1216 (1994)	37
<i>Pioneer Inn & Casino</i>	
228 NLRB 1263 (1977)	43
<i>Premcor, Inc.</i>	
333 NLRB 1365 (2001)	29
<i>Red Lobster</i>	
300 NLRB 908 (1990)	35, 38, 39
<i>Renaissance Center Partnership</i>	
239 NLRB 1237 (1979)	30
<i>Safety Carrier</i>	
306 NLRB 960 (1992)	29
<i>Safeway Stores</i>	
256 NLRB 918 (1981)	29
<i>Seaboard Marine</i>	
327 NLRB 556 (1999)	32
<i>Specialty Healthcare and Rehabilitation Center of Mobile</i>	
357 NLRB No. 83 (2011)	2, 6, 29, 31, 32
<i>Stormont-Vail Healthcare</i>	
340 NLRB 1205 (2003)	46
<i>The Boeing Company</i>	
349 NLRB 957 (2007)	2, 27, 28
<i>Union Electric Co</i>	
217 NLRB 666 (1975)	29
<i>United Rentals, Inc.</i>	
341 NLRB 540 (2004)	37

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The Boeing Company (hereinafter referred to as the "Company" or "Boeing"), pursuant to Sections 102.67(b) and (c) of the Board's Rules and Regulations, submits this Request for Review of the Acting Regional Director's Decision and Order Dismissing Petition (hereinafter referred to as the "Acting Regional Director's Decision" or "Decision"), issued by Gary W. Muffley, Acting Regional Director for Region 31 of the National Labor Relations Board, on August 5, 2011. For the reasons set forth below, the Request for Review should be granted.

I. INTRODUCTION

The Acting Regional Director's decision in this case completely disregards the Board's instructions on remand. The Board specifically instructed him that the petition was not to be dismissed, but instead that a clarification order was to issue. In spite of this clear direction from the Board, he dismissed the Petition anyway. In addition, the Decision's scant analysis of the factors required by the remand routinely misapplies Board precedent and misstates both law, including the Board's remand, and record evidence. Among other things, the Acting Regional Director refused to consider the Board's accretion doctrine, which is even more relevant to the

case in light of the Board's recent decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011). Finally, misapplying both law and facts, the Decision errs in finding that a multi-location bargaining relationship exists. Accordingly, for the reasons set forth in more detail below, the Board should grant the Company's Request for Review.

II. PROCEDURAL HISTORY

On April 8, 2005, the Company filed the instant Petition seeking clarification of the scope of the representational status of the Society of Professional Engineering Employees in Aerospace, IFPTE, Local 2001, AFL-CIO (hereinafter referred to as the "Union" or "SPEEA"), as it relates to professional and technical employees performing work at the Company's facilities at Edwards Air Force Base, California, and Air Force Plant 42 in Palmdale, California (hereinafter referred jointly as "Edwards/Palmdale").¹ On October 18, 2006, the Regional Director for Region 31 issued his Decision and Order dismissing the Petition.

On April 30, 2007, pursuant to a request for review by the Company, the Board remanded the case to the Regional Director for further processing of the Petition, including the reopening of the record for the collection of additional evidence. *The Boeing Company*, 349 NLRB 957 (2007). On April 1, 2010, the record was closed for a second time. Post-hearing briefs were filed by both parties on July 16, 2010. On August 5, 2011, Acting Regional Director for Region 31, Gary W. Muffley, issued his Decision.

III. SUMMARY

As will be discussed in detail below, the Company's operations at the relevant California locations do not in any material way resemble the operations that were in place at the time representation was extended to the Union. Indeed, prior to 1976, the Company's operations at

¹ Professional employees and technical employees constitute separate bargaining units. See Jt. Ex. 1, 10. Also, the Company filed RM petitions for the two bargaining units at Palmdale/Edwards on April 8, 2008. Co. Exs. 120-121.

Edwards Air Force Base, CA (hereinafter referred to as “Edwards”), were managed from its facilities in the State of Washington (hereinafter referred to as “Puget Sound”). It is undisputed that employees working there were considered to be on temporary travel assignment from Puget Sound. In July 1976, the Company for the first time established permanent operations and assigned employees permanently to Edwards.

Some of the newly permanent employees assigned to Edwards filed a petition for representation. In response, the Company agreed to include employees permanently assigned from Puget Sound to Edwards/Palmdale in the existing Puget Sound bargaining units. In 1989, the Company began work at Air Force Plant 42 in Palmdale, CA (hereinafter referred to as “Palmdale”) and agreed to include professional and technical employees working at Palmdale in the Puget Sound units. Until 1999, management in Puget Sound hired and assigned all employees to Edwards/Palmdale.

On January 1, 1999, Edwards/Palmdale’s operational dependence on Puget Sound changed dramatically. As a result of the acquisition of certain operations of Rockwell International Corporation (hereinafter referred to as “Rockwell”) in 1996 and a merger with McDonnell Douglas Corporation (hereinafter referred to as “McDonnell Douglas”) in 1997, the Company created the High Desert Assembly Integration and Test Center (hereinafter referred to as “HDAIT”). This new operationally independent entity covered all Edwards/Palmdale facilities and employees. For the first time, management at Edwards/Palmdale no longer answered exclusively to higher levels of management in Puget Sound and new permanent employees at Edwards/Palmdale were not assigned from Puget Sound. Instead, permanent employees were hired directly to Edwards/Palmdale by local management and Human Resources personnel without the assistance of the Company’s staffing office in Puget Sound.

In addition to the changes for heritage² Boeing employees, with the creation of HDAIT, professional and technical employees from the three heritage companies at Edwards/Palmdale, Boeing, Rockwell, and McDonnell Douglas, were merged for the first time under the same supervisory and managerial structure. None of the heritage Rockwell and McDonnell Douglas professional and technical employees were members of the Union at the time of the merger.

After the merger, permanent employees were no longer assigned from Puget Sound and unrepresented professional and technical employee significantly outnumber represented professional and technical employees after the merger of the three heritage employee groups. Therefore, due to the significant operational and administrative changes that occurred with the creation of HDAIT, the Company determined that it could no longer recognize the Union as the representative of all professional and technical employees at Edwards/Palmdale. The Company did voluntarily agree to allow the Union to continue to represent heritage Boeing professional and technical employees permanently located at Edwards/Palmdale. However, as these employees were replaced with new employees, the Company determined all new employees would be unrepresented like all other non-heritage Boeing professional and technical employees.

More than one year after the Company announced the creation of HDAIT, and more than ten months after the merger of the heritage Boeing, Rockwell, and McDonnell Douglas employee groups, the Union filed a grievance challenging the Company's position regarding its representational status as it related to the professional and technical employees at Edwards/Palmdale. The Union initially asserted that it should represent all professional and technical employees at Edwards/Palmdale regardless of heritage status, but subsequently backed off that position. It instead claimed representational rights for heritage Boeing professional and

² The term "heritage" was used to indicate from which of the three companies, Boeing, Rockwell, or McDonnell Douglas, someone or something, e.g. a program or employee, originated prior to the creation of HDAIT.

technical employees, all newly hired professional and technical employees, and any employees who transfers into new positions, regardless of their heritage status. The Union did not seek to represent heritage Rockwell or McDonnell Douglas professional and technical employees that remained in their pre-merger positions. Since retracting its initial position, the Union has steadfastly asserted that it does not represent these individuals. When the grievance procedure failed to produce a solution to the disagreement between the Parties regarding the scope of the units, the Union filed for arbitration. In response to the Union's arbitral claim, the Company filed the instant Petition requesting that the Board resolve the representational dispute.

The Company's Request for Review should be granted because the Acting Regional Director's Decision raises a substantial question of law and policy because he failed to clarify the union as directed by the Board in its remand. Dismissing the Petition effectively leaves an arbitrator to resolve the outstanding representational question which the Board clearly indicated was its exclusive responsibility. Moreover, even if the Acting Regional Director's dismissal of the Petition was procedurally appropriate, the dismissal was based on a significant departure from establish Board precedents, clear misstatements of record evidence, and rulings and determinations that resulted in prejudicial error and are plainly contradictory to the statutory limitations and purposes of the National Labor Relations Act.

Specifically, record evidence clearly establishes that with the creation of HDAIT significant organizational changes occurred which effectively severed the relationship between Edwards/Palmdale and Puget Sound. Since the creation of HDAIT, professional and technical employees have been hired directly by Edwards/Palmdale management and Human Resources and are no longer assigned from Puget Sound. The Acting Regional Director essentially ignored

the fact that new hires at Edwards/Palmdale no longer meet the requirements of the agreed upon professional and technical units because they are no longer assigned from Puget Sound.

Moreover, since the organizational changes caused by HDAIT resulted in the merger of heritage Boeing, Rockwell, and McDonnell Douglas professional and technical employees into a single organizational structure, it was necessary for the Acting Regional Director to consider the Board's accretion doctrine as it applied both before and after the creation of HDAIT. His failure to do so leads to conclusions that stand in conflict with explicit limitations imposed by Section 9(a) of the Act and established Board precedent, including the Board's recent decision in *Specialty Healthcare*, 357 NLRB No. 83. The Acting Regional Director also failed to apply established Board precedent and misstated uncontroverted record testimony when determining multi-location bargaining was proper between Edwards/Palmdale and Puget Sound after the creation of HDAIT.

This Request for Review should be granted because the Acting Regional Director's Decision raises substantial questions of law and policy, reflects a significant departure from establish Board precedents, clearly misstates record evidence, and contains rulings and determinations that are plainly contradictory to the statutory limitations and purposes of the National Labor Relations Act.

IV. FACTS

A. A Brief Summary of the Company's Business

The Company is a Delaware corporation with its headquarters in Chicago, Illinois. The principal industry in which the Company conducts business is the development and manufacture of military and commercial aircraft. Tr. 2200-1.³ The defense segment of the Company's

³ References to the transcript of the hearing will be made as Tr. __; references to the exhibits of the Union will be made as Un. Ex. __; references to exhibits of the Company will be made as Co. Ex. __; reference to Joint Exhibits

business is organized into a department known as Boeing Defense Systems (herein referred to as “BDS”).⁴ Tr. 3249. The commercial aircraft segment is organized into a department known as Boeing Commercial Airplanes (herein referred to as “BCA”). Tr. 1842.

