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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY, Employer-Petitioner, and SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES IN AEROSPACE, IFPTE, LOCAL 2001, AFL-CIO, Union.	Case No. 31-UC-311 **UNION'S STATEMENT IN OPPOSITION TO THE EMPLOYER'S REQUEST FOR REVIEW OF THE ACTING REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND ORDER DISMISSING PETITION**

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I. INTRODUCTION

The Boeing Company ("Employer," "Boeing," or "Company") filed a petition to clarify two contractually-recognized bargaining units represented by the Society of Professional Engineering Employees in Aerospace, IFPTE, Local 2001, AFL-CIO ("SPEEA" or "Union"), a unit of professional engineers and a unit of technical employees. The bargaining units have long included both a very large group of employees working at several Boeing locations in Washington State and a smaller group of employees working at Edwards Air Force Base and in Palmdale, California ("Edwards/Palmdale"). The Employer seeks to exclude the vast majority of Edwards/Palmdale employees from the units on the ground that employees "whose current job requisition was not filled through the Seattle, Washington staffing offices" were historically excluded from the units. Company Ex. 1.

Although the evidence presented over a period of nearly five years and more than 30 days of hearing is voluminous and at times complex, the questions at the heart of this case are really quite simple. First, does the Employer's alleged historical exclusion exist? Were employees "requisitioned" locally at Edwards/Palmdale actually excluded from the units prior to 2000, when the dispute that ultimately led to this proceeding first arose? Second, if the historical exclusion does exist, is the location from which requisition paperwork was initiated a proper basis on which to determine unit placement? Finally, do community of interest factors and other doctrines regarding the appropriateness of bargaining units support approval of the existing units?

In a decision issued on August 5, 2011, the Acting Regional Director of Region 31

reached what the Union believes is the only proper conclusion, dismissing the Employer's petition, rejecting the purported historical exclusion, and confirming the existing bargaining units which include several locations in both the Puget Sound and Edwards/Palmdale. Like the Regional Director before him, the Acting Regional Director correctly found that there was no historical exclusion of employees "requisitioned" or "assigned" locally as opposed to from Seattle. Similarly, the Acting Regional Director properly rejected the Employer's proposed criterion for unit placement as illegitimate and foreign to the doctrines governing appropriate bargaining units. Finally, consistent with the Board's remand order, the Acting Regional Director carefully examined the community of interest factors and found that the existing multi-location bargaining units were appropriate and should not be disturbed.

The Acting Regional Director's decision was based on an exhaustive analysis of the applicable facts and law, and no compelling reasons exist that would justify Board review. As a result, Boeing's request for review should be denied, and after more than six years, this case should finally reach its long-overdue conclusion.

II. PROCEDURAL HISTORY

On April 8, 2005, the Employer petitioned to clarify two bargaining units represented by the Union – a unit of professional engineers and a unit of technical employees.

The unit descriptions that were the subject of the petition were established by the recognition clauses of the parties' collective bargaining agreements and have remained unchanged for many years, encompassing professional and technical employees working

for the Employer in Washington State and at Edwards/Palmdale. Originally, the Employer sought to exclude all Edwards/Palmdale employees "not hired through the Seattle, Washington staffing offices." Board Ex. 1(a). Boeing amended its petition on October 4, 2005, the first hearing day, seeking to exclude all Edwards/Palmdale employees "whose current job requisition was not filled through the Seattle, Washington staffing offices." Company Ex. 1.

During the initial 11 days of hearings between October 4, 2005 and May 4, 2006, the Employer claimed that only Edwards/Palmdale employees who had been "requisitioned" from Seattle had historically been included in the SPEEA bargaining units. As a result, Boeing argued, the units should be clarified to confirm the historical exclusion of employees not "requisitioned" from Seattle.

In response, the Union presented evidence that from 1976, when Edwards employees were first organized, until the completion of the 1996 acquisition of components of Rockwell International Corporation ("Rockwell") and the 1997 merger with McDonnell Douglas Corporation ("McDonnell Douglas"), all professional and technical employees at Edwards/Palmdale had been represented by SPEEA. The Union had never heard of, much less acquiesced in, the exclusion of employees based on where their requisition paperwork was processed. The Union agreed that, in order to preserve employee free choice, "heritage" Rockwell and McDonnell Douglas individuals should be "red circled" and excluded so long as they remained in their existing positions. But otherwise, the recognition provisions required the inclusion of all Edwards/Palmdale professional and technical employees. Moreover, there was no basis under community of

interest analysis to treat employees differently based only on their requisition location.

Following the closure of the first set of hearings on May 4, 2006, the parties filed post-hearing briefs arguing their respective positions.

On October 18, 2006, the Regional Director issued his decision, holding: (1) that as the petitioner, the Employer had the burden of proving "compelling circumstances" warranting the clarification of the parties' historical units, Regional Director's Decision ("RDD") at 18; (2) that the record lacked community of interest evidence supporting the division of Washington and Edwards/Palmdale employees into separate units, RDD at 25; (3) that requisition location, the Employer's proposed criterion for determining unit placement, is an improper basis for establishing whether an employee is included or excluded, RDD at 25; (4) that there has been no historical exclusion based on requisition location and that the Union never acquiesced in the exclusion of Edwards/Palmdale employees based on that or any other factor not explicitly set forth in the recognition clauses, RDD at 29; (5) that the recognition provisions' use of the phrase "assigned to" to describe the inclusion of Edwards/Palmdale employees does not support Boeing's historical exclusion argument, RDD at 30; (6) that accretion analysis does not apply to this case, RDD at 31-32; and (7) that the Board lacks the power to order an election because there is no question concerning representation. RDD at 32.

Boeing filed a request for review of the Regional Director's decision and the Union filed a statement in opposition. On April 30, 2007, the Board granted the Employer's request for review and remanded the case to the Regional Director in a 2 to 1 decision, with Member Liebman dissenting. *Boeing Company*, 349 NLRB 957 (2007).

The Board's ruling was limited, and left intact (or at least unaddressed) much of the Regional Director's analysis. Specifically, the Board found that *after* the merger and acquisition, the parties never agreed on the proper composition of the units. *Id.* at 957. As a result, "the issues presented are not solely a matter of contract interpretation, but rather, involve representation matters," and therefore are not appropriate for resolution by an arbitrator and must be resolved by the Board. *Id.* The Board concluded that there was insufficient evidence in the record regarding community of interest and bargaining history for the Board to come to that resolution. Therefore, the Board remanded and instructed the Regional Director to reopen the hearing to gather "additional evidence with respect to elements critical to resolving the unit composition issues." *Id*. at 958.

