

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY,  
Respondent,

and

SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES  
IN AEROSPACE, IFPTE LOCAL 2001,  
Charging Party

Case No. 19-CA-128941

Respondent's Brief in Support of its Exceptions to the Decision of  
the Administrative Law Judge, Honorable Dickie Montemayor,  
in Case No. 19-CA-128941

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. STATEMENT OF THE CASE.....	3
III. ISSUES PRESENTED.....	3
IV. FACTUAL BACKGROUND.....	4
A. Overview of Boeing and SPEEA.....	4
B. The Parties’ Collective Bargaining Agreements Grant Boeing the Unilateral Right to Relocate Bargaining Unit Work.....	5
C. Events Relating to the Union’s Request for Information.....	8
1. The Joint Workforce Committee .....	8
2. The Boeing Research & Technology Realignment Study .....	11
3. SPEEA’s Information Request .....	13
4. Boeing’s Response and Request for Clarification .....	15
V. ARGUMENT .....	20
A. Ignoring The Overwhelming Record Evidence, The ALJ Incorrectly Found That The Request Did Not Seek Information About Potential Movement of Work, And Then Ordered Boeing To Provide The Union With Information About Potential Movement of Work .....	20
1. The ALJ erred in finding that the Request only sought information regarding plans to relocate bargaining unit work that Boeing had already decided to implement, and thus the Request was not vague, ambiguous, or unduly burdensome. ....	20
2. The ALJ erroneously ordered Boeing to produce information that he specifically found that the Union was not requesting. ....	24
B. The ALJ Erred By Failing To Find That Boeing Was Relieved Of Its Obligations To Respond Because The Union Ignored Boeing’s Efforts To Obtain Clarification Of The Ambiguous, Overbroad, And Unduly Burdensome Request .....	25

**TABLE OF CONTENTS**  
*(continued)*

	<b><u>Page</u></b>
1. Because the Request sought information regarding possible movement of work, the ALJ erred by failing to conclude that the Union is not entitled to information regarding every “possible” movement of work. ....	25
2. The ALJ erred by failing to find that the request was vague, overly broad, and unduly burdensome. ....	29
3. The ALJ erred in failing to find that Boeing sought clarification of the Request and that the Union refused to provide any clarifications. ....	31
C. The ALJ Erred In Finding That Boeing Had An Obligation to Provide Decisional Information Because The Union Did Not Clearly And Unmistakably Waive Right To Bargain Movement of Work Decisions .....	36
VI. CONCLUSION.....	41

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>CASES</b>	
<i>BC Industries, Inc.</i> , 307 NLRB 1275 (1992) .....	25, 36, 37
<i>Bell Atlantic Corp.</i> , 336 NLRB 1076 (2001) .....	29
<i>Chemical Solvents, Inc.</i> , NLRB Case No. 8-CA-39218 (May 15, 2012) .....	37
<i>Cowles Communications</i> , 172 NLRB 1909 (1968) .....	25, 36
<i>Double D Construction Group</i> , 339 NLRB 303 (2003) .....	35
<i>Douglas Aircraft Co.</i> , 308 NLRB 1217 (1992) .....	36
<i>First National Maintenance Corp. v. NLRB</i> , 452 U.S. 666 (1981) .....	28
<i>Globe-Union, Inc.</i> , 222 NLRB 1081 (1976) .....	28
<i>Ingham Regional Medical Center</i> , 342 NLRB 1259 (2004).....	25, 37, 38
<i>Liquid Carbonic Corp.</i> , 277 NLRB 851 (1985) (emphasis added). .....	28
<i>Martin Luther King Sr. Nursing Center</i> , 231 NLRB 15 (1977) .....	36
<i>Mission Foods</i> , 345 NLRB 788 (2005).....	31
<i>Oklahoma Fixture Co.</i> , 314 NLRB 958 (1994), enfd. denied on other grounds, <i>NLRB v. Oklahoma Fixture Co.</i> , 79 F.3d 1030 (10th Cir. 1996) .....	27, 28
<i>Pan-Adobe, Inc.</i> , 222 NLRB 313 (1976) .....	39
<i>Paramount Liquor Co.</i> , 270 NLRB 339 (1984).....	28
<i>Parksite Group</i> , 354 NLRB 801 (2009) .....	36
<i>Pekar v. Local 181, Brewery Workers</i> , 311 F.2d 628 (6th Cir. 1962), cert. denied 373 U.S. 912 (1963).....	39
<i>Property Resources Corp.</i> , 285 NLRB 1105 (1987), enf'd 110 CCH LC Sec. 10872 (D.C. Cir. 1988).....	36
<i>Providence Hosp. v. NLRB</i> , 93 F.3d 1012 (1st Cir. 1996).....	28

**TABLE OF AUTHORITIES**  
(continued)

	<b><u>Page(s)</u></b>
<i>Rai Radio Televisione Italiana SpA</i> , NLRB Case No. 02-CA-079087 (Div. Advice Nov. 16, 2012) .....	37
<i>Rockwell Int’l Corp.</i> , 260 NLRB 1346 (1982) .....	41
<i>Salem College</i> , 261 NLRB 327 (1981) .....	28
<i>Speidel Corp.</i> , 120 NLRB 733 (1958) .....	40, 41
<i>Starcraft Aerospace, Inc.</i> , 346 NLRB 1228 (2006) .....	35, 40
<i>United Parcel Service</i> , 2013 WL 4429506, NLRB Case No. 16-CA-028064 (Aug. 15, 2013) .....	31, 32
<i>Valley Mould and Iron Co.</i> , 226 NLRB 1211 (1976) .....	2, 26
<i>Willamette Tug &amp; Barge Co.</i> , 300 NLRB 282 (1990) .....	28
 <b>STATUTES</b>	
29 U.S.C. § 158(a)(1) .....	1, 2, 3, 41
29 U.S.C. § 158(a)(5) .....	passim

Respondent The Boeing Company (“Boeing”), by and through its undersigned counsel, respectfully submits this Brief in Support of its Exceptions to the Decision of the Administrative Law Judge, Honorable Dickie Montemayor, in Case No. 19-CA-128941.

## I. INTRODUCTION

For years Boeing has provided frequent presentations and other information to the Society of Professional Engineering Employees in Aerospace (“SPEEA” or “the Union”) regarding potential and actual movement of work during monthly Joint Workforce Committee meetings. As a result, Boeing regularly provides the Union advance notice that it is considering potential movement of bargaining unit work months, if not years, before a decision is ever made.

Despite this pipeline of information from Boeing to the Union regarding potential and actual movement of work, the ALJ found that Boeing violated Sections 8(a)(1) and (5) of the National Labor Relations Act by refusing and failing to provide the Union with information responsive to its March 27, 2014 information request (“the Request”) expressly “requir[ing] information about the *possible* movement of unit work and/or opportunities.” (GC-6) (emphasis added). The ALJ’s Decision is highly flawed and must be reversed because it:

- 1) impermissibly rewrites the information request to limit it to only actual decisions by Boeing to relocate bargaining unit work, contradicting both the plain language of, and the Union’s admitted purpose for, the Request—*i.e.*, to obtain information regarding “possible” and “potential” movement of bargaining unit work before Boeing makes any decision;
- 2) concludes that the Request, as modified by the ALJ (and never presented to Boeing in such form), sought presumptively relevant information and was not ambiguous, overly broad, or unduly burdensome; and

- 3) contrary to the ALJ's modification of the Request, orders Boeing to produce everything that the Union demanded in the Request as originally drafted, including information about potential movement of work for which Boeing had not yet made a decision.