The Company operates several BDS and BCA aircraft projects and any of its many facilities may work on multiple projects at the same time. Co. Ex. 5. Historically, the Edwards/Palmdale facility has worked exclusively on BDS projects. Tr. 1377-78. Puget Sound is approximately 1,114 miles away from Edwards. Co. Ex. 29, p. 2. Edwards is approximately 35 miles away from Palmdale. Tr. 41, 223.

B. Program Execution and Facility Administration

In managing its various aircraft projects, the Company has historically relied on an organizational structure that bifurcates project execution from facility administration. Tr. 61-62, 78-79. Many Company facilities, including Edwards/Palmdale, have different reporting responsibilities based on whether the task pertains to the execution of a program or the day-to-day administration of the facility. Tr. 78-79.

1. Program Execution

The Company assigns each project to one of its many facilities to serve as the program office. Tr. 2115, 2149-50. The Company also may assign portions of program work to other facilities for completion, although the program office retains ultimate responsibility for ensuring that the project is properly completed. Tr. 2115, 2149-50, 2255. Edwards/Palmdale is usually assigned the product testing portion of a project. Tr. 2115.

The program office coordinates with local supervisors at secondary offices to ensure

will be made as Jt. Ex. __; and reference to the Acting Regional Director’s Supplemental Decision and Order Dismissing Petition will be made as ARD Decision, p. __.

⁴ On the record, Boeing Defense Systems was also referred to as Integrated Defense Systems or IDS. Tr. 872-73, 2391, 3249.

assigned work is completed as needed and, when necessary, it provides project-specific direction to employees at secondary offices. Tr. 2115, 2224-26, 2255-56. Although it may provide project execution direction to employees at other facilities and may recommend that employment actions be taken in relation to those employees, the program office does not have any independent authority to hire, fire, discipline, or take any other employment action against an employee working on the project at another facility. Tr. 2256-60.

Each facility may be assigned as a secondary office on several different programs at a time, each of which could have a different program office. Co. Ex. 5. Since January 1999, Edwards/Palmdale has been assigned to fifteen programs on which arguably represented employees have worked. Co. Ex. 5. The fifteen programs had eight different program offices. Co. Ex. 5. The following are the program offices for the programs that have been located at Edwards/Palmdale and have employed arguably represented employees at any time since 1999: B-1 – Long Beach, CA; B-52 – Wichita, KS; F-22 – Seattle, WA; B-2 – Seattle, WA; X-31 – Seal Beach, CA; NASA Space Systems – Houston, TX; C-17 – Long Beach, CA; Joint Strike Fighter⁵ – Seattle, WA; X-37 – Huntington Beach, CA; Unmanned Combat Air Vehicle – St. Louis, MO⁶; C-130 – Long Beach, CA; CV-22 – Philadelphia, PA; Airborne Laser⁷ – Seattle, WA; and Scramjet Engine Demonstrator⁸ – Huntington Beach, CA. Co. Ex. 5.

2. Facility Administration

a. Cost centers

The Company maintains various administrative structures to manage the operation and administration of its facilities and to ensure efficient cost tracking of program development and

⁵ The Joint Strike Fighter program will hereinafter be referred to as “JSF”.

⁶ The Unmanned Combat Air Vehicle program will hereinafter be referred to as “UCAV”.

⁷ The Airborne Laser program will hereinafter be referred to as “ABL”.

⁸ The Scramjet Engine Demonstrator program will hereinafter be referred to as “SED” or “X-51A”.

completion. One type of administrative structure it uses for its government programs is cost centers. Tr. 56. Cost centers are the product of negotiations with the United States government. Tr. 56, 101. They are relied on to determine which program-related costs will be charged to the government pursuant to the parties' various contracts. Tr. 56

Each cost center has a principal office. Tr. 187-88. One or more of the Company's other facilities may be assigned to a cost center as a remote facility. Tr. 103, 187-88, 2549-50. The principal office provides general administrative and operational support to its remote facilities. Tr. 187-88. Additionally, cost centers develop and maintain policies and procedures specific to the cost center and its remote facilities. Co. Ex. 91-102; Tr. 2543-65.

At all relevant times for this Petition, cost centers played a significant role in the cost management of the Edwards/Palmdale facilities because most of its work has historically been on government programs. Tr. 1377-78. Prior to the creation of HDAIT, each heritage company had cost centers at different locations. The cost center for heritage Boeing programs were managed by Puget Sound; the cost centers for heritage Rockwell programs were managed by Seal Beach and Downey, CA; and the cost centers for heritage McDonnell Douglas programs were managed by Long Beach, CA, and St. Louis, MO. Co. Ex. 5.

In January 1999, after the creation of HDAIT, Edwards/Palmdale became a remote facility assigned to the Company's Long Beach cost center for all but one of its programs.⁹ Tr. 57, 100-1, 114. For operational and administrative purposes, management at Edwards/Palmdale began reporting to individuals who worked out of Long Beach. Tr. 1377, 1822-23, 1686, 1835. For example, Edwards/Palmdale's site director reported to management located in Long Beach. Tr. 1378, 2047.

⁹ The cost center for work performed by Edwards/Palmdale on the NASA Space Systems program in 1999, was Downey, CA. Tr. 1904. Since that time, the cost center has changed to Huntington Beach, CA, and then Houston, Texas. Tr. 92. 1904.

b. General Company-wide administration

As with most major corporations, the Company has historically established company-wide administrative and operational guidelines. Co. Ex. 90; Un. Ex. 75-82; Tr. 2526-2528. It has done this by issuing policies and procedures that provide the basic framework upon which local facility management is expected to respond to both routine and unusual managerial situations. Co. Ex. 90; Un. Ex. 75-82; Tr. 2542-43.

c. Historical Edwards/Palmdale administration

Prior to 1999, heritage Boeing operations at Edwards/Palmdale relied heavily on Puget Sound for day-to-day managerial, operational, and administrative support. With the creation of HDAIT, Edwards/Palmdale management was given independent day-to-day control of the facility, thus severing its relationship with and reliance on Puget Sound.

1) *Prior to 1976*

Prior to 1976, all heritage Boeing Company employees that worked at Edwards were considered to be on temporary assignment from their permanent work location in Puget Sound. Co. Ex. 29; Tr. 639-47. The heritage Boeing Company did not have any employees working at Palmdale at that time. Co. Ex. 29; Tr. 639-47.

During this time period, the heritage Boeing Company and Union were parties to collective bargaining agreements covering professional and technical employees working in Puget Sound. Jt. Ex. 6. Employees on assignment to Edwards facilities remained a part of the bargaining units at their permanent Puget Sound location. Co. Ex. 29; Tr. 639-47.

2) *July 1976 to December 1996*

In about July 1976, the heritage Boeing Company created the Boeing Mojave Test Center (hereinafter referred to as "BMTC") at Edwards. Co. Ex. 29, p. 11. With the creation of BMTC,

the heritage Boeing Company established an operation at Edwards that served as a permanent work location for its employees there. Co. Ex. 29, p. 11.

In response to the creation of BMTC and the creation of permanent employment positions at Edwards, the Union filed two representation petitions with the NLRB seeking to represent professional and technical employees at Edwards. Jt. Ex. 6, 7. In response to the petition, the heritage Boeing Company agreed to recognize the Union as the exclusive bargaining representative of the professional and technical employees “assigned” to Edwards from Puget Sound.¹⁰ Jt. Ex. 6; Un. Ex. 4, p. 8; Un. Ex. 5, p. 8.

In about 1989, the heritage Boeing Company began performing work at Palmdale. Tr. 212-13; Jt. Ex. 8; Co. Ex. 8. On May 30, 1989, the heritage Boeing Company and Union agreed that professional and technical employees working at Palmdale would be included in the same bargaining unit as the employees working at Edwards. Jt. Ex. 8.

Although the creation of BMTC gave the heritage Boeing Company a permanent presence at Edwards/Palmdale, BMTC remained part of the Puget Sound cost center and continued to rely on Puget Sound for administrative and operational support. Tr. 56-57. Most importantly, the Human Resources department in Puget Sound posted and filled the open requisitions¹¹ for Edwards/Palmdale facilities. Tr. 275-76, Co. Ex. 15-17.

3) *December 1996 – The acquisition of Rockwell’s aerospace interests*

On December 6, 1996, the heritage Boeing Company acquired the aerospace interests of Rockwell. Tr. 38-39. These interests included three programs that operated at Edwards/Palmdale. Tr. 50-51. The three programs were: (1) the B-1 Bomber flight modification

¹⁰ The intention of the Company and Union when agreeing that the Union would represent employees “assigned” to Edwards from Seattle was explained in detail in the Company’s Post-Hearing Brief submitted after the first set of hearings in this case.

¹¹ “Requisition” is the term used by the Company for an administrative request that is filled out and submitted by a manager when there is a vacant position. Tr. 154, 196.

and flight test; (2) the X-31; and (3) NASA Space Systems. Co. Ex. 5; Tr. 50-51. At this same time, the heritage Boeing Company operated four programs at Edwards/Palmdale: (1) the B-1 Bomber avionics, software, weapons delivery, and related flight tests; (2) the B-2; (3) the FA-22; and (4) the B-52. Tr. 50. In June 1997, work began on the JSF at Edwards/Palmdale. Tr. 96-97. The work was assigned to heritage Rockwell operations and employees. Co. Ex. 5, Tr. 96-97.

Prior to the acquisition, Rockwell maintained two separate administrative structures at Edwards/Palmdale: one for the B-1 and X-31 programs and one for the NASA Space Systems program. Co. Ex. 5. The B-1 and X-31 programs reported to a cost center in Seal Beach, CA, and the NASA Space Systems reported to a cost center in Downey, CA. Co. Ex. 5.

As a result of these separate administrative structures, Rockwell had two site directors at Edwards/Palmdale to whom the employee's frontline supervisors reported. Co. Ex. 5. Each Rockwell site director reported to management at their respective cost centers. Co. Ex. 5. Additionally, it maintained two Human Resources departments, each of which had a separate Rockwell Human Resources director. Co. Ex. 5.