The Board described the issues on which additional evidence was required:

> [I]n clarifying whether the at-issue employees are in or out of the units, the Regional Director and the Board need to resolve such issues as whether those employees may be accreted to the existing units, are already included in the units by virtue of their performance of historical unit work functions, or are sufficiently dissimilar to warrant their exclusion. In order to determine whether employees constitute an accretion to the existing unit or may constitute a separate entity, there must be an examination of skills, functions, supervision, interchange, contact, working conditions, and bargaining history. *Towne Ford Sales*, 270 NLRB 311 (1984). In order to determine whether the disputed employees are already covered by the units, the Regional Director and the Board will need to examine bargaining history and the parties' practices, or, where there are new classifications, whether employees are performing the same basic functions historically performed by unit employees….
>
> The evidence with respect to collective-bargaining negotiations, and actual practice is insufficient to show which employees have been included in the bargaining units in the past. Moreover, the evidence does not appear to address community of interest factors in a relevant manner. It appears that there is little or no evidence with respect to functions, skills, or working conditions of any Edwards/Palmdale employees. Reference to

> supervision is with respect to programs, rather than to specific classifications of employees. There is no indication of the extent of interchange or contact between those who may be in the existing units and the disputed employees.

Id. at 957-58.

Following the remand, Region 31 held 20 days of hearing between May 12, 2008 and April 1, 2010, focusing particularly on community of interest evidence. Both parties filed post-hearing briefs, and on August 5, 2011, the Acting Regional Director issued a supplemental decision and order dismissing the Employer's unit clarification petition. The Acting Regional Director found: (1) that Boeing abandoned its argument that unit placement should be determined based on the location from which requisition paperwork was filled, Acting Regional Director's Decision ("ARDD") at 16; (2) that accretion analysis does not apply where, as here, "a new group … of employees performs the same basic functions that the unit employees had historically performed," ARDD at 17; (3) that the parties have a "long term multi-location bargaining relationship covering Edwards/Palmdale and the Washington State units," ARDD at 18; and (4) that community of interest factors support the appropriateness of the historical units, ARDD at 18-22. Boeing thereafter filed a request for review.

III. ARGUMENT

A. Boeing Cannot Satisfy the High Standard Limiting Board Review to Decisions Containing Clear Factual Errors or Substantial Departures from Precedent

A party seeking review of a Regional Director's decision bears a heavy burden. A request for review may only be granted for "compelling reasons." NLRB Rules &

Regulations, Rule 102.67(c); *Metropolitan Opera Ass'n., Inc.*, 327 NLRB 740, 740 (1999). Four such compelling reasons are recognized. Rule 102.67(c). Here, the Employer invokes two of those reasons, claiming that "a substantial question of law or policy is raised" because the Acting Regional Director's decision constitutes "a departure from officially reported Board precedent," Rule 102.67(c)(1), and that "the decision on … substantial factual issue[s] is clearly erroneous on the record and such error prejudicially affects the rights of a party." Rule 102.67(c)(2).

Specifically, Boeing argues that the Acting Regional Director departed from precedent by failing to properly apply the accretion doctrine. Boeing's Request for Review ("BRR") at 26. It argues that the Acting Regional Director clearly erred by ignoring the "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." BRR at 25-26. (In fact, assignment by Puget Sound was never a criterion for unit placement.) The Employer also claims that the Acting Regional Director "failed to properly apply established Board law and/or misstated uncontradicted record evidence" in his discussion of community of interest factors. BRR at 26. Finally, Boeing asserts that the Acting Regional Director violated the Board's mandate on remand by failing to clarify the units. BRR at 25.

In fact, the Acting Regional Director correctly applied Board law and correctly described the material facts. He did not depart from existing precedent or make "clearly erroneous" factual findings. As a result, Boeing does not come close to satisfying the "stringent requirements" limiting the availability of Board review. *St. Barnabas*

Hospital, 335 NLRB No. 39, slip op. at 1 (2010).

B. Boeing Mischaracterizes the Board's Remand Order by Claiming that the Regional Director Was Instructed to Clarify the Bargaining Units

Boeing's primary argument in favor of Board review is nonsensical and frivolous. Boeing claims that the Board's remand order, *Boeing Co.*, 349 NLRB 957 (2007), required the Regional Director to grant its petition for unit clarification. It relies on a brief passage from the order finding that "the Board has the authority to, and should, *define* the unit in this case." *Id.* at 957 (emphasis added). The Board certainly did hold that the parties' dispute regarding the scope of the bargaining units should be decided by the Agency, not an arbitrator. But it does not follow that the Board somehow barred the Regional Director from dismissing the petition in light of his analysis of community of interest evidence. Indeed, such an instruction would be totally incompatible with the Board's posture in *remanding* the case to the Regional Director for further proceedings.

Instead, the logical interpretation of the Board's statement is that the Regional Director was required to make factual and legal findings regarding the scope of the units, and then based on those findings issue one of three dispositions: clarify the units as requested by Boeing, clarify the units in some other way, or dismiss the petition. Indeed, immediately following the passage relied on by Boeing, the Board stated that "the correct analysis of the representation issues requires examination of evidence which, it appears, is not available in the existing record and, therefore, those issues cannot be resolved without further hearing." *Id.* Among the possible findings expressly contemplated by the Board is the conclusion ultimately reached by the Acting Regional Director, that "at-issue

employees … are already included in the units by virtue of their performance of historical unit work functions[.]" *Id.* at 957-58. *See* ARDD at 3 ("Based on the entire record, I shall dismiss the petition based on my finding that the Edwards/Palmdale employees in dispute are included in the recognized contractual bargaining units. In this regard, I find that the Edwards/Palmdale employees perform historical bargaining unit work and share a community of interest with the Washington State bargaining unit employees.").

In sum, the Acting Regional Director's conclusions and order are entirely consistent with the Board's remand, and Boeing's primary justification for Board review is utterly meritless.

C. The Acting Regional Director Correctly Rejected Boeing's Asserted Historical Exclusion

The Employer argues that "the bargaining history supports an historical exclusion" of employees "assigned out of Puget Sound." BRR at 22-23, 27-28.[1] This contention was correctly rejected both by the Regional Director in his original decision, a finding left undisturbed by the Board in its remand order, and by the Acting Regional Director here. ARDD at 16. As the Acting Regional Director properly found:

> The Employer-Petitioner's initial petition for unit clarification sought to exclude all employees at Edwards/Palmdale whose current job requisition were not filled through the Seattle staffing offices. The Board's decision did not reject the Regional Director's dismissal of this argument. The original Decision and Order dismissing the petition noted that clarification on that basis was not appropriate since it failed to address any

[1] In an attempt to obscure the absurdity of its position, Boeing now uses the word "assigned" rather than "requisitioned." BRR at 27. The meaning, however, is the same. According to the Company, only employees whose administrative documentation was processed in Seattle were included in the historical units.