Consequently, the ALJ's conclusion that Boeing violated Sections 8(a)(1) and (5) is inherently flawed and must be reversed.

Not only must the Decision be reversed because of those and other clear errors, but the Complaint must also be dismissed because the record evidence and applicable law compels the conclusion that Boeing complied with its obligations under the Act. First, the record evidence establishes that the Union made the Request because it wanted information about potential movement of work before Boeing made a decision to implement—i.e., when Boeing was exploring potential movement of work. However, employers have no obligation—for either decisional or effects bargaining—to disclose or provide information regarding every thought or possibility discussed by management concerning potential decisions that might impact the terms and conditions of the bargaining unit. *See Valley Mould and Iron Co.*, 226 NLRB 1211, 1213 (1976).

Second, given the vague, overbroad, and burdensome nature of the Union's demand for information regarding "possible" movement of work, Boeing sought clarification from the Union in order to narrow the Request. The Union, however, refused to engage in good faith discussions with Boeing to clarify the Request as required by the Act.

Finally, to the extent that Boeing had made a final decision to implement any relocation of bargaining unit work, Boeing had no obligation to provide decisional information because the Union clearly and unmistakably waived its right to bargain over such decisions. The parties'

collective bargaining agreements, long-standing past practice, and the Union's failure to rebut the Company's stated interpretation of those collective bargaining agreements make clear that Boeing has the unfettered right to relocate bargaining unit work even when it results in layoffs. Because Boeing need not bargain those decisions, Board law makes clear that Boeing had no obligation to produce decisional information. Consequently, Boeing did not violate the Act to the extent it failed to provide the requested information.

Thus, Boeing respectfully requests that the Board reverse the ALJ's Decision, find that Boeing did not violate Sections 8(a)(1) and (5) of the Act, and dismiss the Complaint.

## **II. STATEMENT OF THE CASE**

The Union filed the underlying Charge in Case No. 19-CA-128941 on May 15, 2014 alleging that the Company "refused to provide information requested by the Union concerning the transfer and relocation of work performed by employees represented by the Union." (GC Ex. 1 (a)). On August 20, 2014, the Regional Director for Region 19 issued the Complaint alleging that Boeing violated Sections 8(a)(1) and (5) of the National Labor Relations Act by not providing the Union with the information requested in the March 27, 2014 information request. (GC Ex. 1(c) ¶¶ 6(a), (d), 7).

Boeing answered on September 16, 2014, denying the material allegations. (GC Ex. 1(e)). The hearing was held in Seattle, Washington on January 27, 2015, before Administrative Law Judge Dickie Montemayor. Judge Montemayor issued a Decision on July 14, 2015 ("ALJD").

## **III. ISSUES PRESENTED**

1. Whether the ALJ erred when he found that Boeing had a statutory obligation to provide the requested information in the Request? This issue presents the following sub-issues:

- (a) Whether the ALJ erred in finding the Request was limited to decisions already made by Boeing to move bargaining unit work?
- (b) Whether the ALJ erred by failing to hold that the Union is not entitled to information regarding every “possible” movement of work?
- (c) Whether the ALJ erred by failing to find that the Request was ambiguous, overly broad, and unduly burdensome?
- (d) Whether the ALJ erred by failing to find that Boeing sought clarification from the Union regarding the Request?
- (e) Whether the ALJ erred by failing to find that the Union refused to engage in good faith discussions with Boeing to clarify and narrow the Request?
- (f) Whether the ALJ erred by ordering Boeing to provide the Union with information that, according to his findings, the Union did not request?

2. Whether the ALJ erred by failing to hold that the Union was not entitled to the requested information for decisional bargaining purposes because it clearly and unmistakably waived any right to bargain over decisions to relocate bargaining unit work?

#### **IV. FACTUAL BACKGROUND**

##### **A. Overview of Boeing and SPEEA**

Boeing is an aerospace company that employs approximately 150,000 employees in the United States, over 80,000 of which are located in Puget Sound, Washington. (Tr. 95). Boeing has four major business units: Boeing Commercial Airplanes (“BCA”); Boeing Defense Systems (“BDS”); Engineering Operations and Technology (“EO&T”); and Shared Services Group (“SSG”). (Tr. 95). All four business units have operations in Puget Sound as well as other locations in the United States and abroad. (Tr. 95, 127).

SPEEA is a labor union that represents approximately 22,000 Boeing “Professional” and “Technical” bargaining unit employees, most of which work in Puget Sound. (Tr. 18, 20-22, 95; GC Ex. 2, Art. 1; GC Ex. 3, Art. 1). The Professional unit consists of fully-degreed engineers performing engineering work; and the Technical unit consists of employees with a variety of degrees performing hands-on type work on the airplanes. (Tr. 96). SPEEA represents employees in all four major business units. (Tr. 95).

**B. The Parties’ Collective Bargaining Agreements Grant Boeing the Unilateral Right to Relocate Bargaining Unit Work**

Contrary to the ALJ’s findings and conclusions, Articles 2 and 8 of the parties’ collective bargaining agreements grant Boeing the unfettered right to relocate bargaining unit work to employees outside the bargaining unit. (Tr. 125, 160-61; GC Ex. 2, pp. 2, 11-12; GC Ex. 3, pp. 2, 11-12). Specifically, Article 2 defines the rights of management, stating in pertinent part:

2.1(b) The management of the Company and the direction of the workforce are vested exclusively in the Company subject to the terms of this Agreement. Without limitation, implied or otherwise, all matters not specifically and expressly covered or treated by the language of this Agreement may be administered for its duration by the Company in accordance with such policy or procedure as the Company from time to time may determine.

(Tr. 125, 160-61; GC Ex. 2, p. 2; GC Ex. 3, p. 2). Article 8 (Workforce Administration) further elucidates Boeing’s right to relocate bargaining work unilaterally:

**Section 8.2 Objective.** The general objective of the procedure stated in this Article is to provide for the accomplishment of workforce reductions for business reasons, to the end that, insofar as practicable the reductions will be made equitably, expeditiously and economically, and *at the same time will result in retention on the payroll of those employees regarded by management as comprising the workforce that is best able to maintain or improve the efficiency of the Company*, further its progress and success and contribute to the successful accomplishment of the Company’s current and future business. *The location, occurrence and existence of any condition necessitating a workforce reduction, and the number of employees involved, will be determined exclusively by the Company.* Following such determination, the Company will notify the Union of the location and the estimated size and job family and skills management code(s)

involved in the anticipated workforce reduction. Wherever practicable, affected employees will be given two (2) weeks' notice prior to layoff and will receive consideration for open positions in accordance with Section 8.7.

(Tr. 125, 161; GC Ex. 2, pp. 11-12; GC Ex. 3, pp. 11-12) (emphasis added).