Upon acquisition of Rockwell's aerospace interest, the heritage Boeing Company created a subsidiary company called Boeing North American (hereinafter referred to as "BNA") to operate the heritage Rockwell programs. Tr. 38.¹² With the creation of BNA, the heritage Boeing Company retained Rockwell's pre-merger operational and administrative structure for the heritage Rockwell programs, including the cost center reporting responsibilities. Co. Ex. 5; Tr. 48-49. The operational and administrative structure for the heritage Boeing programs remained as it had prior to the acquisition, with significant administrative support coming from its cost center in Puget Sound. Co. Ex. 5; Tr. 48-49.

¹² During the hearings in the instant case, the parties used the terms "heritage" and "former" to describe employees or programs that existed prior to the creation of HDAIT and their relationship to each of the three companies, Boeing, Rockwell, and McDonnell Douglas, that were combined with the creation of HDAIT.

At the time of the acquisition, there were seventy-four (74) heritage Rockwell professional employees, none of whom were represented by a union, and sixteen (16) heritage Boeing professional employees, all of whom were represented by the Union. Co. Ex. 44. As for technical employees, there were twenty-nine (29) heritage Rockwell employees who were represented by United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 887; seven (7) heritage Rockwell employees who were not represented by any union; and two (2) heritage Boeing employees, both of whom were represented by the Union. Co. Ex. 55.

4) *August 1, 1997 – Merger with McDonnell Douglas*

On August 1, 1997, the heritage Boeing Company merged with McDonnell Douglas. Tr. 518-19. At the time of the merger, McDonnell Douglas was performing work on two programs at Edwards/Palmdale: the C-17 and the F-15. Co. Ex. 5; Tr. 49-50. The programs' cost centers were Long Beach, CA, and St. Louis, MO, respectively. Co. Ex. 5; Tr. 49-50. Each program had a frontline supervisor, but no higher local supervision. Co. Ex. 5; Tr. 49, 293-96. The frontline supervisors reported directly to management located at each program's cost center. Co. Ex. 5; Tr. 49, 293-96.

The heritage Boeing Company maintained most of McDonnell Douglas' organizational structure at Edwards/Palmdale separate after the merger, as it had done with Rockwell after its acquisition. Co. Ex. 5. It did rely on the local BNA Human Resources department for personnel needs because McDonnell Douglas did not have a Human Resources presence at Edwards/Palmdale. Co. Ex. 5; Tr. 302-3. The BNA Human Resources personnel at Edwards/Palmdale reported to higher levels of management in Seal Beach. Co. Ex. 5.

At the time of the merger, there were seventy-eight (78) heritage Rockwell professional employees, none of which were represented; twenty-one (21) heritage Boeing professional

employees represented by the Union; and one (1) heritage McDonnell Douglas professional employee represented by the Southern California Professional Engineering Association (herein referred to as “SCPEA”).¹³ Co. Ex. 45. As for technical employees, there were thirty-five (35) heritage Rockwell technical employees represented by UAW Local 887; ten (10) heritage Rockwell technical employees not represented by any union; and two (2) heritage Boeing technical employees represented by the Union. Co. Ex. 56. There were no heritage McDonnell Douglas technical employees. Co. Ex. 56.

5) *Since July 1998 - Creation of the HDAIT*

On July 10, 1998, the heritage Boeing Company announced the creation of HDAIT and, on January 1, 1999, the Company began making the HDAIT changes. Co. Ex. 4; Tr. 100-101. In HDAIT, the Company consolidated all heritage Boeing, Rockwell, and McDonnell Douglas operations at Edwards/Palmdale into one administrative entity. Tr. 43-44. Additionally, it assigned all HDAIT operations to its Long Beach, CA, cost center, except for NASA Space Systems which remained assigned to Downey, CA. Co. Ex. 5; Tr. 103, 2128.

At the time of the creation of HDAIT, Edwards/Palmdale employees were working on the following programs with their respective program offices: B-1 – Long Beach, CA; B-52 – Wichita, KS; F-22 – Seattle, WA; X-31 – Seal Beach, CA; NASA Space Systems – Downey, CA; B-2 – Seattle, WA; C-17 – Long Beach, CA; F-15 – St. Louis, MO; and JSF – Seattle, WA. Co. Ex. 5; Tr. 2115-17, 2132-45.¹⁴

As of January 1, 1999, there were a total of one hundred and forty-one (141) professional employees at Edwards/Palmdale in the newly created HDAIT. Co. Ex. 47. Of those, one

¹³ The SCPEA was also referred to as SCPPA on the record. Tr. 348, 821 It was decertified as the representative of heritage McDonnell Douglas employees prior to the creation of HDAIT. Tr. 826, 1002.

¹⁴ The following programs started at Edwards/Palmdale after January 1, 1999: X-37 – October 1999; UCAV – May 2000; C-130 – September 2000; CV-22 – October 2000; ABL – 2001; and SED – June 2008. Co. Ex. 5; Tr. 2017.

hundred and sixteen (116) were not previously represented by any union and twenty-five (25) were previously represented by the Union. Co. Ex. 47. As for technical employees, there were a total of sixty-one (61) at Edwards/Palmdale as of January 1, 1999. Co. Ex. 58. Of those, forty (40) were represented by UAW Local 887; sixteen (16) were not previously represented by any union; and six (6) were previously represented by the Union. Co. Ex. 58.

The collective bargaining agreement covering represented professional employees at the time of the consolidation contained the following bargaining unit description:

Section 1.1 Recognition. For the purposes of collective bargaining with respect to rates of pay and other conditions of employment, the Company recognizes the Union as the exclusive bargaining agent for the following collective bargaining units:

1.1(a) All persons working in the Company's plants in the State of Washington, including persons who are on travel status from such plants, who are classified by the Company in one of the classifications listed in Article 11 and including those persons assigned (other than on travel status) at Edwards, AFB, California or Palmdale, California who are classified by the Company in one of the classifications listed in Article 11.

Jt. Ex. 1.

The collective bargaining agreement covering represented technical employees at the time of the consolidation contained the following bargaining unit description:

Section 1.1 Recognition. For the purposes of collective bargaining with respect to rates of pay and other conditions of employment, the Company recognizes the Union as the exclusive bargaining agent for the collective bargaining units described as follows:

1.1(a) As defined by the Certification of Representation dated February 3, 1972, by the National Labor Relations Board in Case No. 19-RC-5993, those technical employees on the general office payroll of The Boeing Company working in the Company's plants in the State of Washington, including persons who are on travel status from such plants, who are classified by the Company in one of the job classifications listed in Appendix A attached hereto and including those persons assigned (other than on travel status) at Edwards AFB, California or Palmdale, California who are classified by the Company in one of the job classifications listed in Appendix A hereto; excluding guards and supervisors as defined in the National Labor Relations

Act, employees in all other job classifications in the general office payroll, and all other employees.

Jt. Ex. 10.

d. Administration of Edwards/Palmdale prior to HDAIT

Prior to the creation of HDAIT, frontline supervisors and management at Edwards/Palmdale, regardless of their heritage company or program, exercised some day-to-day authority over professional and technical employees.¹⁵ However, when matters required involvement from higher levels of management, the frontline supervisors would seek assistance from local management of their respective heritage employer, who in turn would seek guidance from management at the respective cost center.¹⁶

Staffing requests for the various heritage programs would start with the frontline supervisor and then progress to the local Human Resources representative, who would ultimately coordinate the hiring process with the Human Resources department at the respective cost center.¹⁷ Edwards/Palmdale would first look to fill open positions with available local employees who were working on programs of the same heritage company. Tr. 192-93. They did not transfer local employees between programs from different heritage companies, however, because, up until the creation of HDAIT, the Company kept the operating budgets for each heritage company separate. Tr. 193-94. If no local employees from the same heritage company were available to fill the vacant position, local management would coordinate with the program's cost center to open a requisition to seek other candidates for the position.¹⁸ Puget Sound Human

¹⁵ The specifics supervisory structure and authorities related to each program prior to January 1999, were discussed in detail at hearing in Company Exhibit 5 and through testimony. Because each program was largely similar in its supervisory structure and authorities, we will not discuss each in detail. The details for each program prior to January 1999, can be found in Company Exhibit 5 and in the hearing transcript, pages 1537-1700.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

Resources participated significantly in staffing for heritage Boeing programs at Edwards/Palmdale, including making hiring and assigning decisions. Tr. 275-76, 301-3.

e. Administration of Edwards/Palmdale after the creation of HDAIT

With the creation of HDAIT, the operational or administrative relationship between Edwards/Palmdale and Puget Sound was severed. All operations and all employees at Edwards/Palmdale were centralized under a single site director who reported exclusively to management at the Company's cost center in Long Beach, CA, except for NASA Space Systems, which continued to report to Downey, CA. Co. Ex. 5; Tr. 2128-29. Additionally, all Human Resources functions were consolidated into a single department which also reported to higher levels of management in Long Beach. Co. Ex. 5; Tr. 187-88, 274-75, 1823.¹⁹

After the consolidation of the programs at Edwards/Palmdale into HDAIT, local Edwards/Palmdale management became solely responsible for all staffing. Also, for the first time, they could seek to fill open positions with local professional and technical employees from any of the programs located at the facility, regardless of their heritage affiliation, without the prior budgetary concerns.²⁰ Tr. 295-96, 1844.

Frontline supervisors continued to conduct performance reviews, recommend increases, participate in the discipline process, grant overtime, and grant time off.²¹ They are also generally responsible for initiating discipline and may resolve the disciplinary matter without

¹⁹ Some Human Resources responsibilities for the F-22 program remained in Seattle until January 2000. Co. Ex. 5; Tr. 290-91. Additionally, Human Resources operations for NASA Space Systems were not merged with the Human Resources operations of the other Edwards/Palmdale programs until after July 27, 2001. Co. Ex. 5, 6; Tr. 325-26.

²⁰ Edwards/Palmdale Human Resources department began transferring professional and technical employees between all programs, regardless of their heritage designation, in January 2000. Tr. 287-88, 295-96. At this time, Edwards/Palmdale Human Resources department also assumed full control over local staffing from Human Resources personnel in Puget Sound. Tr. 288, 295-305.