> community of interest factors and would leave the matter of who is included or excluded completely in the unilateral control of one of the parties. *The Sun*, 329 NLRB 854, 859 (1999). The Employer-Petitioner has not provided any further arguments in support of the requisition argument and I find that it does not warrant further consideration.

Id. Indeed, Boeing's argument is unprecedented and totally unsupported by any reported Board decision. The Employer asserts not that certain job classifications were historically excluded, but that employees in the same classification were deemed included or excluded based only on the location at which the Employer initiated their requisition paperwork. Even if this were an accurate account of an existing practice (which it is not), it would be a totally inappropriate basis on which to determine unit placement.

In any event, there is simply no evidence that such an exclusion ever existed. A historical exclusion may be found only when a group was never included in the unit, or has not been included for some time and the union has made no attempt to include the group. *Robert Wood Johnson Univ. Hosp.*, 328 NLRB 912 (1999). It is undisputed that the employees at issue in this proceeding are engineers and technical employees, and that SPEEA's bargaining units have always included all such employees at SPEEA-represented locations. While job classification titles have changed over time, there is no dispute that all employees whom SPEEA claims to represent work in job classifications covered by the SPEEA collective bargaining agreements. Moreover, it is undisputed that from Boeing's recognition of SPEEA in 1976 until some time after the 1996 Rockwell acquisition and 1997 McDonnell Douglas merger, all Boeing engineers and techs permanently assigned to Edwards/Palmdale were represented by SPEEA. That recognition is memorialized in a Memorandum of Agreement clearly covering both

employees hired in Seattle and employees hired locally. Tr. at 643:17-653:16 (Bradford); Joint Ex. 6.

Here, the only two employees to testify both gave unrebutted testimony that they were hired into Edwards/Palmdale with no prior relationship with the Puget Sound and no involvement from the Puget Sound, and that they were represented by SPEEA during their entire tenures as permanent Edwards/Palmdale employees. Cynthia Cole first came to work for Boeing at Edwards/Palmdale in 1978, and she was interviewed and hired by a local manager. No one in Seattle had any involvement in her hiring. Tr. at 683:6-687:9 (Cole). Jeffrey Lewis was a Boeing employee in Wichita represented by a different union when an Edwards/Palmdale manager came to Wichita in 1984 and recruited him to transfer to Edwards/Palmdale. Mr. Lewis was initially on loan from Wichita and retained his prior union representation. Edwards/Palmdale then became his permanent location, and he became a member of SPEEA's unit. No one from Seattle had any role in his transfer to Edwards/Palmdale. Tr. at 701:7-706:1 (Lewis).

The best evidence the Employer could have presented to substantiate the alleged historical exclusion is actual job requisition records showing the location from which requisitions were initiated. But in more than 30 days of hearings stretching over a period of almost five years, Boeing never presented documentary evidence clearly establishing that even a single Edwards/Palmdale employee was "requisitioned" from Seattle.

The Employer argues that "the Union has never protested the fact that the Company does not extend contractual benefits to the disputed employees," and that the Union therefore believed that it did not represent those employees. BRR at 22-23. This

contention is absurd, and was previously rejected by the Regional Director in his original decision, RDD at 28, another conclusion left intact by the Board. Indeed, the Union engaged in herculean efforts to protest Boeing's improper exclusion of Edwards/Palmdale employees in the face of years of stonewalling and delay from the Employer.

Specifically, in early 2000 amid difficult contract negotiations and just prior to a SPEEA strike, Boeing unilaterally and secretly decided that from then on, all Edwards/Palmdale engineering and technical position would be deemed non-represented.[2] Boeing's witnesses admitted its secret scheme. Tr. at 591:11-17 (Stamper); Tr. at 447:5-448:4 (Hamilton); Tr. at 300:13-21 (Hyson). SPEEA discovered there was a problem in September 2000 when a SPEEA-represented engineer at Edwards/Palmdale left the Company and was replaced by someone whom the Employer contended was not represented. Tr. at 716:3-718:2 (Lewis); Tr. at 832:8-833:11 (Plunkett). That event precipitated several months of informal discussions, and when those failed, the Union filed a grievance in March 2001 protesting the Employer's violation of the recognition clauses at Edwards/Palmdale. Tr. at 833:12-834:9 (Plunkett); Joint Ex. 9. The Employer denied the grievance, and for the next two years, stonewalled repeatedly when the Union sought information. Company Exs. 20-27. The Union demanded arbitration in June 2003, and when the Employer refused, successfully sued in federal court to compel

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[2] At that time, the three companies had not fully consolidated, and in fact, retained distinct job classification codes. Therefore, there were few, if any, "heritage" Rockwell and McDonnell Douglas employees who had transferred into SPEEA-represented

(Footnote continued)

arbitration. Union Exs. 28-30; Joint Ex. 11. Only then did Boeing file its unit clarification petition. The Company has never argued that the grievance was untimely.

Significantly, at no time during the parties' discussions or in any of the correspondence on this issue did the Employer contend that only employees "requisitioned" from Seattle were included in the units. Indeed, the Employer's previous position, expressed in the original UC petition, was that only employees "hired through the Seattle, Washington staffing offices" were included. Board Ex. 1. Boeing apparently realized that was wrong, a realization proven indisputably correct by the testimony of Ms. Cole and Mr. Lewis, and devised a more subtle argument based on requisition paperwork location.

Given the long history of inclusion of all permanent Edwards/Palmdale engineers and techs as well as the Union's consistent and repeated attempts to demand their inclusion immediately upon discovering the Company's secret decision to begin excluding them, there is simply no basis to find a historical exclusion. Moreover, an exclusion based on requisition location could not be "historical" when Boeing first came up with it *after* filing its unit clarification petition.

In sum, as the Regional Directors have now twice concluded, there is no historical exclusion of locally-requisitioned employees. The historical units included all engineering and technical employees permanently assigned to Edwards/Palmdale.

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positions.

D. The Acting Regional Director Correctly Ruled that the Union Is Not Attempting to Accrete Unrepresented Employees

In rejecting the Employer's argument that the Union is attempting to accrete previously unrepresented employees, the Acting Regional Director correctly held 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." ARDD at 17 (citing *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166 (2001); *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001)).