Completely absent from the ALJ Decision is any discussion of the uncontroverted evidence that during the 2002, 2005, 2008, and 2012 collective bargaining negotiations, SPEEA attempted to bargain for limitations on Boeing's exclusive right to relocate bargaining unit work, but Boeing never agreed to any such limitation. (Tr. 122, 124, 161, 165; R. Ex. 12). For example, in 2002 SPEEA proposed a modification to Article 8 that would require SPEEA's joint approval of any decision resulting in the layoff of bargaining unit employees as the result of moving work outside the bargaining unit, but Boeing rejected the proposal. (Tr. 165; R. Ex. 12; GC Ex. 2; GC Ex. 3). Despite SPEEA's multiple attempts, Boeing never accepted SPEEA's proposed changes to limit Boeing's exclusive right to move bargaining unit work. (Tr. 165; R. Ex. 12; GC Ex. 2; GC Ex. 3).

The ALJ also disregarded the fact that the parties, since at least 1990, have interpreted and applied the collective bargaining agreements to give Boeing the contractual right to relocate SPEEA bargaining work unilaterally. (Jt. Ex. 1, ¶ 1). Indeed, in 2013 and 2014, Boeing unilaterally moved bargaining unit work outside the Puget Sound at least 16 times, including:

- Establishment of BCA engineering design centers in multiple locations outside the bargaining unit;
- 3-D Modeling work affecting approximately 7 SPEEA-represented employees in the Puget Sound;
- BCA Commercial Aviation Services ("CAS") Fleet Services modifications and freighter conversions work affecting approximately 300-400 SPEEA-represented employees in the Puget Sound;
- BCA CAS Out-of-Production Airplane Support affecting approximately 300 SPEEA represented employees in the Puget Sound;

- Product Development advanced concepts work affecting approximately 60 SPEEA-represented employees in the Puget Sound;
- 787 sustaining aft body structures and systems installation design work affecting approximately 10 SPEEA-represented employees in the Puget Sound;
- APU engineering work affecting approximately 13 SPEEA-represented employees in the Puget Sound;
- Propulsion Integration Center work affecting approximately 5-10 SPEEA-represented employees in the Puget Sound;
- 787-10 non-recurring aft body structures and systems installation work affecting approximately 20 SPEEA-represented employees in the Puget Sound;
- 787 sustaining mid body structures and systems installation work affecting approximately 5 SPEEA-represented employees in the Puget Sound;
- Concept Center Alignment for Engineering Design Centers affecting approximately 30 to 40 SPEEA-represented employees in the Puget Sound;
- Boeing Research & Technology work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;
- CAS Customer Support work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;
- CAS media services support work affecting approximately 25 SPEEA-represented employees in the Puget Sound;
- Global Services and Support work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;
- 737 MAX Fan Cowl work affecting approximately 20 SPEEA-represented employees in the Puget Sound; and
- Aircraft interior design and manufacture work to South Carolina that impacted Puget Sound employees.

(Tr. 77, 128; Jt. Ex. 1, ¶ 2).<sup>1</sup> Boeing has never bargained with SPEEA, nor has SPEEA made any demand or request to bargain over these decisions to move, relocate, or realign work. (Tr. 77, 82-

---

<sup>1</sup> Boeing also regularly relocates and locates new work into the SPEEA bargaining unit in the Puget Sound. As a result, the number of employees in the bargaining unit recently reached an all-time high despite these relocations of bargaining unit work. (Tr. 180-81).

83, 159-60; Jt. Ex. 1, ¶ 3). Moreover, since at least 1990, SPEEA has never challenged these unilateral decisions by filing a grievance, a demand for arbitration, or an unfair labor practice charge with the National Labor Relations Board. (Jt. Ex. 1, ¶¶ 4-6).

**C. Events Relating to the Union’s Request for Information**

**1. The Joint Workforce Committee**

By virtue of Letter of Understanding (LOU) 6, which only governs Boeing’s use of non-Boeing (i.e., contract) labor, Boeing and SPEEA have agreed to participate in a Joint Workforce Committee (“JWC”) where they:

discuss and provide relevant, necessary information on a variety of workforce-related subjects, such as skills management, the Performance Management process, employment forecast, current and future business and its influence on staffing strategies, the job posting and transfer process, workforce education, and new skills development training related to future skills and competencies.

(Tr. 122; GC Ex. 2, p. 58; GC Ex. 3, p. 60). Although LOU 6 requires that the JWC meet only once per quarter, JWC meetings are generally held each month. (Tr. 23, 63; GC Ex. 2, p. 58; GC Ex. 3, p. 60). Numerous representatives from SPEEA attend, including SPEEA executive board members and officers. (Tr. 24-25). There are also multiple Boeing representatives, such as Todd Zarfos, Vice President of Engineering for the Washington State Design Center and Senior Chief Engineer for Systems for BCA, and Yvonne Marx, a Boeing Employee Relations Specialist and SPEEA’s single point of contact at Boeing for addressing any disputes, concerns, or information requests. (Tr. 24-25, 94, 97, 120).

The ALJ gave zero import in the Decision to the fact that, despite having no obligation to provide regular updates to the Union regarding business strategies involving the relocation of bargaining unit work and their potential impact on the bargaining units, Boeing also used the JWC meetings “to make [SPEEA] aware whenever possible of what [Boeing is] looking at” regarding movement of work since 2008. (Tr. 122, 124). As such, even Sean Leonard, SPEEA’s

contract administrator and the General Counsel's only witness, acknowledged Boeing's efforts to give SPEEA "a forum to meet with the company and discuss issues relating to the workforce, like what the company has planned for upcoming layoffs [and] changes to job[s]." (Tr. 18, 23). Consequently, and contrary to the ALJ's conclusion that Boeing was trying "to keep the union in the dark about its plans," (ALJD at p. 11:23-26), Boeing regularly provides information regarding movement of work that results in layoffs during the JWC meetings, and yet SPEEA never requested to bargain over those impending and actual decisions to move bargaining unit work. (Tr. 25-26, 77, 82-83, 153, 159-60; Jt. Ex. 1, ¶ 3).

Boeing usually presents movement of work information to the JWC in the form of a PowerPoint presentation detailing the relevant business strategies and plans under review (i.e., "studies") that may or may not include workforce movement or work relocation. (Tr. 64, 125; R. Exs. 2-9). The level of detail presented to SPEEA at the JWC meetings varies depending on the status of the study, and frequently studies are not implemented as originally planned, if at all, because they are reviewed and revised multiple times before a final decision is ever made. (Tr. 178-79).

As an example, at the July 2013 JWC meeting, Boeing provided an overview of its engineering workforce strategy for Propulsion, including a description of the business elements affecting and impacting Propulsion as well as the potential impact the strategy might have on SPEEA represented employees. (Tr. 129-30; R. Ex. 2). Boeing explained that its Propulsion strategy was driven by the fact that the location of skills did not coincide with projected increases in demand, and thus the Propulsion study sought to evaluate how bargaining unit work could be moved to "[a]llign engineering to the build." (Tr. 130, 132; R. Ex. 2). However, no decision had been made at that time regarding the Propulsion Engineering Workforce study. (Tr. 132-33).

Rather, Boeing merely provided SPEEA notice of the possibility that bargaining unit work in Propulsion might be relocated so that SPEEA, consistent with the overarching purpose of the JWC, could ask questions and understand what Boeing sought to achieve in the event it ever did decide to implement. (Tr. 132-33).