²¹ The specific supervisory structure and authorities related to each program after January 1999, were discussed in detail at hearing in Company Exhibit 5 and through testimony. Because each program was largely similar in its supervisory structure and authorities, we will not discuss each in detail. The details for each program after January 1999, can be found in Company Exhibit 5 and in the hearing transcript, pages 1714-29 and 1821-2029.

assistance from higher levels of management.²² Un. Ex. 79; Tr. 2412-14. If not resolved by the frontline supervisor, higher levels of Edwards/Palmdale management help resolve the matter. Un. Ex. 79; Tr. 2412-14. No one from Puget Sound is involved in the day-to-day management of professional and technical employees at Edwards/Palmdale just as no one from Edwards/Palmdale is involved in the day-to-day management of Puget Sound professional and technical employees.²³ Local supervisors and managers are also largely responsible for the grievance and complaint resolution process as well as for conducting assessments to determine which employees will be laid off. Ex. 14-15; Tr. 843-44, 2331-38. The Parties' collective bargaining agreements explicitly separate Edwards/Palmdale represented employees from Puget Sound employees for purposes of reductions-in-force. Jt. Ex. 14-15.

Many of the support functions necessary to ensure efficient operation of the Edwards/Palmdale facilities and programs are housed locally. These include: security (Tr. 2454-55), supplier management (Tr. 2458), finance (Tr. 2460), environmental staff (Tr. 2463), health services (Tr. 2463-64), and procurement (Tr. 2467).

1) *Terms and conditions of employment for Edwards/Palmdale professional and technical employees*

Professional and technical employees at Edwards/Palmdale share some common terms and conditions of employment with employees company-wide. However, many conditions of employment are specific only to Edwards/Palmdale. Tr. 267-68, 705, 1844-45, 2402-3, 2565-66. Edwards/Palmdale professional and technical employees do not share any terms and conditions of employment with employees at Puget Sound that are unique to those two locations. After its realignment to the Long Beach cost center, Edwards/Palmdale also became subject to several policies issued out of Long Beach. Tr. 2543-2565; Co. Ex. 91-102.

²² Id.

²³ Id.

Edwards/Palmdale has employee meetings and group events several times per year which all Edwards/Palmdale employees attend. Tr. 1970-73, 1977. These meetings include all employee meetings, an end-of-the-year employee recognition luncheon, a team appreciation day, a diversity recognition luncheon, and program-specific mandatory staff meetings. Tr. 1970-73, 1977. Employees from Puget Sound do not participate in Edwards/Palmdale meetings and events. Tr. 1974.

There are some webcast meetings that are held company-wide in which Edwards/Palmdale and Puget Sound employees participate jointly. Tr. 2113-14. Also, Edwards/Palmdale professional and technical employees may interact with Puget Sound professional and technical employees regarding programs on which they work and for which Puget Sound serves as the program office. Tr. 1728-29, 1869-70, 1950-51, 1969, 2009. These interactions are no different than interactions Edwards/Palmdale professional and technical employees have with employees of other Company locations serving as program offices. Tr. 1940, 1950-51, 1969, 1986, 1996, 2009. They may occur anywhere from several times per day to as rare as once per month, depending on the program's stage of development. Tr. 2119-20.

The Company also maintains policies that are applicable to all its facilities. Tr. 2263-2328; Un. Ex. 75-94. Edwards/Palmdale has flexibility when enforcing some company-wide policies. Tr. 2402. For example, although there is a company-wide policy setting a general work schedule, Edwards/Palmdale local management can approve deviations from it. Tr. 2202-5, 2403-8. There are some company policies that are applicable to Puget Sound that are not applicable to Edwards/Palmdale. Tr. 2312; Un. Ex. 89.

2) *Number of employees at Edwards/Palmdale and Puget Sound*

The number of employees at both Edwards/Palmdale and Puget Sound for the years 1999, 2000, and 2001 are as follows:

Year	Puget Sound	Edwards/Palmdale	
	Professional & Technical	Professional	Technical
1999	23,393	141	37
2000	20,961	312	34
2001	19,013	288	15

Un. Ex. 113.²⁴

3) *Loan ins and Loan outs*

The Company has a practice of temporarily transferring employees to locations other than their permanent location to perform work. Tr. 46-47, 1476-79. For purposes of this Petition, an employee who is temporarily performing work at a facility other than their home facility is considered to be loaned out from their home facility and loaned into the facility to which they are temporarily assigned. Tr. 46-47, 1476-79.

When an employee is on loan to another Company facility, the employee's home location retains the authority to make employment-related decision regarding the employee, including the authority to fire, layoff, or recall the employee, all without the input of management at the location to which the employees is loaned. Tr. 1368-69, 2005-6.

Historically, Edwards/Palmdale has had professional and technical employees loaned into work at the facility from many of the Company's other facilities. Co. Ex. 111-12. Similarly, professional and technical employees from Edwards/Palmdale have been loaned out to work at many of the Company's other facilities, though in fewer numbers than loan ins. Co. Ex. 113-14.

Below are two tables showing the number of professional and technical employees loaned into Edwards/Palmdale from Puget Sound and loaned out from Edwards/Palmdale to Puget Sound. They also show the same numbers as they relate to other Company locations.

²⁴ The record did not contain separate numbers for professional employees and technical employees at its Puget Sound facilities for any of the critical time periods. Also, the record only contains the number of professional and technical employees in Puget Sound that were members of the Union on January 1 of a given year.

a) Professional employees

Year	Puget Sound		Other Locations	
	Loan In to Edwards/Palmdale	Loan Out from Edwards/Palmdale	Loan In from Edwards/Palmdale	Loan Out from Edwards/Palmdale
1999	37	0	118	86
2000	34	0	41	86
2001	15	0	48	13

b) Technical employees

Year	Puget Sound		Other Locations	
	Loan In to Edwards/Palmdale	Loan Out from Edwards/Palmdale	Loan In from Edwards/Palmdale	Loan Out from Edwards/Palmdale
1999	8	0	14	10
2000	8	0	6	9
2001	3	0	7	1

4) *Corporate-wide organizational changes occurring since 2009*

In January 2009, the Company began the process of creating a new company-wide organization called Boeing Test & Evaluation (hereinafter referred to as “BT&E”) as part of its existing Engineering, Operations & Technology organization. Tr. 3244-46. As the new organization continues to be consolidated, all testing and evaluation services and resources throughout the Company will be merged into one operating organization that will provide the testing and evaluation services for all programs throughout the Company regardless of their BCA or BDS designation. Tr. 3248-51. The integration of the several components of BT&E is scheduled to take place over several years. Tr. 3251.

BT&E consists mainly of two operational organizations: Flight Test Operations (hereinafter referred to as “FTO”) and Laboratory Test Operations (hereinafter referred to as “LTO”). Tr. 3246. Edwards/Palmdale is assigned to FTO which is based out of Puget Sound. Tr. 3246-48, 3253-55.

FTO is organized into four regions: Southwest, Northwest, Midwest, and Southeast. Tr. 3253-54. Edwards/Palmdale is assigned to the Southwest region and Puget Sound is assigned to the Northwest region. Tr. 3253-55. The current regional director for the Southwest region is located at Edwards/Palmdale. Tr. 1535, 3253. The current regional director for the Northwest region is located in Puget Sound. Tr. 3109, 3253-54. After BT&E is fully integrated, the Southwest region will include facilities at approximately 20 different locations, including Edwards/Palmdale, Victorville, Long Beach, and China Lake, CA, and Maui, HI. Tr. 3255.

Although reporting responsibilities changed for the highest levels of management at Edwards/Palmdale, the reporting responsibilities for employees and supervisors did not. Tr. 3248, 3302. Professional and technical employees continue to report to the same frontline supervisor they did prior to Edwards/Palmdale's move to BT&E and the frontline supervisors continue to report to the same local managers. Tr. 3302; Un. Ex. 121; Co. Ex. 122, 123.

C. The bargaining history supports an historical exclusion

The bargaining history in this case is clear. It is undisputed that the Union unsuccessfully sought during both the 1999 and 2002 negotiations for a new contract to expand the recognition clause to include the heritage Rockwell and McDonnell Douglas professional and technical employees. Tr. 575-76, 1303, 1334-45; Co. Ex. 35- 40. It is well-settled that a party does not request in bargaining something it already has.

Indeed, contrary to the Acting Regional Director's assertion that Edwards/Palmdale employees "already belonged to the unit," ARD Decision, p. 17, the Union's actions reflect that it is trying to gain representation rights through litigation and has never believed that the Rockwell and McDonnell Douglas professional and technical employees were already part of the Puget Sound units. It is undisputed that the Union has not attempted to collect dues or enforces its union security clause with respect to them. Un. Ex. 73. The record shows that the Union has

never protested the fact that the Company does not extend contractual benefits to the disputed employees, including its expanded overtime policy, layoff policy, or any of the many bonus opportunities available only to unit members. Tr. 976-80. Likewise, there is no evidence the Union has ever sought to file a grievance on behalf of a disputed employee. Tr. 1066-69, 1082. Indeed, even the grievance that led to the filing of the Petition does not seek back pay or any other make whole remedy, but only seeks clarification of the unit. Tr. Jt. Ex. 9. *See Robert Wood Johnson University Hospital*, 328 NLRB 912 (1999) (absence of evidence that the union protested the employer's unilateral actions in setting and changing the terms and conditions of employment for a group of employees was cited as support for the Board's conclusion that the group was historically excluded from the bargaining unit.)

D. The Union admits it does not represent all professional and technical employees at Edwards/Palmdale

The Union does not claim to be nor does it seek to be recognized as the exclusive bargaining representative of all permanent professional and technical employees at Edwards/Palmdale. It only claims to represent employees who 1) worked on heritage Boeing programs prior to the creation of HDAIT,²⁵ 2) were hired at Edwards/Palmdale after the creation of the HDAIT, and/or 3) were permanently transferred between programs at Edwards/Palmdale after the creation of HDAIT. Tr. 2781-2829; Un. Ex. 108-12. The Union admits that it does not represent, nor does it seek to represent, professional and technical employees who were working on heritage Rockwell and McDonnell Douglas programs at the time HDAIT was created and continue to do so. Tr. 897-98, 1026-27; Co. Ex. 37. There are also certain employees in

²⁵ The Union relies on about November 9, 1999, as the critical date for determining the representational status of professional and technical employees at Edwards/Palmdale. Tr. 2787. It relied on this date because it felt that the data in the comprehensive employee files for Edwards/Palmdale employees provided by the Company, Co. Ex. 109(a)-(c) and 110(a)-(b), were not reliable prior to that date in determining which employees at Edwards/Palmdale were performing work in classifications covered by the parties' Puget Sound agreement. Tr. 2911-12. The Union asserts the data became more reliable after the Company and Union agreed to apply the Company's established Salaried Job Classification (SJC) codes to represented employees. Tr. 2786-87.

technical classifications that are currently represented by UAW, Local 887. Co. Ex. 5. The Union does not seek to represent those individuals despite the fact that they perform the same job duties as technical employees the Union seeks to represent.