In essence, the Employer's accretion argument is just the flip side of its historical exclusion argument. It is true that historically excluded employees may not be added to a bargaining unit through accretion. *Kaiser Foundation Hospitals*, 342 NLRB 57, 57 (2004). Therefore, it is true that adding locally-assigned employees here would constitute an accretion if those employees actually were historically excluded. But of course, the reverse is also true. If locally-requisitioned employees were historically *included* in the units, then by definition, the Union cannot be attempting to accrete them because they are already in the units. And as discussed in Section III.C, there is no historical exclusion in this case.

Boeing attempts to complicate this simple axiom, first by mischaracterizing the Union's position and then by obscuring the size and scope of the existing units.

First, Boeing argues that "heritage" Rockwell and McDonnell Douglas employees cannot properly be accreted because they had a "separate identity" from "heritage" Boeing employees. BRR at 28-30. Whether or not this is correct, it is immaterial

because throughout this case, the Union has taken a very consistent position that it does not seek to represent "heritage" Rockwell and McDonnell Douglas employees who have not transferred into SPEEA-represented job classifications. The Union's intent is simply to maintain its historical units, which cover both the Puget Sound and Edwards/Palmdale, without jeopardizing employee free choice by claiming to represent employees whose status has not changed since the Rockwell acquisition and McDonnell Douglas merger. That is why the Union agreed that a "non-compete requisition" does not constitute a transfer into the bargaining unit. Such requisitions are involuntary, and therefore should not effect a change in status. Tr. at 2825:20-2829:6 (Kempf).

Next, Boeing argues that it is not obligated "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." BRR at 29 (citing *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)). Again, SPEEA does not claim to represent "heritage" Rockwell and McDonnell Douglas employees. Even if it did, those employees would make up a tiny percentage of the recognized historical bargaining units, which include both the relatively small number of employees who work at Edwards/Palmdale and the thousands of employees who work in the Puget Sound.

The Employer attempts to obscure this point by inventing a historical exclusion out of thin air, so that it can treat Edwards/Palmdale as a separate entity unburdened by a

long and unbroken history of multi-location bargaining with the Puget Sound. But as discussed above, the exclusion does not exist, the historical units include all Puget Sound and Edwards/Palmdale engineering and technical employees, and the Union has gone out of its way to avoid accretion by disclaiming any intent to represent "heritage" Rockwell and McDonnell Douglas employees.

Boeing's accretion argument is particularly disingenuous because its ultimate objective is to exclude not only "heritage" Rockwell and McDonnell Douglas employees, whom SPEEA does not claim to represent, but also all employees who have been hired into Edwards/Palmdale since the consolidation of the three companies. Of course, the presumption of majority support among new hires is well-settled and cannot be questioned by the Employer. *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 779 (1990).

E. The Acting Regional Director Correctly Ruled that Community of Interest Factors Support the Existing Bargaining Units, Particularly in Light of the Parties' History of Multi-Location Bargaining

1. Boeing Totally Ignores Longstanding Board Authority Holding that Historical Multi-Location Units Are Entitled to a Strong Presumption of Continued Appropriateness

The Employer cites a number of cases setting forth the doctrines governing the appropriateness of *new* multi-locations units. BRR at 33-34 (citing *J&L Plate, Inc.*, 310 NLRB 429, 429 (1993); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Dixie Belle Mills*, 139 NLRB 629 (1962); *Esco Corp.*, 298 NLRB 837, 839 (1990)). But these cases do not undermine the appropriateness of *existing* multi-location units. Here, because the longstanding, recognized professional and technical units encompass both

Puget Sound and Edwards/Palmdale, and because there is no historical exclusion of locally-requisitioned Edwards/Palmdale employees, the cases cited by the Employer are inapposite. As the Acting Regional Director correctly held, and Boeing cannot challenge:

> It is undisputed that the parties have had a long term multi-location bargaining relationship covering Edwards/Palmdale and the Washington State units for over 40 years. The record discloses that there has been little or no substantive change to the recognition language in successive collective-bargaining agreements, including those negotiated subsequent to the implementation of HDAIT.

ARDD at 18.

In these circumstances, the governing rule is that "[t]he Board normally will not disturb an historical, multilocation unit absent compelling circumstances." *Met Elec. Testing Co., Inc.*, 331 NLRB 872, 872 (2000). "It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate." *Canal Carting, Inc.*, 339 NLRB 969, 970 (2003). "This evidentiary burden is a heavy one," *Met Elec. Testing*, 331 NLRB at 872, because the existing history of multi-plant bargaining "alone suggests the appropriateness of … [the] bargaining unit." *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993), *enf'd. sub nom. California Pacific Medical Center v. NLRB*, 87 F.3d 304 (9th Cir. 1996) (quoted in *Southern Power Co.*, 353 NLRB No. 116, slip op. at 1 (2009), *aff'd following remand*, 356 NLRB No. 43 (2010)). As a result, the Board has maintained historical units encompassing geographically distant facilities even in the complete absence of employee interchange or operational integration among the facilities, *Southern*

Power Co., slip op. at 2, and even when there is only a one-year history of multi-location bargaining. *Met Elec. Testing*, 331 NLRB at 872 (citing *Arrow Uniform Rental*, 300 NLRB 246 (1990); *West Lawrence Care Center*, 305 NLRB 212, 216-17 (1991)). In sum, a multi-location bargaining unit may only be disturbed if its existence is "repugnant to Board policy." *Canal Carting*, 339 NLRB at 970 (quoting *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1105 n.2 (1979)).

As discussed below, under this deferential standard, the community of interest shared by Edwards/Palmdale and Puget Sound employees is more than sufficient to confirm the historical units.

2. It Is Undisputed, and the Acting Regional Director Correctly Found, that At-Issue Employees Perform the Same Work as Concededly Included Employees, Including Those at Edwards/Palmdale

Notably missing from Boeing's Request for Review is any acknowledgement of the basic fact, recognized by the Acting Regional Director, ARDD at 19, that the employees whom it seeks to exclude from the bargaining units have exactly the same duties and skills as employees whom it concedes are included in the units. Indeed, Boeing stipulated as much at the hearing. Tr. at 1745:20-1748:1 (stipulation). Common duties and skills are, of course, significant factors in the community of interest analysis.