There was uncontested and unrefuted testimony that Boeing does not and cannot inform the JWC of each and every change currently under consideration because thousands of individuals at multiple levels throughout the Company are constantly evaluating their statements of work and how to operate more efficiently. (Tr. 131). Yet, the ALJ failed to grasp that Boeing examines how best to use its engineering employees “[e]very single day at all different levels,” which can range from someone scratching an idea out on a napkin, to suggesting something during a staff meeting, to putting together a PowerPoint presentation. (Tr. 110-11, 131). Moreover, the primary focus of these studies is not whether Boeing should move bargaining unit work out of the Puget Sound, but rather what can be done to improve efficiencies and better support the business. (Tr. 176-77). Although there are currently less than two dozen studies that have progressed sufficiently far enough to warrant announcement to the JWC, the total number of studies currently underway at Boeing that could result in the potential movement of bargaining unit work is unknown by even Boeing’s Vice President of Engineering because Boeing is always looking at new opportunities for improving “synergy and efficiency.” (Tr. 131, 142-43).

The ALJ also failed to recognize that Boeing also provides regular updates on previously announced studies and decisions. (Tr. 18-19, 63, 133-34; R. Exs. 2-9). For example, at the November 14, 2013 JWC meeting, Boeing announced a Boeing Test & Evaluation (BT&E) study that could result in the movement of bargaining unit work. (Tr. 133-34; R. Ex. 3). In that

presentation, Barbara Cosgrove, BT&E's Vice President – Flight Test, presented SPEEA an overview of its business strategy and discussed potential closures that might be necessary. (Tr. 135).

Similarly, in January 2014 Boeing presented a study involving the Interiors engineering statement of work performed in South Carolina and what impact it might have on SPEEA represented employees in the Puget Sound.<sup>2</sup> (Tr. 140). During the June 2014 JWC meeting, Boeing presented its 777X Engineering Diversity Plan describing potential relocation of bargaining unit work under consideration. (Tr. 79-82; R. Ex. 7). At the same meeting, Boeing also presented its Flight Services Management Study, which also examined the placement of work outside the Puget Sound. (Tr. 81-82; R. Ex. 8, p. 2). At the August 2014 JWC meeting, Boeing provided a Global Services and Support (GS&S) Alignment Overview relating to BDS work performed at Kent and how it might be relocated outside the Puget Sound. (Tr. 83-85; R. Ex. 9). At the time Boeing made these particular presentations, no decision had been made as to whether the studies would be implemented. (Tr. 82, 85).

## 2. The Boeing Research & Technology Realignment Study

During the November 2013 JWC meeting, Boeing provided SPEEA an update on a Boeing Research & Technology (BR&T) study, which the ALJ failed to note that Boeing first announced to the JWC in late summer or early fall 2012. (Tr. 27, 69-71, 136, 138; R. Ex. 4). Although there was still no final decision, Boeing updated the Union on the issues BR&T was facing given that layoffs were expected. (Tr. 71, 138-139; R. Ex. 4, p. 2). Thus, the presentation updated SPEEA on BR&T's goals for aligning its capabilities and capacities to match the needs

---

<sup>2</sup> Boeing initially predicted an impact of approximately 100 to 200 Interiors employees, but the impact now appears to be much less. (Tr. 141-42).

of the business, which included the movement of bargaining unit work. (Tr. 74, 138-39). Specifically, the presentation stated that Boeing sought to establish five centers of excellence across the country to “balance locations,” “align skills and infrastructure to future business requirements,” “leverage our global workforce,” and “optimize skills mix and management spans.” (Tr. 27, 72-73; R. Ex. 4, pp. 8, 11). As the General Counsel’s own witness acknowledged, “[w]hen Boeing uses that terminology, it does often relate to decisions to relocate [bargaining unit] work.” (Tr. 74).

At the December 2013 JWC meeting, Boeing announced that it had decided to implement the BR&T study, which would result in the relocation of bargaining unit work to multiple locations across the United States, create fewer work opportunities for SPEEA represented employees, and potentially layoffs. (Tr. 27-28). After the announcement at the JWC meeting, Boeing immediately announced the decision to its employees. (Tr. 29).

The ALJ also failed to find that although a decision was made to implement the BR&T realignment, Boeing still did not know precisely what impact its decision would have on the SPEEA represented workforce. (Tr. 146). Rather, only after Boeing began to implement the decision could it determine specifics such as what skills would be needed, who will be retained, and what operations will be consolidated. (Tr. 146). Moreover, this process would necessarily involve the work of SPEEA represented employees and thus was not immediately available at the time of the decision in December 2013. (Tr. 146).

Accordingly, at the January 30, 2014 JWC meeting, Boeing updated the JWC regarding the BR&T realignment and provided an estimate of the expected reductions in bargaining unit employees in BR&T for 2014. (Tr. 35-36, 78; GC Ex. 4; R. Ex. 6, p. 2). The presentation specified that the reductions would likely be achieved by a combination of attrition,

redeployment, and reductions in force. (R. Ex. 6, p. 2). It also updated SPEEA on the focus for each BR&T Research Center in the United States.<sup>3</sup> (R. Ex. 6, p. 7).

### 3. SPEEA's Information Request

At the February 27, 2014 JWC meeting, Boeing provided another update on the BR&T realignment, and also announced the potential realignment of Commercial Aviation Services (CAS) that would involve the movement of bargaining unit work from Puget Sound to Southern California.<sup>4</sup> (Tr. 145-48). After these discussions, a representative from SPEEA asked Zarfos whether they would continue to see these types of studies and movement of work impacting the Puget Sound workforce. (Tr. 39, 86, 148).

The ALJ incorrectly found that Zarfos, in response to this question, announced additional decisions or plans to move bargaining unit work. (ALJD at 5:31-34, 11-12-14). Rather, the record establishes that because Zarfos was already planning to announce at that meeting four additional studies on which Boeing had not yet made any decisions, he told SPEEA that Boeing is always evaluating its options, and that there would be additional studies involving work movement. (Tr. 55, 148-49, 169). Zarfos then proceeded to announce and discuss the new studies with the Union that were still pending and on which Boeing had not yet made any decision. (Tr. 55, 148-49, 169).

A month later on March 27, 2014, Rich Plunkett, SPEEA's Director of Strategic Development, sent Marx an information request ghost written by Leonard. (Tr. 20, 43-44, 87; GC Ex. 6). The Request expressly states that "SPEEA requires information about the possible movement of unit work and/or work opportunities," a fact glossed over by the ALJ in his legal

---

<sup>3</sup> As of the hearing, Boeing had still not fully implemented the BR&T realignment. (Tr. 146).

<sup>4</sup> CAS is the customer support organization that performs maintenance engineering, maintenance publications, and field service engineering. (Tr. 147).

analysis. (GC Ex. 6). Immediately following that statement in the Request is the demand that Boeing provide “any and all documents relating to the Company’s plans to ‘relocate’ or ‘realign’ [bargaining unit] work,” listing the following requests:

- a. Any studies relating to the “relocation” and/or “realignment” of such work.
- b. Any documents relating to specific plans for such “relocation” and/or “realignment” of such work.
- c. Any documents relating to the timeline for implementation of such “relocation” and/or “realignment.
- d. Any document relating to the acquisition of property, relocation of equipment, and/or any and all other actions taken by the Company to prepare for such “relocation” and/or “realignment.”
- e. Any documents relating to meetings that the Company has held, or plans to hold, with SPEEA-represented employees to discuss such “relocation” and/or “realignment.”
- f. Any documents relating to “Operation Dragonridge” *and/or similar or related Operation.*

(Tr. 46-47; GC Ex. 6) (emphasis added). The letter asserts that SPEEA needed the information “in order to fully and fairly represent its members,” but it includes no demand to bargain. (Tr. 88; GC Ex. 6).