The Union's commitment to not represent heritage Rockwell and McDonnell Douglas professional and technical employees is established by record testimony. In 1999, the parties were negotiating a new contract. Tr. 765, 1336. During those negotiations, Charles Bofferding, the Union's Executive Director, made it a practice of asking the Company if it was going to recognize the Union as the representative of all Edwards/Palmdale employees. Tr. 1287-88. 1323-24. Phyllis Rogers, General Counsel for the Union, testified that she thought of Bofferding's comments as a joke and did not feel that the comments were part of a formal discussion with the Company. Tr. 1287-88. Rogers testified that the Union never made a proposal to represent all professional and technical employees at Edwards/Palmdale. Tr. 1288.

On June 4, 2003, Bofferding wrote a letter to Jeff Janders in the Company's labor department making a formal request for arbitration of the representational issues that form the basis for this Petition. Un. Ex. 28. In his request, Bofferding affirmed that the Union, "continues to assert that ALL engineers and technical workers employed at Edwards and Palmdale, performing work described in Article 11 of the Puget Sound Professional Unit and Technical Unit Collective Bargaining Agreements, are represented by SPEEA per Article 1 of the same." Un. Ex. 28. At hearing, Plunkett testified Bofferding was engaging in "bravado" when using the term "ALL" to describe the scope of the Union's representation at Edwards/Palmdale. Tr. 897-98. He asserted that the Union was only seeking to represent professional and technical employees at Edwards/Palmdale who were employed by the heritage Boeing company prior to

the creation of HDAIT and all professional and technical employees hired by the Company at Edwards/Palmdale after the creation of HDAIT. Tr. 898.

V. ANALYSIS

A. Legal standard for requests for review

Section 102.67(b) of the Board's Rules and Regulations provide a party with the ability to request that the Board review a decision by a regional director related to representational issues. Section 102.67(c) states that a request for review will only be granted if one or more of four standards are met:

- (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.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Pursuant to these provisions of the Board's Rules and Regulations, the Company requests that the Board review the Acting Regional Director's Decision dismissing the Petition.

As explained below, the Acting Regional Director dismissed the Petition in contravention of the Board's remand instructing the Acting Regional Director to clarify the unit in question. His dismissal of the Petition fails to carry out this mandate.

In addition to the dismissal being procedurally improper, the Acting Regional Director based his decision on a clear departure from established Board precedent, misstatements of uncontradicted record evidence, and rulings and determination that result in prejudicial error. First, he ignored that fact that new employees at Edwards/Palmdale no longer meet the terms for

inclusion in the at-issue bargaining units because they are no longer assigned to Edwards/Palmdale by Puget Sound.

He also failed to consider the Board's accretion doctrine and whether the new employee group consisting of heritage Boeing, Rockwell, and McDonnell Douglas professional and technical employees was a single group for bargaining purposes, which the evidence clearly establishes. This accretion analysis was necessary because the Union has acknowledged that it does not represent heritage Rockwell and McDonnell Douglas professional and technical employees. If the merged heritage Boeing, Rockwell, and McDonnell Douglas professional and technical employees do constitute a single group appropriate for bargaining purposes, any units clarified not to include the heritage Rockwell and McDonnell Douglas employees, as sought by the Union, would be non-exclusive in nature. Thus, they would not conform to the demands of Section 9(a). The Board has long held that it will not recognize or give weight to such a unit.

Finally, his decision shows that to the extent he addressed accretion-related multi-facility bargaining factors, the Acting Regional Director failed to properly apply established Board law and/or misstated uncontradicted record evidence as it pertained to the day-to-day supervision of bargaining unit employees, the level of interchange between Edwards/Palmdale and Puget Sound, the bargaining history at Edwards/Palmdale between the Parties, and the requirement that multi-facility bargaining be limited to those locations that conform to an employer's administrative or operational structure.

For these reason, the Company's Request for Review should be granted.

B. The Acting Regional Director failed to comply with the Board's remand by dismissing the Petition

On October 18, 2006, the regional director for Region 31 issued a decision in which he failed to clarify the bargaining unit as requested by the Parties and dismissed the Petition. In its

remand of that decision, the Board made clear that it had exclusive responsibility to clarify representational issues when petitioned to resolve them and that such matters could not be left to be resolved by arbitration. *The Boeing Company*, 349 NLRB 957. It explained:

Despite his acknowledgement that this case does not solely involve a contractual issue, the Regional Director dismissed the petition. The Regional Director's dismissal, in effect, allows the arbitrator to decide the representational issues, subject only to deferential Board review. This result clearly conflicts with Board policy. Thus, we find that the Board has the authority to, and should, define the unit in this case.

Id.

Now, after further evidence has been collected pursuant the Board's remand, the Acting Regional Director has once again dismissed the Petition. This clearly violates the direct mandate from the Board that such a result is unacceptable because it leaves the resolution of the question of representation to arbitration. For this reason alone, the Request for Review should be granted.

The Acting Regional Director's failure to properly comply with and interpret the Board's remand has unduly tainted the credibility of his decision. Thus, the Request for Review should be granted.

C. The Acting Regional Director failed to consider that newly hired professional and technical employees at Edwards/Palmdale have not met the eligibility requirements of the at-issue bargaining units since the creation of HDAIT

The Acting Regional Director erroneously concluded that the Board in its remand rejected Boeing's claim that the bargaining unit as defined by the Parties' prior to the creation of HDAIT only included employees assigned out of Puget Sound. ARD Decision, p. 16. In fact, the Board fully recognized that the Company's position may be legitimate. It stated:

Our dissenting colleague also asserts that the Employer's rationale for its unit contention is based solely on the fact that some employees were assigned through the Seattle office and some were not. Our colleague then says that we rejected this rationale and then posited our own. Our colleague is incorrect on both points. First, the Employer's rationale was based, at least in part, on bargaining history, i.e., the fact that one group was historically represented by the Union and the other was not.

In addition, the Employer argued that each group has a separate identity. Finally, the Employer explicitly argues that each group has its own community of interest. Concededly the record is presently incomplete on that last point, and we are remanding for further evidence on that point. It is ultimately the Board's responsibility to determine those matters, and we want to have all relevant facts before making that determination.

The Boeing Company, 349 NLRB at 958. Consistent with this misinterpretation of the Board's remand decision, the Acting Regional Director failed to consider that newly hired professional and technical employees at Edwards/Palmdale do not qualify for inclusion in the at-issue units because they are no longer assigned out of Puget Sound. The failure of the Acting Regional Director to consider the Company's position related to the definition of the bargaining unit should justify the granting of the Request for Review.

D. The Regional Director improperly concluded that the accretion doctrine does not apply in this case

The Acting Regional Director dismissed the notion that an accretion analysis plays any role in the determination of which, if any, Edwards/Palmdale professional and technical employees belong in the at-issue bargaining units. In determining the proper legal standard for analyzing the record evidence, the Acting Regional Director stated:

I find that an accretion analysis does not apply where a new group or classification of employees performs the same basic functions that the unit employees had historically performed. Rather, the 'new' group of employees is viewed as already belonging to the unit rather than being added as an accretion to that unit.

ARD Decision, p. 17. This was error. As noted in Section IV.C above, the employees were never treated as "already belonging to the unit."

The accretion doctrine is applicable in two respects. First, it is important to illustrate that the Edwards/Palmdale employees were not already part of the at-issue units at the time of HDAIT's creation. The Acting Regional Director's assertion that "an accretion analysis does not apply where a new group or classification of employees performs the same basic functions that

the unit employees had historically performed” would possibly be right if the changes that occurred with the creation of HDAIT resulted solely in the creation new classifications of employees and involved only heritage Boeing professional and technical employees. *See Developmental Disabilities Institute, Inc.*, 334 NLRB 1166 (2001); *Premcor, Inc.*, 333 NLRB 1365 (2001); *Union Electric Co.*, 217 NLRB 666 (1975). However, they did not. The Board has defined the accretion doctrine as “the addition of a relatively small group of employees to an existing unit” without first holding an election. *Safety Carrier*, 306 NLRB 960, 969 (1992) citing *Safeway Stores*, 256 NLRB 918, 924 (1981). That is the only way that heritage Rockwell and McDonnell Douglas professional and technical employees could possibly be including in the at-issue units. Because accreted employees are absorbed into an existing bargaining unit without an election or other demonstrated showing of majority status, the Board follows a restrictive policy in applying the accretion doctrine. *Frontier Telephone*, 344 NLRB at 1271. Accordingly, accretion may be found “only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted.” *Id.*

The changes that resulted from the creation of HDAIT resulted in the merger of the heritage Boeing professional and technical employees at Edwards/Palmdale with the existing heritage professional and technical employees from Rockwell and McDonnell Douglas. It cannot seriously be claimed that the heritage Rockwell and McDonnell Douglas employees did not have a “separate identity.” Instead, they record clearly shows they could have constituted separate appropriate bargaining units. *See Specialty Healthcare*, 357 NLRB No. 83, slip op. at 10 (“the Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate”). Thus, they could not have be an accretion into the Puget Sound unit.

The record shows that professional and technical employees from the different heritage companies were separately managed and supervised. Each heritage company had its own site director and Human Resources departments. Heritage employees seeking to transfer to a program operated by another heritage program were required to go through the same hiring process other non-heritage Boeing applicants were required to go through. The evidence is more than sufficient to demonstrate that prior to the creation of HDAIT, heritage Rockwell and McDonnell Douglas employees maintained separate identities and were separate bargaining groups. Thus, the heritage Rockwell and McDonnell Douglas professional and technical employees cannot be considered an accretion to the at-issue units before the creation of HDAIT because they did not share an overwhelming community of interest with heritage Boeing employees.