The Employer also attempts to blur the reality that its own rendering of the units would leave some Edwards/Palmdale employees represented and some non-represented, even within the same programs. Indeed, Boeing concedes that certain Edwards/Palmdale employees, those identified on Union Exhibits 108-110 and Company Exhibits 116 and

117 with an "S," are included in the units and that they perform the same type of work, have the same job classifications, report to the same supervisors, and are subject to the same policies as other Edwards/Palmdale employees whom the Employer asserts are excluded from the units. Stated differently, if the Employer's argument is accepted, a represented employee and an unrepresented employee could work side-by-side on the same tasks every day, answering to the same front-line supervisor, parking in the same lot, and working in the same building. In short, the only distinction between the two groups would be the location from which requisition paperwork was initiated, a characteristic totally foreign to community of interest analysis and on which there is virtually no evidence in the record.

Although the result sought by the Company would continue SPEEA representation for a small number of Edwards/Palmdale employees who would continue to work side-by-side with unrepresented employees, the Employer's chief argument seems to be that *all* employees at Edwards/Palmdale have an entirely distinct identity from employees in the Puget Sound. Because Boeing is not attempting to sever Edwards/Palmdale entirely, this argument is inconsistent with the result the Company seeks. Nevertheless, as the Acting Regional Director correctly found, the evidence on community of interest presented in the post-remand hearings strongly supports the conclusion that employees in the Puget Sound and Edwards/Palmdale share a community of interest despite their geographic distance.

3. The Acting Regional Director Correctly Ruled that the Presence of Local Supervisors and Human Resources Officials Does Not Weigh Against the Existing Multi-Location Units Because Those Individuals Are Constrained By Detailed Company-Wide Policies and Because Managers at Other Locations Also Exercise Supervisory Authority

Boeing claims that "[u]ncontradicted testimony … established that supervisors and management at Edwards/Palmdale exercise exclusive authority over day-to-day terms and conditions of employment" and that the Acting Regional Director's findings on the authority of off-site program managers are "thoroughly contradicted by the record." BRR at 35, 36. These statements are simply false.

Although Edwards/Palmdale employees report to local managers, those managers in turn report to their respective off-site program managers on program execution issues. In contrast, the local chain of command, ending with Edwards/Palmdale Site Leader John Stolting, has authority only over "functional" issues, such as health and safety and scheduling. Program managers direct the actual work performed by Edwards/Palmdale engineering and technical employees. Tr. at 2115:16-19, 2118:20-2119:18, 2127:12-2128:10, 2131:18-2132:1, 2137:19-2138:3 (Stolting). They frequently resolve disputes within and among locations about program execution issues. Tr. at 2224:16-2226:16 (Stolting). And because they are ultimately responsible for the completion of program tasks, they have genuine authority to recommend work assignments, disciplinary actions, and promotions, though such actions are usually implemented by "functional" management. Tr. at 2256:7-2260:10 (Stolting). Some Edwards/Palmdale employees are not supervised by the local hierarchy at all, reporting through their front-line supervisors

directly to the program manager in Seattle on both "functional" and programmatic issues. Tr. at 3384:22-3385:17 (Stolting); Company Exs. 122, 123.

Likewise, there are local human resources personnel at Edwards/Palmdale, but given Boeing's highly centralized structure, they have few responsibilities and virtually no real authority. Company-wide payroll is handled in Seattle. Tr. at 1900:7-1901:23, 2204:15-2205:12 (Stolting). Pay and benefits issues are resolved through a centralized entity called Total Access. Tr. at 2500:8-2511:6 (Plunkett); Tr. at 2573:11-2574:15, 2576:6-16 (Stolting); Union Ex. 98. Decisions to arbitrate grievances under collective bargaining agreements are made by labor relations officials in Seattle. Tr. at 2331:16-2333:18 (Hamilton). There is a central pension service center to deal with pension issues. Tr. at 2223:5-2224:2 (Stolting). Moreover, as discussed below, nearly all aspects of employees' working conditions are spelled out in great detail in more than 1,000 company-wide policies. Local human resources officials often have roles in applying the policies, but rarely have any discretion in how they do so.

Finally, both Mr. Stolting and Deborah Larkin, the Edwards/Palmdale human resources director, now report directly to individuals located in the Puget Sound. When human resources issues must be "elevated," they are elevated to the Puget Sound. That is because Edwards/Palmdale is now part of a sub-segment of Boeing called Flight Test Operations, and that entity is based in the Puget Sound. Tr. at 3243:11-3249:8 (Stolting); Union Exs. 119, 120.

In support of its assertions, Boeing relies entirely on Mr. Stolting's conclusory answers to Employer counsel's leading questions regarding the exercise of Section 2(11)

supervisory criteria by local Edwards/Palmdale managers. Tr. at 1536:9-2029:9 (Stolting). But on cross, as shown in the cited portions of the transcript noted above, Mr. Stolting admitted that it is off-site program managers, not local "functional" managers who exercise control over the actual work performed by Edwards/Palmdale engineers and technicians. The Acting Regional Director properly credited the more detailed answers given by Mr. Stolting on cross, finding that "program managers, often located at other facilities, including Washington State, are the supervisors who define the program's tasks and priorities and ultimately oversee the work performed by all assigned employees." ARDD at 18. The Employer may disagree with this conclusion, but it is firmly based on record evidence and surely does not rise to the level of "clear error." NLRB Rules and Regulations, Rule 102.67(c)(2).

Moreover, the cases Boeing cites in support of the argument that local Edwards/Palmdale managers exercise sufficient autonomy to render multi-location bargaining inappropriate, *Hilander Foods*, 348 NLRB 1200 (2006); *Red Lobster*, 300 NLRB 908 (1990); and *Hall Trucking*, 290 NLRB 41 (1988), all arose in the context of initial representation petitions seeking *new* multi-location units. In this case, the *existing* units are multi-location units. As discussed above, the applicable presumption here strongly favors those existing units, and the traditional presumption in favor of single-location units does not apply.[3]

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[3] It bears noting that even if Edwards/Palmdale was removed from the SPEEA units entirely, the remaining units would still be multi-location units, as there are several different SPEEA-represented Boeing facilities in Washington State and elsewhere

(Footnote continued)

4. The Acting Regional Director Correctly Found that Edwards/Palmdale Employees Regularly Interact with Employees at Other Locations, Including the Puget Sound

As the Acting Regional Director found, Edwards/Palmdale employees regularly interact with their counterparts in the Puget Sound and at other Boeing locations across the country, and sometimes around the world. ARDD at 20. The Company's military and commercial operations are organized by program, and programs are located at Boeing facilities throughout the United States, and often relocate. Each program has a program office, where program operations at all other locations are managed. Edwards/Palmdale is primarily a flight testing facility. Airplanes are designed and built at other locations, and then sent to Edwards/Palmdale for evaluation prior to or during deployment by a military or commercial client.