The ALJ also turned a blind eye to Leonard’s admissions that the Union wanted information about “potential” movement of work. Specifically, Leonard testified that the information request “was an attempt to get some more information in advance to plan on how to represent our members, and also to get specific information about who was going to be impacted

and when.” (Tr. 45). However, Leonard admits that request was anything but specific. (Tr. 46). For example, despite claiming that the Request was directed, in part, to obtain additional information about the BR&T realignment, he admits that the Request does not specifically ask for documents related to the movement of work in BR&T. (Tr. 88, 90). Moreover, by Leonard’s own admission—which the ALJ also ignored—the information request was designed “to cast a nicely sized net” seeking any information regarding any “potential” movement of work, including a request for information regarding “Operation Dragonridge” despite having no idea as to what “Dragonridge” was, how it related to the bargaining unit, or whether a final decision had been made by Boeing to implement any such “operation.”<sup>5</sup> (Tr. 46, 48, 88).

#### 4. Boeing’s Response and Request for Clarification

Upon reviewing the Union’s request, Boeing did not believe that SPEEA was entitled to most of the requested information because the parties’ collective bargaining agreements gave Boeing the unfettered right to relocate bargaining unit work. (Tr. 99, 111). Marx also found the request very “broad in scope” as it appeared that the Union wanted “anything in regards to potential work movement that [Boeing] may be thinking about or discussing.” (Tr. 97-98). Also, contrary to Leonard’s interpretation, Marx did not believe that the request sought additional information regarding the BR&T realignment given that SPEEA had not specifically identified it in the request and Boeing had already provided multiple updates since the decision itself. (Tr. 98, 158). Moreover, she was puzzled by the request because SPEEA was receiving information at the JWC meetings about studies that had advanced beyond mere exploration and that are likely

---

<sup>5</sup> Dragon Ridge was not a specific project, but rather an overarching term used to describe generally a series of different operating opportunities and realignments under review by the Company. Those operating opportunities only had the potential to result in the movement of bargaining unit work if Boeing decided to implement. (Tr. 100, 117).

to have an actual impact on SPEEA members. (Tr. 101). As a result, Marx did not understand what SPEEA wanted, to what degree, and for which particular statement of work, thereby making the request very unwieldy and burdensome. (Tr. 99, 110). As Marx explained:

This letter talks about the possible movement of work. Again, as I stated before, we have quite a large area within our company, just within Puget Sound for business units, many layers of management where these types of conversations as part of our daily operations of the business could be taking place. I don't know where if someone's sitting down and talking about an idea that they sketch out on a napkin or just sit in a staff meeting and look at ways to efficiently run the business. So for me to go and actually look for this type of information would be very burdensome.

(Tr. 110-11). Accordingly, she believed that Boeing could not respond to the request as currently written:

the request is extremely broad in scope and that, you know, the ability to figure out who, where, when, how much of this data, especially because of the fact that these are potential work movements as outlined in this letter versus actual decisions that we have already shared.

(Tr. 106).

Zarfos similarly testified, without rebuttal, that the request, as drafted, was impossible to answer because BCA alone had 15,000 engineers and 1,000 managers in the Puget Sound area who were moving or evaluating whether to move unit work back-and-forth every day. (Tr. 155-56, 159). Consequently, he was not sure how Boeing could capture this "ebb and flow" of work in and out of the Puget Sound and present it to SPEEA. (Tr. 157). He also found the request vague and impossible to answer because it sought "anything you've ever thought of" and was imprecise as to what it wanted. (Tr. 157, 159). Moreover, and which the ALJ failed to find, responding to SPEEA's request was also problematic because Boeing often does not know which specific employees, if any, will be affected by a decision until it actually implements the study. (Tr. 151).

The ALJ also failed to recognize that even SPEEA's request seeking relocation and realignment information presented in employee meetings was problematic as it, too, was very broad and had no time limitation. (Tr. 102). There are many business units in the Puget Sound with multiple levels of management where discussions could take place with SPEEA represented employees regarding the movement of work. (Tr. 102). Indeed, it is undisputed that Employee Relations is not aware of every single discussion between management and SPEEA represented employees regarding relocations and realignments and that it would take considerable research to determine not only who had those meetings at any point in time, but what information was provided during those meetings. (Tr. 102-03, 114). Accordingly, Boeing necessarily needed SPEEA to narrow and clarify its requests so that it could have guidance on how best to get SPEEA the information it wanted in a timely manner. (Tr. 114-15, 157).

Given these issues, Marx responded on Boeing's behalf on April 2, 2014, with the following:

I am writing in response to your request for information dated March 7, 2014 in which you request extensive information regarding the possible future relocation of SPEEA-represented work. We are struck by the breadth and scope of the request and struggling to understand the basis upon which the Union believes it is entitled to the requested data.

As a preliminary matter, we take issue with your characterization of the Company's statements. The Company did not make a blanket statement that work will continue to be moved out of the Puget Sound as your request suggests. As you know, the Company maintains the legal and contractual right to locate engineering work in any location, and is continually evaluating the most effective ways to utilize its workforce, including its options for the placement of work. Studies undertaken to evaluate the viability of a work location are highly confidential and often speculative business planning exercises, many of which never progress further than mere exploration.

The Union predicates its data request on nothing more than a mischaracterization of the Company's position during an unspecified Joint Workforce Committee meeting, and the bald assertion that "SPEEA requires information about the possible movement of work and/or work opportunities, in order to fully and fairly represent its members." There is nothing within existing law or the parties'

contract that requires the Company to provide the union with information regarding such studies – certainly not based on such thinly supported alleged relevance.

We are also at a loss for why you feel the existing process does not provide you with adequate information regarding work movement initiatives. The parties have a longstanding practice of utilizing the Joint Workforce Committee to share information regarding work movement. In those meetings, the union is provided with information relating to those studies that have advanced beyond mere exploration and that are likely to have an actual impact on SPEEA members. These studies are typically shared months in advance, giving SPEEA more than ample time and data to sufficiently represent its employees' interests. There are Joint Workforce Committee meetings scheduled for both the 10th and 24th of this month, and we would be happy to discuss any specific questions you have regarding the studies that have been announced at either of those sessions. In the meantime, if there are specific provisions of the CBA that you believe the administration of which requires the requested data, please identify those provisions and we will evaluate what information could be provided to help facilitate your request.

Notwithstanding the above, the Company will provide documents relating to meetings it has held with SPEEA-represented employees regarding the relocation of SPEEA-covered work. If there are specific meetings that you believe have occurred for which you would like information, please identify them specifically to help facilitate a prompt response.

(Tr. 48-49, 112; GC Ex. 7).

On April 11, 2014, Plunkett responded to Marx's letter, but failed to address any of Boeing's concerns, clarify or specify precisely what data SPEEA wanted or otherwise narrow the request, or refute Marx's statement that Boeing had no obligation to bargain decisions to relocate bargaining unit work—facts omitted by the ALJ in the Decision. (Tr. 52, 103-04; GC Ex. 8). Plunkett again stated that SPEEA needed the information to represent its members, but also added the information was needed to “evaluate potential decisional and effects bargaining.” (GC Ex. 8).