The accretion doctrine is also applicable in analyzing the status of Edwards/Palmdale employees after the creation of HDAIT. The Board does not obligate an employer to recognize a union as the bargaining representative of a newly merged group of employees when the complement of the unrepresented employees constitutes a majority of the bargaining unit after being merged with the represented employees. *See Nott Company*, 345 NLRB 396 (2005); *Carr-Gottstein Foods Co., Inc.*, 307 NLRB 1318 (1992); *Geo. V. Hamilton, Inc.*, 289 NLRB 1335 (1988); *Renaissance Center Partnership*, 239 NLRB 1237 (1979).

The record is clear that, since the creation of HDAIT, heritage Boeing, Rockwell, and McDonnell Douglas professional and technical employees at Edwards/Palmdale have the requisite close community of interest necessary to trigger an analysis under the Board's accretion doctrine. They share common day-to-day supervision, work in the same facilities, can be transferred freely between all positions and programs at Edwards/Palmdale regardless of their

prior heritage status, are subject to the same policies, and generally share the same terms and conditions of employment that are indistinguishable from one another except for union benefits provided to heritage Boeing employees. Most importantly, after the creation of HDAIT in 1999, the heritage Boeing employees shared no unique community of interest with employees in Puget Sound. Rather than the heritage Rockwell and McDonnell Douglas employees being accreted into the Puget Sound units, the small number of heritage Boeing employees would in reality be an accretion into a new unrepresented unit in Edwards/Palmdale.

E. The Acting Regional Director's decision could lead the effective certification of units by an arbitrator that do not meet the statutory requirements of Section 9(a)

The Union has unequivocally averred that it does not represent heritage Rockwell and McDonnell Douglas professional and technical employees at Edwards/Palmdale and went to great length at hearing to ensure that this fact was clear on the record. Consequently, the Acting Regional Director's failure to consider that heritage Boeing, Rockwell, and McDonnell Douglas employees at Edwards/Palmdale may be a single employee group for bargaining purposes since the creation of HDAIT, per the accretion doctrine, has even more significant potential consequences as it pertains to the viability of his decision to dismiss the Petition. Such a dismissal leaves the door open for an arbitrator to recognize units that are not cognizable under Section 9(a) of the Act. In effect, the arbitrator could recognize the Union, who has requested units excluding heritage Rockwell and McDonnell Douglas professional and technical employees, as a non-exclusive bargaining representative of professional and technical employees at Edwards/Palmdale.

Section 9(a) of the Act requires that a union certified by the Board be the exclusive bargaining representative of an appropriate unit of employees. The Board has strictly adhered to this statutory mandate. *See Specialty Healthcare*, 357 NLRB No. 83; *Makin Hats*, 332 NLRB 19

(2000); *Goski Trucking Corp.*, 325 NLRB 1032 (1998); *Arthur Sarnow Candy Co.*, 306 NLRB 213 (1992); *Don Mendenhall*, 194 NLRB 1109 (1972); *Manufacturing Woodworkers Association of Greater New York*, 194 NLRB 1122 (1972); *Kansas Power & Light Company*, 64 NLRB 915 (1945). It has consistently refused to compel employers to bargain with unions when the bargaining history shows that the Union has voluntarily engaged in non-exclusive bargaining. As it stated in *Don Mendenhall*, 194 NLRB at 1110, in the context of an 8(a)(5) unfair labor practice charge:

We conclude that, in the context of events, the Respondent's actions cannot be held violative of Section 8(a)(5). That section, by reference to Section 9(a), requires as a predicate for any finding of violation that the employee representative has been designated or selected as the exclusive representative of the employees. It has been settled since the early days of the Act that member-only recognition does not satisfy statutory norms.

See also Specialty Healthcare, 357 NLRB No. 83, slip op. at 13 (“[T]he Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis.’ *Seaboard Marine*, 327 NLRB 556, 556 (1999). If the proposed unit here consisted of only selected CNAs, it would likely be a fractured unit: the selected employees would share a community of interest but there would be “no rational basis” for including them but excluding other CNAs.”). The Acting Regional Director has opened the door for an arbitrator to effectively certify an inappropriate fractured unit that excludes the heritage Rockwell and McDonnell Douglas employees disclaimed by the Union.

F. The Acting Regional Director failed to properly apply established Board precedent in determining multi-facility bargaining was appropriate between Edwards/Palmdale and Puget Sound

It is clear that an accretion analysis must be performed in this case in order to properly clarify the at-issue units. Edwards/Palmdale's relationship with Puget Sound plays a significant role in that analysis because of the Parties' historical inclusion of professional and technical

employees from both locations in the bargaining units. This multi-location coverage in the Parties' collective bargaining agreements matters because the non-represented heritage Rockwell and McDonnell Douglas professional and technical employees significantly outnumbered the represented heritage Boeing employees when HDAIT was created.

If Edwards/Palmdale is considered to be a single location for purposes of bargaining, the Union would lose its representational status for any Edwards/Palmdale professional and technical employees as the number of employees that were not represented by the Union would overwhelmingly outnumber those that were represented. On the contrary, if it is concluded that Edwards/Palmdale and Puget Sound are properly joined for multi-location bargaining, the outcome changes because the number of represented professional and technical employees would outnumber those that were not represented.

To the extent he addressed the multi-location factors in his decision, the Acting Regional Director routinely failed to conform his conclusions to Board precedent and regularly relied on misstatements of fact. Consequently, the Request for Review should be granted.

In his decision, the Acting Regional Director accurately recited the general standard for determining the appropriateness of a bargaining unit recognizing that the unit need not be the most appropriate but only an appropriate unit. While true in general, the Acting Regional Director wholly failed to recognize that the appropriate unit standard has stricter requirements in the context of multi-facility bargaining.

First, in the context of multi-facility bargaining, as it is in this case, it is not sufficient that the employees at the two facilities share a basic level of similarities that may justify a bargaining unit at a single facility. Instead the two groups at the separate facilities are required to be so functionally integrated that they have no separate identity. *J&L Plate, Inc.*, 310 NLRB 429, 429

(1993); *see also New Britain Transportation Co.*, 330 NLRB 397 (1999); *Dixie Belle Mills*, 139 NLRB 629 (1962). To determine whether the multiple locations share this co-dependent relationship, the Board considers: 1) central control over daily operations and labor relations, including the extent of local autonomy; 2) similarity of skills, functions, and working conditions; 3) degree of employee interchange; 4) distance between locations; and 5) bargaining history, if any. *See J&L Plate*, 310 NLRB at 429; *New Britain Transportation*, 330 NLRB at 397; *Esco Corp.*, 298 NLRB 837, 839 (1990). The record clearly reflects that the level of co-dependence necessary for multi-facility bargaining does not exist between the Company's operations in Edwards/Palmdale and Puget Sound.

Second, for multi-facility bargaining to be appropriate, the two facilities must conform in some way to the employer's administrative or organizational structure. Again, the record clearly demonstrates that the Edwards/Palmdale and Puget Sound operations standing alone do not conform to any administrative structure of the Company. The Acting Regional Director's dismissive treatment of these issues justifies granting the Request for Review.

1. The record evidence does not support the Acting Regional Director's conclusion that Puget Sound shares day-to-day supervision of professional and technical employees at Edwards/Palmdale

The Acting Regional Director found that Edwards/Palmdale and Puget Sound share common supervision sufficient to justify multi-facility bargaining. His analysis underemphasizes the singular authority supervisors and management at the Edwards/Palmdale facilities have over the day-to-day terms and conditions of employment for professional and technical employees and overemphasizes the limited project-based relationship the two locations share. He also ignores that Edwards/Palmdale shares a similar project-based relationship with many facilities other than Puget Sound.

The Board has explained what differentiates local autonomy from central authority in determining the appropriateness of multi-location bargaining. It stated:

. . . centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. *New Britain Transportation*, 330 NLRB 397 (1999). Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.

Hilander Foods, 348 NLRB 1200, 1203 (2006).

Uncontradicted testimony at hearing established that supervisors and management at Edwards/Palmdale exercise exclusive authority over the day-to-day terms and conditions of employment of the professional and technical employees. They decide who to hire, who to fire, who to discipline, and who to transfer. First-line supervisors, all of whom are located in Edwards/Palmdale, provide day-to-day direction, conduct performance reviews, grant time off, and resolve first step grievances and complaints. There are no first-line supervisors in Puget Sound who have any authority to make decisions that affect the terms and conditions of employment of Edwards/Palmdale professional and technical employees.

This level of local autonomy is noticeably similar to that exercised by local management in *Red Lobster*, which the Board found to be sufficient to undermine a claim for multi-facility bargaining. In *Red Lobster*, 300 NLRB 908 (1990), local supervisors evaluated employees, conducted interviews, accepted applications, made hiring decision, issued discipline, approved wage increases, resolved grievances, granted overtime, reassigned employees, and granted vacation and other leave. *Id.* This clearly mirrors the day-to-day authority exercised by Edwards/Palmdale supervisors and managers. Moreover, the Board has found even less local authority sufficient to undermine a claim for multi-location bargaining. For example, in *Bowie*

Hall Trucking, 290 NLRB 41 (1988), the Board found sufficient local autonomy where local management conducted initial screenings for new hires and was consulted about disciplinary decisions but did not have final authority to either hire or discipline. Edwards/Palmdale supervisors and management clearly possess and exercise greater local autonomy.

The Acting Regional Director, in his attempt to bridge the divide between Edwards/Palmdale and Puget Sound day-to-day supervision, clings to the precarious argument that day-to-day supervision is shared between the two locations because program directors in Seattle provide general direction to Edwards/Palmdale professional and technical employees working on their programs. In so doing, the Acting Regional Director misstates the level of authority and involvement these program directors have over the day-to-day terms and conditions of Edwards/Palmdale professional and technical employees. He states, “The program offices have the authority to assign the engineers and technicians to the Edwards/Palmdale job assignments, to impose discipline and recommend promotions.” ARD Decision, p. 18. He also states:

The record discloses that daily supervision occurs at the local level and that supervisors at Edwards/Palmdale make decisions regarding hiring and discharge of employees; issuance of performance reviews; grievance resolution decisions; and other personnel issues. However, decisions regarding these matters are also handled by program managers that may be located in Puget Sound, WA or at other program locations.