Because of the collaborative nature of engineering and technical work and the program-based (as opposed to location-based) organization of Boeing's operations, interchange between employees assigned to different locations is extremely common. Tr. at 2116:8-2172:2 (Stolting). Moreover, because programs come and go and because different locations are utilized for different aspects of each program, "there is a great deal of movement that takes place among the professionals and [t]echnical employees at various Boeing locations" and it is very common for engineers and technical employees to move from location to location during their Boeing careers. Tr. at 2098:22-2099:1, 2173:17-2174:4 (Stolting).

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covered by the same recognition provisions. *See Macy's West, Inc.*, 327 NLRB 1222, 1223 n.5 (1999).

On cross examination, Mr. Stolting testified to these facts in detail. His testimony established that engineering and technical employees working on every single program located at Edwards/Palmdale are required as part of their duties to communicate with their colleagues at other locations, often as frequently as several times per day. Of the 15 programs described by Mr. Stolting, six have or had employees working at both Edwards/Palmdale and the Puget Sound, and these employees are required to communicate with each other frequently. Tr. at 2116:8-2172:2 (Stolting). They do so by phone and email, but also with sophisticated communication tools like WebEx, which allows employees at disparate geographic locations to participate in meetings and collaborate in real time on projects. Tr. at 2103:8-2114:17 (Stolting).

Similarly, because of the operational integration of programs across various locations, engineering and technical employees often travel away from their home locations to work with colleagues assigned to the same programs at other locations, sometimes for extended periods of time. Tr. at 2096:9-2097:6, 2174:5-18, 2389:16-2391:15, 3288:6-12, 3282:22-3923:21 (Stolting); Union Ex. 121, at 163-79. For the same reason, among others, it is common for employees to be "loaned" from one location to another. Tr. at 2151:13-2152:13 (Stolting); Company Exs. 111-114. Mr. Stolting estimated that at any given time, 10% of the engineering and technical employees physically located at Edwards/Palmdale are on loan from another location. Tr. at 2174:19-2175:10 (Stolting).

Boeing again relies on cases dealing with *new*, rather than *existing*, multi-location units, BRR at 37-39 (citing *Hilander Foods*, 348 NLRB at 1203; *Red Lobster*, 300 NLRB

at 911), and again fails to demonstrate that the Acting Regional Director's factual findings were clearly erroneous. Indeed, Boeing totally ignores the undisputed evidence, on which the Acting Regional Director relied in part, demonstrating that Edwards/Palmdale employees communicate and work with counterparts at other locations, including the Puget Sound, as often as multiple times per day using technology that allows for real-time interaction and collaboration. ARDD at 20. *See* Tr. at 2116:8-2172:2 (Stolting).

5. The Acting Regional Director Correctly Found that the Geographic Distance Between Edwards/Palmdale and the Puget Sound Does Not Defeat the Existing Units, Particularly In Light of the Parties' Consistent Practice of Multi-Location Bargaining

It is true, of course, that Edwards/Palmdale and the various Boeing facilities in Washington State are not geographically close to each other. Boeing focuses on this fact, but fails to disclose that the same collective bargaining agreements at issue here also cover engineering and technical employees working in Utah, Florida, and Oregon, and the Employer did not argue in this proceeding that multi-location bargaining is inappropriate in those locations. Joint Exs. 14, 15. Similarly, other unions at Boeing also bargain on a multi-location basis. The IAM Local 751 agreement covers employees working in the Puget Sound and at several "remote locations," including Edwards/Palmdale. Likewise, the IAM Local 725 and UAW Local 887 agreements cover employees at disparate locations, including as far away as St. Louis. Indeed, Mr. Stolting testified that *none* of the bargaining units at Edwards/Palmdale is limited only to Edwards/Palmdale. Tr. at 2427:20-2428:5 (Stolting).

Likewise, Boeing is a highly centralized company, and working conditions largely apply to all employees, regardless of location or job classification, and obviously including both Puget Sound and Edwards/Palmdale employees. The Union presented numerous company-wide policies spelling out the working conditions of employees with a great deal of specificity. These policies cover a significant array of issues, including disciplinary action and termination, scheduling and shifts, reasonable accommodations, leaves of absence, and such minutia as the use of toasters and other kitchen appliances in the workplace. Policies on disciplinary action and discharge illustrate the lack of discretion given to local managers and human resources officials in interpreting and applying company-wide policies. Union Ex. 78-80. The policies expressly enumerate every type of offense imaginable, the level of discipline appropriate to each offense, and the aggravating and mitigating factors on which adjustments to discipline may be based. Local managers and human resources officials lack authority to make final decisions on discipline. Tr. at 2360:7-2363:5 (Hamilton).

Centralized groups within Boeing, such as Global Staffing, Global Diversity and Employee Rights, Boeing Leave Management, Global Mobility, and Total Access, manage and apply various aspects of the policies presented, sometimes with input from local managers but generally without any variation based on the location at which any particular employee works. In the rare event that variations are allowed, they typically must be approved by corporate-level officials located in Chicago, the Puget Sound, Long Beach, or somewhere else outside of Edwards/Palmdale. Tr. at 2360:7-2363:5 (Hamilton). Pension and other employee benefit plans also apply company-wide and are

managed by centralized entities. Tr. at 2516:7-2517:8 (Plunkett).

One of the likely reasons for the centralization and standardization of working conditions at Boeing is that employees tend to move from location to location during their Boeing careers. Tr. at 2098:22-2099:1, 2173:17-2174:4 (Stolting). The experience of Jeffrey Lewis, an engineer who testified during the pre-remand hearings, is typical. Mr. Lewis started working for Boeing in Wichita in 1983. He then transferred to Edwards/Palmdale in 1984, then transferred to Seattle in 1990, then transferred to Denver in 1996, then transferred back to Edwards/Palmdale in 1997, then transferred back to Seattle in 2004. Tr. at 700:22-707:5 (Lewis). In addition, employees are often "loaned" from facility to facility without changing their permanent location, and even more commonly go on extended travel assignments. Mr. Stolting estimated that at any given time, about 10 percent of the engineers and techs physically located at Edwards/Palmdale are "on loan" from somewhere else, and that number is only expected to increase. Tr. at 2174:19-2175:10, 3388:18-3389:8 (Stolting).