On April 30, 2014, Marx responded that because Boeing had no decisional bargaining obligations under the contract and the requested information was not relevant to effects bargaining, it had no obligation to produce the information. (Tr. 53; GC Ex. 9). However, Marx

added that while “there is no pending request for effects bargaining, ... we remain more than willing to engage in such discussions and to provide information reasonably necessary to effectuate them.” (GC Ex. 9). She also stated that Boeing would provide the Union with information about meetings Boeing had with employees regarding relocation and realignment, and requested the Union’s assistance in identifying the particular meetings it was interested in. (GC Ex. 9). However, Marx never received a response from Plunkett or anyone else at SPEEA to her April 30th letter, and the ALJ paid no notice in the Decision to the fact that the Union never disputed Boeing’s express statement that it had no decisional bargaining obligations. (Tr. 105).

Improperly dismissed by the ALJ as “vague assertions,” Zarfos’ testified without challenge or contradiction that he also asked the Union for clarification of the Request in April and May 2014. (Tr. 172-75). Specifically, Zarfos asked Plunkett, “What types of information are you looking at above and beyond what we’ve already provided?” (Tr. 174). Plunkett, however, refused to clarify and merely responded that SPEEA’s members want more details, and appeared content to agree to disagree as to how much information Boeing had already provided.<sup>6</sup> (Tr. 175). As such, SPEEA never provided Boeing any clarification regarding the information or documents that it sought. (Tr. 89, 101-02, 158).

The ALJ also disregarded the fact that although Boeing did not provide any information directly in response to SPEEA’s written request, it did and continues to provide SPEEA information related to the possible and planned movement of work at the JWC meetings. (Tr. 54, 106). Indeed, on May 29 Boeing continued to discuss the BR&T and CAS relocations with SPEEA, and the May 2014 JWC meeting agenda specifically included “what other work is being

---

<sup>6</sup> Plunkett did not testify at the hearing despite being present prior to the entry of the sequestration order. (See Tr. 3).

studied to move out of Puget Sound” as a topic. (Tr. 150-51; R. Ex. 11). Moreover, as Boeing got a better understanding regarding which employees would be impacted by the BR&T and CAS decisions, it shared that information with SPEEA. (Tr. 151).

To date, SPEEA has never requested bargaining related to any decision to relocate work. (Tr. 75-76, 104-07). Moreover, and somehow escaping the ALJ’s analysis, SPEEA never followed up on Boeing’s offer to provide information for effects bargaining in Marx’s April 30th letter, nor specified the employee meetings for which it desired information. (Tr. 105).

## V. ARGUMENT

### A. Ignoring The Overwhelming Record Evidence, The ALJ Incorrectly Found That The Request Did Not Seek Information About Potential Movement of Work, And Then Inexplicably Ordered Boeing To Provide The Union With Information About Potential Movement of Work

1. The ALJ erred in finding that the Request only sought information regarding plans to relocate bargaining unit work that Boeing had already decided to implement, and thus the Request was not vague, ambiguous, or unduly burdensome.

The ALJ Decision concludes that the Request only sought information regarding movement of work decisions that Boeing had already made. This purported interpretation of the Request, however, conflicts directly with both the express language of the Request and the Union’s admitted desire to obtain information about potential movement of work before Boeing makes a decision to implement any such relocation of work. Therefore, the ALJ, in effect, impermissibly modified and rewrote the Request to cure its inherent defects; thus, the ALJ Decision must be reversed.

The undisputed facts and overwhelming record evidence establish that the Union drafted the Request broadly to encapsulate any information regarding “possible” movement of work Boeing was considering. (Tr. 46). The Request plainly states its intent and purpose: “SPEEA *requires* information about the *possible* movement of unit work and/or work opportunities.”

(GC Ex. 6) (emphasis added). The Request contains no modifiers limiting it to any specific statements of work (e.g., BR&T, CAS, Interiors, etc.) or to studies that had progressed past mere exploration. (GC Ex. 6).

The fact that the Union sought information about “possible” or potential movement of work is confirmed by Leonard’s testimony at the hearing articulating that the Union wanted information about movement of work before Boeing made any decision to implement:

A ... And in April, at the joint workforce committee meeting, it proceeded just like in December. They told us that they had an announcement – or that they had made a decision, and then 15, 20 minutes – ten minutes, I think we started getting the buzzing of the cell phones again, that they had just made that announcement to the employees.

Q Okay. What is the problem with the way that – is there a problem with the way that Boeing has been making its announcements?

A Well, yes. I mean like I’ve explained, *the way that they tell us only after the decision has been made* and only ten or so minutes before the employees are told about it, it makes it very difficult for us to do our jobs. *The fact that the decision has clearly already been made, it makes it difficult for us to do decision bargaining....*

(Tr. 51) (emphasis added). Similarly, in the Union’s brief to the ALJ, the Union asserts that it wanted information regarding “potential” movement of work:

- “This was a critical part of the information SPEEA was attempting to obtain – information about the timeline and scope of Boeing’s *potential* work relocation projects.” (Union Br. 8) (emphasis added); and
- “[I]t is precisely *when the employer is exploring work relocation* that the parties’ discussion could make the most difference – and when the union can determine whether it can or should make concessions sufficient to meet or exceed the benefit to the employer of relocating.” (Union Br. 12) (emphasis added).

Finally, the Union conceded in its brief to the ALJ that 1(f) of the Request, which asked for information regarding “Operation Dragonridge” and any other similar or related operations—*i.e.*, a catch-all, was directed toward possible movement of work rather than “specific plans for, and actions taken to implement, relocation.” (Union Br. 13).

Despite these undisputed facts, the ALJ erroneously concluded that the Union only sought information regarding movement of work for which Boeing had made a decision to implement:

Respondent's argument ignores two important undisputed facts, first the union was directly informed by Zarfos that more movement of work would impact the Puget Sound area and secondly 8 days after the date of Marx's April 2, 2014 letter, the Company announced at the April 10, 2014 JWC meeting it had completed a study and decided to move 1000 jobs to Southern California. [I]n this case the employer had taken "sufficiently concrete" actions to warrant disclosure. It is patently obvious that the actions surrounding the moving of 1000 jobs were not simply "ideas written on napkins" as Respondent suggests. ... ***It simply was not true (as alleged by Respondent) that the union sought information about "potential movement of work for which Boeing had not yet made a decision."*** As noted above, both the testimony of Zarfos and the actions of Boeing make clear that in fact Boeing did make decisions. Respondent nevertheless failed to provide the union with any information. Respondent's attempt to hide behind the union's use to the term "possible" to shield it from producing information about decisions that were concrete and in the process of being implemented is simply semantic gamesmanship designed to keep the union in the dark about its plans.

(ALJ, p. 11:16-26) (emphasis added).

Not only is the ALJ's conclusion contrary to the record evidence, but it is undermined by the very bases relied upon to reach that conclusion. First, contrary to the ALJ's factual finding, Zarfos did not inform the Union "that more movement of work **would** impact the Puget Sound" or that Boeing had announced additional decisions to move bargaining unit work during the February 2014 JWC meeting. Rather, the record evidence, when viewed in its entirety, overwhelmingly establishes that at the February 2014 JWC meeting, in response to a question from the Union, Zarfos merely acknowledged that Boeing is always studying its operations and that those studies "could" result in decisions by the Company to move bargaining unit work, not that Boeing had decided to implement specific plans to relocate bargaining unit work:

Q Okay. Was there – did SPEEA raise any questions about additional work moving out of Puget Sound at the February 27 meeting?