ARD Decision, p. 19.

These statements regarding program manager authority are thoroughly contradicted by the record. The record makes clear that program directors, whether at Puget Sound or elsewhere, do not have any authority to hire, discipline, or terminate employees at Edwards/Palmdale. Tr. 2256-60. At most, they may recommend that management at Edwards/Palmdale take such actions, however, uncontroverted hearing testimony makes clear that Edwards/Palmdale

management has no obligation to grant the request. Tr. 2256-60. Moreover, program directors do not issue performance reviews to Edwards/Palmdale employees and they do not resolve grievances for them. And while true that program managers may give Edwards/Palmdale professional and technical employees work assignments, it is the responsibility of the local first-line supervisor, not the program manager, to make sure the work is performed on a day-to-day basis.

In addition to his mischaracterization of the involvement of Puget Sound program directors in the day-to-day supervision of Edwards/Palmdale professional and technical employees, the Acting Regional Director placed no weight on the fact that not all Edwards/Palmdale professional and technical employees work on programs that are based in Seattle. Many work on projects based in other Company locations, which the Acting Regional Director routinely acknowledged. The program directors at these other locations have the exact same limited responsibilities for the work performed by Edwards/Palmdale employees working on their programs as program directors based in Puget Sound. It is difficult to see how Edwards/Palmdale and Puget Sound could be so intertwined that they have lost their separate identities when Edwards/Palmdale operates independently from Puget Sound so regularly.

2. The record evidence does not support the Acting Regional Director's conclusion that interchange between Edwards/Palmdale and Puget Sound is sufficient to justify multi-facility bargaining

The Acting Regional Director recognizes that “the degree of employee interchange and communication is a particularly important factor in reaching a unit determination in both initial and representation proceedings and accretion proceedings.” ARD Decision, p. 20, citing *Catholic Healthcare West*, 344 NLRB 790 (2005); *United Rentals, Inc.*, 341 NLRB 540 (2004); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994). However, he wholly ignores established Board precedent that requires interchange to be significant before it will support the

appropriateness of multi-location bargaining; the existence of interchange by itself is not sufficient. *See Hilander Foods*, 348 NLRB at 1203 (evidence of temporary transfers did not favor multi-location bargaining because the transfer rate was not significant); *Red Lobster*, 300 NLRB at 911 (the level of transfers were not sufficient to justify multi-facility bargaining where only 19 of 85 employees were affected by temporary transfers in one year). In spite of this clear precedent, the Acting Regional Director is content that the interchange is “regular” while dismissing the fact that the record clearly show that interchange between Edwards/Palmdale and Puget Sound professional and technical employees has been minimal historically. ARD Decision, p. 20. Yet, he acknowledges that the already minimal interchange between the Edwards/Palmdale and Puget Sound locations has been on the decline since the creation of HDAIT in 1999. *Id.* The lack of significant interchange is demonstrated by looking at temporary transfers between Edwards/Palmdale and Puget Sound in the years 1999, 2000, and 2001.

a) Total number of professional and technical employees

Year	Puget Sound	Edwards/Palmdale	
	Professional & Technical	Professional	Technical
1999	23,393	141	37
2000	20,961	312	34
2001	19,013	288	15

a) Professional employee loan ins and outs

Year	Puget Sound		Other Locations	
	Loan In to Edwards/Palmdale	Loan Out from Edwards/Palmdale	Loan In from Edwards/Palmdale	Loan Out from Edwards/Palmdale
1999	37	0	118	86
2000	34	0	41	86
2001	15	0	48	13

b) Technical employee loan ins and outs

Year	Puget Sound		Other Locations	
	Loan In to Edwards/Palmdale	Loan Out from Edwards/Palmdale	Loan In from Edwards/Palmdale	Loan Out from Edwards/Palmdale
1999	8	0	14	10
2000	8	0	6	9
2001	3	0	7	1

In *Red Lobster*, 300 NLRB 908, the Board found that temporary transfers affecting 18 of 85 employees at one location in a single year were not sufficient to justify multi-location bargaining. As a percentage, that means just over twenty-two (22) percent of the employees were affected by temporary transfers to the other locations at issue. In the three years discussed above, exactly zero (0) percent of Edwards/Palmdale professional and technical employees were affected by temporary transfers to Puget Sound. As for Puget Sound professional and technical employees, in each of the three years discussed, significantly fewer than one (1) percent were affected. These numbers are particularly bleak for Edwards/Palmdale professional and technical employees when considering that both groups of employees were more affected by temporary transfers to Company locations other than Puget Sound during the same three year period.

3. The Acting Regional Director erred in finding the distance between Edwards/Palmdale and Puget Sound does not weigh against multi-location bargaining

The Acting Regional Director concluded that the distance between Edwards/Palmdale and Puget Sound did not weigh against multi-facility bargaining. He acknowledges that the two facilities are 1,100 miles apart, but concluded that such a distance between facilities is normal in nationwide corporations. He cites no case law supporting his proposition that the nationwide nature of the Company mitigated the adverse impact of the distance between the two locations on the multi-facility analysis. His failure to recognize that the expansive distance between

Edwards/Palmdale and Puget Sound weighs against the appropriateness of multi-location bargaining is simply astounding. His position becomes even less justifiable when considering that there are other Company locations nearer in proximity to Puget Sound with professional and technical employees that the Union does not claim to be part of a multi-facility unit.

In seeking to minimize the glaring problem posed by the distance between Edwards/Palmdale and Puget Sound, the Acting Regional Director notes that “employees can use the Employer-Petitioner’s WebEx system for “presentations and group meetings regardless of their immediate location.” Acting Regional Director Decision, p. 21. However, he cites no factual basis upon which to conclude that the availability of Webex or its frequency of use between the two locations is sufficient to close the 1,100 mile divide. Moreover, WebEx is available for use between Edwards/Palmdale and Company locations other than Puget Sound as well as between Puget Sound and Company locations other than Edwards/Palmdale, many of which are much closer in physical proximity. Again, the evidence fails to show that Edwards/Palmdale and Puget Sound share a relationship so singular that it justifies multi-facility bargaining.

4. The Acting Regional Director did not comply with established Board precedent when he failed to consider the Union’s non-exclusive bargaining relationship with Edwards/Palmdale professional and technical employees when determining the appropriateness of multi-location units

Throughout his analysis, the Acting Regional Director relies on the bargaining history of the Parties to justify his decision to dismiss the Petition. It is true that the Parties have had a history of bargaining related to a unit that includes heritage Boeing professional and technical employees at Edwards/Palmdale and Puget Sound. Yet, the Acting Regional Director refused to recognize that the bargaining history between the Parties changed fundamentally with the creation of HDAIT, a change the Union acknowledges and defends. The evidence clearly shows

that with the creation of HDAIT, the Union voluntarily changed its representational status as it pertained to Edwards/Palmdale professional and technical employees from that of an exclusive bargaining representative to that of a non-exclusive bargaining representative by excluding from representation of all heritage Rockwell and McDonnell Douglas professional and technical employees.

In spite of the Union's voluntarily change to a non-exclusive representative of Edwards/Palmdale professional and technical employees, the Acting Regional Director refused to acknowledge long-standing Board precedent that establishes that non-exclusive bargaining status carries no weight when determining the appropriateness of a bargaining unit. Moreover, he failed to consider clear Board precedent in which the Board has refused to compel employers to bargaining in situation where a union voluntarily engages in non-exclusive bargaining as such bargaining fails to conform to the requirements of Section 9(a) of the Act. Because the Acting Regional Director failed to recognize and apply established Board precedent in analyzing the impact of the Union's non-exclusive bargaining status on the viability of multi-location bargaining between Edwards/Palmdale and Puget Sound, the Request for Review should be granted.

As noted above, the Board has long recognized that Section 9(a) of the Act requires a union to be the exclusive bargaining representative of an appropriate unit of employees. *See Makin Hats*, 332 NLRB 19; *Goski Trucking Corp.*, 325 NLRB 1032; *Arthur Sarnow Candy Co.*, 306 NLRB 213; *Don Mendenhall*, 194 NLRB 1109; *Manufacturing Woodworkers*, 194 NLRB 1122; *Kansas Power & Light Company*, 64 NLRB 915. It has consistently refused to compel employers to bargain with unions when the bargaining history between the parties is non-exclusive. As it stated in *Don Mendenhall*, 194 NLRB at 1110:

We conclude that, in the context of events, the Respondent's actions cannot be held violative of Section 8(a)(5). That section, by reference to Section 9(a), requires as a predicate for any finding of violation that the employee representative has been designated or selected as the exclusive representative of the employees. It has been settled since the early days of the Act that member-only recognition does not satisfy statutory norms.

See also Makin Hats, 332 NLRB at 20; *Goski Trucking*, 325 NLRB at 1034-35.

The Board also refuses to give any weight to non-exclusive bargaining when determining whether a bargaining unit is appropriate. For example, in *Manufacturing Woodworkers*, 194 NLRB at 1123, the Board explained:

In the past the Board has held that a history of collective bargaining on a "members only" basis does not provide an adequate basis for representation nor the appropriateness of a bargaining unit such as the statute contemplates. The Board has traditionally refused to give weight to such a bargaining history, or to require its continuance, and we will not do so here.

See also Sarnow Candy, 306 NLRB at 217; *Kansas Power & Light*, 64 NLRB at 918. This is even the case when the bargaining unit description tends to indicate that the union's representation is exclusive, but in actual practice it is not. *See Sarnow Candy*, 306 NLRB at 216; *Manufacturing Woodworkers*, 194 NLRB at 1123.

In *Sarnow Candy*, 306 NLRB 213, the Board adopted the administrative law judge's decision to dismiss claims against an employer because the parties had engaged in non-exclusive, members-only bargaining. In that case, Sarnow Candy had entered into a collective bargaining relationship with a union which lasted for many years. The several contracts between Sarnow Candy and the union contained language recognizing the Union as the exclusive representative as well as a union security clause.