Given this constant movement, it would make little sense to have different benefits, rules, and policies at each Boeing location. For the same reason, it would make little sense to have single-facility collective bargaining agreements with, for example, divergent seniority systems that would have to be harmonized every time an employee transferred to a new location. The parties' long history of multi-location bargaining avoids these problems by standardizing working conditions across all union-represented locations. And even in non-union locations, working conditions are largely standardized because the Employer's company-wide policies are so detailed and leave so little

discretion to local managers.

There are numerous cases finding multi-location units appropriate under similar, and often less compelling, circumstances. In *Southern Power Co.*, 353 NLRB No. 116 (2009), *aff'd following remand*, 356 NLRB No. 43 (2010), *Met Elec. Testing Co., Inc.*, 331 NLRB 872 (2000), and *Gibbs & Cox, Inc.*, 280 NLRB 953 (1986), the Board refused to disturb existing, multi-location units covering employees with similar duties and skills despite significant geographic distance between facilities, an almost complete lack of interchange between employees at the separate facilities, and significant local autonomy. *Southern Power*, slip op. at 1; *Met Elec.*, 331 NLRB at 872, 875; *Gibbs & Cox*, 280 NLRB at 954. These cases preserved historical units notwithstanding the likely inappropriateness of the units had they not already existed.

Other Board decisions, including recent cases, specifically approve multi-location units even in the absence of any previous bargaining history.

In *Trane*, 339 NLRB 866 (2003), the employer overcame the strong presumption in favor of a petitioned-for, single-location unit despite significant geographic distance between facilities and little evidence of employee interchange. *Id.* at 868. There, the Board held that common supervision and working conditions were sufficient to require multi-location bargaining, despite the presumption that the petitioned-for unit was appropriate. *Id.* Here, of course, the single-plant presumption does not apply because of the existing bargaining history of multi-location units.

In *Macy's West, Inc.*, 327 NLRB 1222 (1999), the union petitioned to represent a new unit of maintenance engineers at six separate locations in Arizona, including four

stores in Phoenix and two more than 100 miles away in Tucson. *Id.* at 1222. The Board held that the unit must also include stores in Las Vegas (nearly 300 miles from Phoenix) and Albuquerque (more than 400 miles from Phoenix and nearly 600 miles from Las Vegas) because employees at all stores shared a common, though extremely hands-off, supervisor and because one member of the unit, based in Arizona, traveled to work with his counterparts in Las Vegas and Albuquerque no more than twice a month. *Id.* at 1222-23, 1222 n.1. No other Arizona employees had any interaction with Las Vegas or Albuquerque employees, and Las Vegas and Albuquerque employees had no interaction with each other. Because the petitioned-for Arizona unit was itself a multi-location unit, the single-location presumption did not apply. *Id.* at 1223 n.5. And because one employee had "significant interaction" with employees outside the petitioned-for unit, the Las Vegas and Albuquerque locations must be included. *Id.* at 1223.

Finally, in *Eastman Interiors, Inc.*, 273 NLRB 610 (1984), the Board rejected a multi-location unit that covered the employer's two warehouses, and held that only a wall-to-wall unit including both the warehouses and seven retail stores was appropriate. *Id.* at 612. The Board relied on the significant amount of interchange between warehouse and store employees, despite their different duties, as well as the "centralized" and "highly interdependent nature of the Employer's operational structure." *Id.* at 612-13.

6. The Acting Regional Director Correctly Ruled that Nothing in the Company's Organizational Structure Undermines the Historical Units

Boeing argues 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."

BRR at 46 (citing *Laboratory Corp. of America Holdings*, 341 NLRB 1079 (2004); *Stormont-Vail Healthcare*, 340 NLRB 1205 (2003)). Again, the cases cited arose in the context of initial representation petitions, and do not undermine the appropriateness of an existing, longstanding bargaining unit. Boeing's argument is unavailing because the bargaining units at issue significantly predated the establishment of the HDAIT, and Boeing cannot rely on its own unilateral organizational changes to undermine historical bargaining units. See *The Sun*, 329 NLRB 854, 859 (1999) (matters within unilateral control of employer constitute invalid criteria for unit placement). Moreover, the Employer does not dispute the inclusion of far-flung locations in Utah, Florida, and Oregon, which are covered by the same collective bargaining agreements at issue here. Joint Exs. 14, 15.[4] In short, Boeing is relying on an assertion – that the established bargaining units are incompatible with its organizational structure – that it does not really believe and cannot justify.

In any event, nothing about Boeing's organizational structure undermines the appropriateness of the historical units. As discussed above, the Employer is a highly centralized organization. Policies and working conditions are largely standardized throughout the Company, and local supervisors and human resources officials have little discretion in how they implement those policies and conditions. The location of "cost centers" is irrelevant to front-line employees and totally foreign to community of interest

[4] The treatment of Puget Sound and Edwards/Palmdale as a single unit, and units in Utah, Florida, and Oregon as separate units is little more than semantics. All of these locations are covered by the same professional and technical agreements negotiated

(Footnote continued)

analysis.

If anything, Boeing's organizational structure has become *more* consistent with the historical bargaining units. In the past, Boeing was organized into two primary segments, one for commercial aircraft and one for military aircraft. Edwards/Palmdale was under the military segment, known as Integrated Defense Systems. But in recent years, Boeing reorganized its operations, creating a third primary segment called Engineering, Operations and Technology ("EO&T"), which consolidates many engineering and technological functions of Boeing into one entity. A sub-segment of EO&T is Boeing Test and Evaluation ("BT&E"), which consolidates all testing and evaluation functions, both commercial and military, into one entity. Finally, a further sub-segment of BT&E is Flight Test Operations ("FTO"), which consolidates all flight testing functions into one entity.

Edwards/Palmdale is a part of FTO, and Mr. Stolting now reports directly to the Vice President of FTO. The leadership of both BT&E and FTO are based in the Puget Sound. As a result, Mr. Stolting's direct supervisor is now located in the Puget Sound, and Edwards/Palmdale human resources personnel now report directly to a human resources official in the Puget Sound. In the event that a human resources issue must be "elevated," it would now be elevated to the Puget Sound, not to Long Beach. Tr. at 3243:11-3249:8 (Stolting); Union Exs. 119, 120.

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principally in Seattle by the same SPEEA and Boeing representatives.

F. SPEEA Does Not Have a "Non-Exclusive Bargaining Relationship" with Edwards/Palmdale Employees; It is Boeing that Seeks to Divide Employees Based on Requisition Paperwork Rather than Legitimate Statutory Criteria

Boeing argues that because the Union has agreed to "grandfather" out of the bargaining units "heritage" Rockwell and McDonnell Douglas employees who perform engineering and technical work but have not transferred into job classifications covered by the collective bargaining agreements, SPEEA is engaged in "non-exclusive bargaining." As a result, the Employer asserts that the units should be clarified to exclude not only "heritage" Rockwell and McDonnell Douglas employees, but employees who have been hired at Edwards/Palmdale since the merger and acquisition. BRR at 40-46. *See NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 779 (1990) (new hires are presumed to support union).