A Yes, they did.

Q What do you recall?

A I recall that, under hot topics, I think we were talking about some of the – some of the BR&T in particular, I think the timing was. And then somebody asked – I can't recall who, I think it might have been Rich Plunkett, but I'm not positive – asked about, "Well, are we going to continue to see this type of – you know, these studies and movement impacting the Puget Sound workforce?" And I responded that we would.

Because we had already previously indicated that *we had studies underway*, and plus, I knew that, later that same meeting, in a different part of the agenda, I was going to give them updates on a couple of studies and – so I think there was, like, four different work packages that we were going to be discussing in addition. So it would have been disingenuous to say no, we're not, when I knew we were going to talk about it in, you know, a half an hour.

(Tr. 148-49).

Q Is there anything factually erroneous about [the first paragraph in the information request]?

A I would say that the aspect of when it says "Boeing indicated SPEEA represented --" I'm just reading it so I can respond – "Boeing indicated SPEEA represented work will continue to be moved, relocated, or realigned outside of Puget Sound similar to the realignment of BR&T work that is currently happening," *that is not the statement that was made in the joint workforce*. I responded to a question that said "Do you know of any other studies or anything related similar to BR&T?" And I said, "Yes, I do, and I'm going to be speaking about them in greater detail in this same meeting," as an example.

...

Q And when you gave those discussions that were partially in response to the question that you earlier testified about, you also talked about the potential of realignment or relocating work outside the bargaining unit, didn't you?

A *Yes, I would have acknowledged that there is a potential that any of those studies could have some impact.*

(Tr. 168-69) (emphasis added). As such, the studies that Zarfos discussed at the February 2014 JWC meeting were studies currently underway and about which no decision had been made. (Tr. 39, 55, 86, 148-49, 169).

Moreover, the April 2014 announcement that Boeing had *completed* the CAS study and decided to move 1,000 jobs to Southern California occurred *after* the Union submitted the

Request, and thus the announcement of that decision cannot be proof that the Union sought information only about movement of work that Boeing had already decided to implement. (Tr. 145-48; GC Ex. 8). Rather, the evidence shows that if the CAS realignment motivated the March 2014 Request, it was only because Boeing provided an update on the CAS study—i.e., potential movement of work—at the February 2014 JWC meeting. Accordingly, the ALJ had no valid basis for finding that the Request did not seek information regarding potential movement of work, and thus the ALJ Decision, in effect, ‘rewrote’ the Request to eliminate a fatal flaw.<sup>7</sup>

Indeed, having rewritten the Request, the ALJ then went on to conclude that the Request, as modified, sought presumptively relevant information to which the Union was entitled. However, it is common sense that Boeing cannot be obligated to respond to an information request that was never received or communicated to it. As the Union never presented Boeing with an information request seeking information limited only to movement of work decisions Boeing had already made, it was error for the ALJ to analyze such a request and to find that Boeing had an obligation to respond.

Because the ALJ Decision’s determination that Boeing violated the Act hinges entirely on his erroneous interpretation of the Request, the ALJ Decision must be reversed and the Complaint dismissed.

**2. The ALJ erroneously ordered Boeing to produce information that, according to his findings, the Union did not request.**

The ALJ Decision orders Boeing to “provide the Union with information requested in paragraphs 1a-f, of its March 27, 2014 request for information.” (ALJD at 14:44-45). However,

---

<sup>7</sup> The ALJ’s conclusion that Boeing was engaged in “gamesmanship” “to keep the union in the dark” is just as perplexing, given that Boeing gave notice to the Union months, if not years, in advance of any decision to relocate bargaining unit work. (Tr. 25-26, 77, 82-83, 122, 124, 153, 159, R. Exs. 2-9).

as the Union conceded in its brief to the ALJ, paragraph 1(f) seeks information about potential movement of work rather than “specific plans for, and actions taken to implement, relocation.” (Union Br. 13).

Specifically, paragraph 1(f) asks for “[a]ny documents relating to ‘Operation Dragonridge’ and/or similar or related Operation.” (GC Ex. 6). However, it is undisputed that Dragon Ridge was not a specific project, but rather an overarching term used to describe generally a series of different operating opportunities and realignments under review by the Company. As such, Dragon Ridge—and any “similar or related Operation”—concerned potential movement of bargaining unit work. (Tr. 100, 117). Given the ALJ’s finding—albeit incorrect—that the Request did not seek information about “potential” movement of work, it was improper for the ALJ to order Boeing to provide the Union with information that it purportedly did not request. Accordingly, the ALJ Decision is in error and must be reversed.

**B. The ALJ Erred By Failing To Find That Boeing Was Relieved Of Any Obligation To Respond Because The Union Ignored Boeing’s Efforts To Obtain Clarification Of The Ambiguous, Overbroad, And Unduly Burdensome Request**

1. Because the Request sought information regarding possible movement of work, the ALJ erred by failing to conclude that the Union is not entitled to information regarding every “possible” movement of work.

Boeing has no duty to provide information to SPEEA regarding any “possible” movement of work for which it has made no decision. The duty to furnish information stems from the underlying statutory duty to bargain with respect to mandatory subjects of bargaining. *Cowles Communications*, 172 NLRB 1909 (1968). In other words, if there is no duty to bargain regarding a particular subject, then the union cannot demonstrate relevance of the requested information related to that subject, and is thus not entitled to the information. *Ingham Regional Medical Center*, 342 NLRB 1259, 1262 (2004); *BC Industries, Inc.*, 307 NLRB 1275 n.2 (1992)

(holding that “[b]ecause Respondent BCI had no statutory obligation to bargain about the partial closure decision,...it had no duty to furnish information for that purpose”). As such, the Board recognizes that employers have no obligation to disclose to a union “every thought or possibility” discussed by management concerning potential decisions that might impact the terms and conditions of the bargaining unit. *See Valley Mould and Iron Co.*, 226 NLRB 1211, 1213 (1976).

In *Valley Mould*, where the employer was alleged to have concealed a decision to effect layoffs until after agreement on a contract had been reached, the General Counsel alleged that there was a *per se* violation of the Act because “layoffs had been ‘in the wind’ since January 1975, a time when negotiations were then in progress.” The administrative law judge, affirmed by the Board, found that even if the employer had been considering layoffs at that time, it had no bargaining obligation to disclose that information to the union:

Would it be salutary or inimical, to the bargaining process, for decisional precedent to require employers officiously to convey, during contract negotiations, every thought or possibility mentioned in management discussions concerning cost-cutting efforts to meet an economic downturn, regardless of how speculative the matters under consideration might be, or whether they would even be implemented? In my opinion, to impose such a duty would be counterproductive to the policies of the Act. It would encourage the injection of emotion-laden issues, at times when they are highly conjectural and would only serve to prolong negotiations, possibly engendering ill will needlessly, and all for reasons that may never come to pass.

*Id.* at 1213. Finding that the employer had not decided to effect layoffs prior to the parties’ collective bargaining agreement “under a plan which was *sufficiently concrete* as to warrant disclosure to the Union,” the judge dismissed the complaint. *Id.* at 1311 (emphasis added).