After sometime, Sarnow Candy was sold and merged with Lilly Popcorn. Subsequent to the merger, the newly merged company, referred to as Sarnow Candy, and the union entered into a collective bargaining agreement. Upon its expiration, the union presented to Sarnow Candy a

new contract for execution, which Sarnow Candy refused to execute. The union filed charges alleging that Sarnow Candy violated Section 8(a)(5) of the Act.

The administrative law judge refused to find a violation or order Sarnow Candy to bargain with the union because the union was not the exclusive bargaining representative of Sarnow Candy's employees and, thus, the protections of 8(a)(5) of the Act did not extend to the union and its members. He noted that after the merger of the two companies, the Union only billed the employer for the dues, pension, and welfare contribution for those employees who had worked for Sarnow Candy prior to the merger of the two companies. Sometime later, the Union began billing for only those Sarnow Candy employees who were members of the union.

The administrative law judge explained, "An incumbent union normally enjoys a presumption of continued majority status, particularly during the term of an existing collective-bargaining agreement. *Pioneer Inn & Casino*, 228 NLRB 1263 (1977). Such a presumption may be rebutted during a contract's term if the contract is for members only or if the bargaining unit is not defined with sufficient clarity 'to warrant a finding that the contracts are ones to which a presumption of majority status can attach.' *Ace-Doran Hauling & Rigging Co.*, 171 NLRB 645 (1968); *McDonald's Drive-In Restaurant*, 204 NLRB 299 (1973)." *Sarnow Candy*, 306 NLRB at 215-16. He then recognized that the parties' collective bargaining unit clearly defined the unit, but concluded:

On balance, I am inclined to find that pursuant to the practice of the parties over at least 3 or more years, the collective-bargaining relationship has been limited to a members only situation. That is, whatever bargaining unit existed when Sarnow was a separate company, the unit became a de facto members only unit when Sarnow was acquired by Brooks and merged with Lilly Popcorn.

In view of the above, it is concluded that the presumption of continuing majority status cannot be applied to the facts of the present case. Further, as it is concluded that there does not exist an appropriate bargaining unit within the

meaning of Section 9(a) of the Act, it therefore follows that a bargaining order cannot be granted pursuant to Section 8(a)(5) of the Act.

Id. at 216-17.

Although the decision in *Sarnow Candy* was issued in the context of an 8(a)(5) unfair labor practice case, it is impossible not to recognize the factual and legal similarities between it and this case. In both cases, the union, after a merger with another company, voluntarily represented only those employees who worked for the unionized company before the merger. The statement of law could not be clearer – when parties engage in non-exclusive bargaining, an appropriate unit within the meaning of Section 9(a) of the Act does not exist.

The Acting Regional Director takes issue with one of the cases cited by the Company in its Post-Hearing Brief Following Remand, *Manufacturing Woodworkers*, 194 NLRB 1122, and distinguishes it from this case factually in order to conclude that it is not applicable to this case. In so doing, he completely ignores the legal similarity between the two cases, the non-exclusive representation of employees by a union, while misstating those facts that have the greatest bearing on the outcome of the case. In that case, the Board stated:

In the past the Board has held that a history of collective bargaining on a "members only" basis does not provide an adequate basis for representation nor the appropriateness of a bargaining unit such as the statute contemplates. The Board has traditionally refused to give weight to such a bargaining history, or to require its continuance, and we will not do so here.

Id. at 1123. By its own words, this statement of the law transcends the specific facts of the case and announces a general, universal legal principle. *See also Makin Hats*, 332 NLRB at 20; *Sarnow Candy*, 306 NLRB at 217; *Kansas City Power & Light*, 64 NLRB at 918.

Furthermore, the Acting Regional Director asserts that *Manufacturing Woodworkers* is inapplicable factually primarily because “the Union has not voluntarily restricted its representation of the employees to a small segment of the Employer-Petitioner’s operation.”

First of all, the Acting Regional Director cites no case law that establishes that this is what is legally necessary to trigger the Board's refusal to compel bargaining on a non-exclusive, members-only basis. Secondly, even if the standard was limited to the factual situations set forth by the Acting Regional Director, *Manufacturing Woodworkers* is applicable to this case.

The Union did voluntarily enter into a non-exclusive, members-only relationship with Company upon creation of HDAIT when it excluded from its representation heritage Rockwell and McDonnell Douglas professional and technical employees. The Acting Regional Director himself acknowledges this fact in his decision when he states, "Instead the Union agreed to 'grandfather' or red-circle those employees who were formerly employed by the two companies, but asserted that as the former Rockwell and McDonnell Douglas employees matriculated or moved into bargaining unit positions, either by voluntary promotion or transfer, the employees would become members of the bargaining unit." ARD Decision, p. 24 (emphasis added). Moreover, the Union went to great pains at hearing to establish the fact that it did not represent heritage Rockwell or McDonnell professional and technical employees. If its decision to exclude the Rockwell or McDonnell professional and technical employees was not voluntary, there would have been no reason for the Union to do so.

In addition to the Union voluntarily entering into the non-exclusive bargaining relationship, it did in fact only extend representation to a small segment of the professional and technical employees at Edwards/Palmdale. At the time of the creation of HDAIT and merger of the heritage employee groups, professional and technical employees not represented by the Union significantly outnumbered those that were represented. At that time, professional employees that were not represented by the Union outnumbered those that were represented more than four to one. There were one hundred and sixteen (116) professional employees who

were not represented by the Union and twenty-five (25) that were represented. The numbers for technical employees is even more bleak. At the time of the merger, there were fifty-six (56) technical employees that were not represented by the Union²⁶ and only six (6) that were.

Clearly, the Acting Regional Director unduly relied upon his misapplication of Board law to give weight to the Parties' bargaining history in its multi-facility community of interest analysis. This misapplication of Board precedent to give weight to the Union's non-exclusive bargaining status at Edwards/Palmdale constitutes an error that prejudices the Company. Thus, the Request for Review should be granted.

G. The unit as defined by the Acting Regional Director does not conform to any of the Company's administrative or organizational structures

Consistent with much of his decision, the Acting Regional Director chose to ignore clear Board precedent when dismissing the fact that Edwards/Palmdale and Puget Sound as an independent unit fail to conform to any administrative organization of the Company. Precedent is clear that the Board is loath to recognize a multi-facility bargaining unit that does not conform to the administrative or organizational structure of the employer. *See Laboratory Corporation of America Holdings*, 341 NLRB 1079 (2004); *Stormont-Vail Healthcare*, 340 NLRB 1205 (2003).

Record evidence shows that Edwards/Palmdale and Puget Sound are either part of a larger organizational structure which includes other locations the Union does not claim to represent or are part of separate organizational structures. For example, with the creation of HDAIT, Edwards/Palmdale went from the Puget Sound cost center to the Long Beach cost center. With this change, local management at Edwards/Palmdale reported to higher levels of

²⁶ Forty (40) of the technical employees were represented by the United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 887. This fact brings this case even further in line with the Board's decision in *Manufacturing Woodworkers*, which involved multiple unions representing similarly situated employees who were covered by competing contracts. *Id.* at ____.

management in Long Beach instead of Puget Sound, as they had previously. Also, at the time HDAIT was created, both Edwards/Palmdale and Puget Sound were performing IDS work. However, several other Company locations which the Union does not seek to represent in the at-issue units were also performing IDS work. There is no record evidence that Edwards/Palmdale and Puget Sound form a recognized administrative organization independent of other Company locations. In fact, just the opposite is true.

The creation of EO&T did not change the fact that Edwards/Palmdale and Puget Sound do not form an independent administrative structure. Although Edwards/Palmdale moved from being under Long Beach management back to Puget Sound, several other locations are part of this functional organization that provides enterprise wide engineering and test support. Moreover, as acknowledged by the Acting Regional Director, Puget Sound is in the northwest region and Edwards/Palmdale is in the southwest region of EO&T.

VI. CONCLUSION

The Acting Regional Director's Decision to dismiss the Petition raises substantial questions of law and policy, reflects a significant departure from establish Board precedents, clearly misstates record evidence, and contains rulings and determinations that are plainly contradictory to the statutory limitations and purposes of the National Labor Relations Act

Specifically, he defied the Board's ruling by failing to clarify the at-issue units as directed by the Board in its remand. Instead, the Acting Regional Director erroneously dismissed the Petition, effectively leaving to an arbitrator the responsibility to resolve the outstanding representational question which the Board clearly indicated is its exclusive obligation. Even if the Acting Regional Director's dismissal of the Petition was procedurally appropriate, record evidence clearly establishes that, since the creation of HDAIT, professional

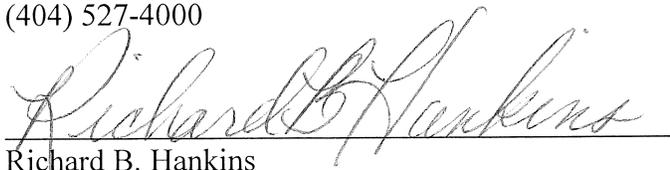
and technical employees are no longer assigned to work at Edwards/Palmdale by Puget Sound and, thus, no longer meet the requirements of the agreed upon professional and technical units.

Additionally, the Acting Regional Director failed to recognize the critical nature of the Board's accretion doctrine in determining the appropriate unit clarifications. This failure has the potential of resulting in the Union, who acknowledges it does not represent heritage Rockwell and McDonnell Douglas professional and technical employees, being certified by an arbitrator as the non-exclusive representative of professional and technical employees at Edwards/Palmdale. This result is not permitted by Section 9(a) of the Act. In addition to his failure to consider the accretion doctrine, the Acting Regional Director routinely misapplied established Board law and misstated uncontroverted record testimony when determining that multi-facility bargaining between Edwards/Palmdale and Puget Sound was appropriate.

Because the Acting Regional Director's Decision raises substantial questions of law and policy, reflects a significant departure from establish Board precedents, clearly misstates record evidence, and contains rulings and determinations that are plainly contradictory to the statutory limitations and purposes of the National Labor Relations Act, this Request for Review should be granted.

Respectfully submitted this 6th day of September 2011.

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CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of **THE BOEING COMPANY'S REQUEST FOR REVIEW OF THE ACTING REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND ORDER DISMISSING PETITION** upon the following parties by electronic mail:

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