This argument fails for several reasons. First, the premise is false. SPEEA is not engaged in "non-exclusive bargaining." Second, even if the Union's concession to exclude "heritage" Rockwell and McDonnell Douglas employees *until* they transfer into Union-represented positions does constitute "non-exclusive" or "members-only" bargaining, there is no authority that this provides a basis for clarifying the units in a manner that ignores community of interest factors. Third, in stark contrast to the principal cases relied on by Boeing, *Arthur Sarnow Candy Co.*, 306 NLRB 213 (1992) and *Manufacturing Woodworkers Association of Greater New York, Inc.*, 194 NLRB 1122 (1972), the employees whom SPEEA concedes should be excluded represent a tiny percentage of the overall units, which encompass thousands of employees in the Puget

Sound and Edwards/Palmdale. Finally, though its position is inconsistent with the legal arguments it makes, Boeing concedes that certain Edwards/Palmdale engineering and technical employees *are* included in the bargaining units. Union Exs. 108, 109, 110; Company Exs. 116, 117; Tr. at 2789:8-2790:20 (Kempf).

SPEEA's concession excluding "heritage" Rockwell and McDonnell Douglas employees who have not yet transferred into Union-represented positions by bidding on new job requisitions does not constitute "non-exclusive" or "members-only" bargaining. Certainly, the Union is not engaged in "members-only" bargaining in the sense that it only seeks to enforce the collective bargaining agreements as to members of the Union. On the contrary, SPEEA's herculean effort to enforce its labor agreements at Edwards/Palmdale in the face of adamant stonewalling by the Employer is the underlying reason for this case. Out of a sense of fairness, SPEEA has not yet sought to enforce its union security provisions as to the employees at issue in this proceeding, an effort that Boeing would surely resist. But by filing a grievance, demanding arbitration, suing to compel arbitration, and defending against this unit clarification petition, the Union has done everything in its power for the better part of a decade to assert its right to represent bargaining unit employees at Edwards/Palmdale.

Moreover, as the Acting Regional Director correctly explained, the Union maintains 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." ARDD at 24. Thus, unlike *Sarnow Candy*, the Union has not simply disclaimed interest over a significant portion of

the bargaining unit. Rather, the Union has attempted to maintain its historical units while also preserving employee free choice by agreeing to exclude "heritage" Rockwell and McDonnell Douglas employee whose status has not changed since the merger and acquisition of those two companies.

Next, as Boeing admits, BRR at 44, there is no authority supporting the proposition that a unit clarification proceeding may be used to prevent a union from engaging in non-exclusive bargaining. The authorities relied on by Boeing arose in the context of Section 8(a)(5) charges challenging the employers' refusal to engage in non-exclusive bargaining. Therefore, even if there was merit to the Company's substantive argument, this proceeding is not the proper forum in which to address the issue.

Next, unlike *Sarnow Candy* and *Manufacturing Woodworkers Association*, the "grandfathered" individuals whom the Union concedes are excluded represent a tiny number in comparison to the large existing bargaining units, which encompass thousands of engineering and technical employees working in the Puget Sound and Edwards/Palmdale. As of 2009, there were only 31 engineers and three technical employees who were concededly excluded from the units based on their grandfathered "heritage" Rockwell or McDonnell Douglas status. Union Exs. 108, 109, 110; Company Exs. 116, 117.

Grandfathering is based on SPEEA's understanding that "heritage" Rockwell and McDonnell Douglas employees would be excluded from the units unless they transferred into positions represented by SPEEA. Tr. at 1288:17-1289:10 (Rogers). Around 1997, at the time of the McDonnell Douglas merger and before the integration of

Rockwell/Boeing North America into Boeing, the parties had discussions about the integration of former Rockwell and McDonnell Douglas engineering and technical employees into the SPEEA units at SPEEA-represented locations. During the pre-remand hearings, SPEEA's then-Contract Administrator, Rich Plunkett, testified that the parties reached agreement that Rockwell and McDonnell Douglas employees who transferred into SPEEA-represented positions by virtue of the merger and acquisition would become SPEEA-represented. In fact, this is exactly what happened at all locations other than Edwards/Palmdale. Tr. at 821:11-825:16 (Plunkett). No Company witness contradicted Mr. Plunkett's testimony, and in fact, Geoff Stamper, Boeing's former Director of Union Relations, partially corroborated it. Tr. at 593:23-595:5 (Stamper).

Finally, it is ironic that Boeing faults SPEEA for agreeing that some engineering and technical employees at Edwards/Palmdale are excluded from the units when Boeing concedes that some Edwards/Palmdale engineers and techs are included. Indeed, this fact illustrates the fundamental disconnect between the Company's legal argument, which centers on the contention that Edwards/Palmdale may not appropriately be joined in a single unit with Puget Sound, and the position it has taken since the first hearing day in October 2005 that Edwards/Palmdale employees "requisitioned" from Seattle should remain in the units. Thus, Boeing cannot legitimately complain that the Union is engaged in "non-exclusive bargaining" because its own definition of the term combined with the relief it seeks in this case would lead to a materially indistinguishable result, namely SPEEA representation of some but not all Edwards/Palmdale engineering and technical employees.

IV. CONCLUSION

For the foregoing reasons, the Board should deny the Employer's request for review of the Acting Regional Director's Supplemental Decision and Order Dismissing Petition.

DATED: September 30, 2011

Respectfully submitted,

GILBERT & SACKMAN
A LAW CORPORATION

By s/ Joseph L. Paller Jr.

Attorneys for Union

DECLARATION OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, am over the age of eighteen years and not a party to this action. My business address is GILBERT & SACKMAN, A LAW CORPORATION, 3699 Wilshire Blvd., Suite 1200, Los Angeles, CA 90010. On September 30, 2011, I served the following document:

UNION'S STATEMENT IN OPPOSITION TO THE EMPLOYER'S REQUEST FOR REVIEW OF THE ACTING REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND ORDER DISMISSING PETITION

Pursuant to Section 102.114(i) of the Board's Rules and Regulations, I served the above document by sending it by electronic mail, addressed as follows:

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and was executed by me in Los Angeles, California on September 30, 2011.

s/ Michael D. Weiner