Even if Zarfos’ statements at the February 2014 meeting could be construed as a statement that Boeing would make future, unspecified decisions to relocate bargaining unit work, such a statement does not trigger an obligation by Boeing to provide information regarding

“possible” movement of work. The Board recognizes that parties cannot bargain intelligently about the effects of a decision that has yet to be made. *See Oklahoma Fixture Co.*, 314 NLRB 958, 961 n.7 (1994), *enfd. denied on other grounds, NLRB v. Oklahoma Fixture Co.*, 79 F.3d 1030 (10th Cir. 1996). In *Oklahoma Fixture*, the employer asserted that the union had waived its right to effects bargaining when it did not request bargaining after the employer announced that it was “considering” the possibility of subcontracting and “stressed...that no decision had yet been made and that it was merely considering the possibility.” *Id.* at 960. The Board rejected the employer’s argument, finding that the employer’s announcement was insufficient to trigger the union’s obligation to request effects bargaining:

a union’s obligation to request effects bargaining, if it wishes to exercise its statutory right and avoid waiver, may only be triggered by a clear announcement that a decision affecting the employees’ terms and conditions of employment has been made and that the employer intends to implement this decision. ***This obligation is not triggered by an “inchoate and imprecise” announcement of future plans about which the timing and circumstances are unclear.*** The Respondent’s announcement that it was “considering” the possibility of subcontracting, while at the same time stressing that no decision had yet been made, is too “inchoate and imprecise” to give rise to an obligation to request effects bargaining.

*Id.* at 960-61 (emphasis added). Analogous to the Board’s sentiments expressed in *Valley Mould*, the Board noted that bargaining is inappropriate before a decision impacting the employees has been made:

As a practical matter, the parties cannot realistically be expected to be able to bargain intelligently in May about the effects of a decision that was not reached until June....It is premature for a union to seek to bargain over such matters at a time when the employer is stressing that it has not yet made a decision to terminate the employees the union represents. *See Show Industries*, 312 NLRB 447, 453-54 (1993) (“Until Respondent notified the Union that effects of some kind would likely befall the employees, a specific request to meet could hardly be expected or, for that matter, agreed to.”)

*Id.* at 961 n.7. *See also Providence Hosp. v. NLRB*, 93 F.3d 1012, 1019 (1st Cir. 1996) (“It is common ground that a union cannot demand bargaining over effects that are purely speculative....”).

Rather, an employer’s duty to bargain a decision arises only once it desires to implement it, at which point it must “give advance notice of the decision to the Union and to offer to bargain about the decision before its implementation.” *Liquid Carbonic Corp.*, 277 NLRB 851, 864 (1985) (emphasis added). The standard for effects bargaining is virtually identical as the union is only “entitled as much notice of the [decision] as was needed for meaningful bargaining at a meaningful time.” *Willamette Tug & Barge Co.*, 300 NLRB 282, 283 (1990) (citing *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681-82 (1981)). Even then, the amount of notice that the Act requires is only a matter of days and weeks, not months and years, and thus clearly excludes the period during which the employer is contemplating its decision. For example, the Board found 20 days for a subcontracting decision sufficient in *Salem College*, 261 NLRB 327 (1981); 11 days sufficient for a decision to relocate work and layoff an employee in *Paramount Liquor Co.*, 270 NLRB 339, 343 (1984); and a week sufficient for a decision to transfer work in *Globe-Union, Inc.*, 222 NLRB 1081 (1976). Accordingly, Board law makes clear that employers have no obligation under the Act to engage in decisional or effects bargaining for decisions they have not yet made. Absent a duty to bargain, there is no duty to provide information.

To the extent the ALJ concluded that either the studies Zarfos announced at the February 2014 JWC meeting or his response to SPEEA’s question reflected a “decision” or was “sufficiently concrete” to trigger Boeing’s duty to provide information, the ALJ’s Decision is diametrically opposed to Board law. The studies Zarfos announced were anything but decisions,

especially where only a very small percentage of Boeing's studies ever advance past the exploratory stage. (Tr. 131, 142-43, 178-79). Consequently, neither Boeing nor SPEEA could be expected to bargain about such speculative matters. Therefore, Boeing clearly had no obligation to bargain over such "possible" decisions under *Valley Mould* and *Oklahoma Fixture*, and thus no duty to furnish information about those "possible" decisions to the Union.<sup>8</sup>

2. The ALJ erred by failing to find that the request was vague, overly broad, and unduly burdensome.

The ALJ erred when he failed to find that the Request, as drafted, was vague, overly broad and burdensome. SPEEA admits that it intentionally casted a "nicely sized net" to make its request as broad as possible. Indeed, the Request sought any studies that might result in the relocation or realignment of bargaining unit work, any document related to any plans for a possible movement of work, any document relating to any timeline for implementing a relocation or realignment, any document related to the acquisition of property or equipment to prepare for a relocation of work, and any document relating to any employee meetings to discuss relocation or realignment of bargaining unit work. (GC Ex. 6). In addition, it also requested a broad, catch-all request by seeking "*any* document relating to 'Operation Dragonridge' and/or *similar or related* Operation." (GC Ex. 6) (emphasis added). Yet, the Request contained no modifiers limiting it to any specific statements of work (e.g., BR&T, CAS, Interiors, etc.), and included no time limitations and thus was unlimited in duration, both past and future. (GC Ex. 6). As such, even if

---

<sup>8</sup> If Boeing's announcement of a study that could potentially result in the relocation of bargaining unit work is "sufficiently concrete" to trigger a decisional bargaining obligation, it necessarily follows that the Union's failure to request bargaining before Boeing announces its decision to implement would also alleviate Boeing of any obligation to produce decisional information. *See, e.g., Bell Atlantic Corp.*, 336 NLRB 1076, 1086 (2001) ("It is...well settled that, upon receipt of such notice from an employer, a union must act with due diligence to request bargaining, otherwise it may be found to have waived its right to bargain over the mater.").

the Union had limited the request only to movement of work for which Boeing had made a decision to implement, the Request impermissibly sought any document relating to every single relocation or realignment of bargaining unit work that Boeing has ever made.

The ALJ also failed to recognize that the breadth of the request also made responding “very burdensome” if not “impossible.” (Tr. 110-11, 159). The uncontested record evidence establishes that Boeing would have to expend an inordinate amount of time and effort just to identify any studies involving the “possible” movement of work. Indeed, the number of studies currently under consideration is unknown. As such, to formulate a response, SPEEA’s request would require, at a minimum, that Marx (and likely many others) continuously contact more than thousands of managers and executives in all four major business units to:

1. determine whether the manager or executive is currently evaluating or has evaluated any study that might result in the movement of SPEEA-represented work outside the Puget Sound;
2. follow up with the manager/executive and others to obtain all documents related to those studies and to determine if any property or equipment had been purchased in anticipation of the relocation or realignment;
3. determine whether the manager or executive has ever met or will meet with any of the 20,000 SPEEA represented employees to discuss any possible movement of unit work; and
4. identify and obtain all information that the manager or executive provided or will provide to the employees in those meetings.

(Tr. 102-03, 106, 114, 155-56, 159). In addition, work is moved at the engineering/manager level on an ad hoc basis to and from the bargaining unit to and from other locations every single day,

and there is no known way to capture those thousands of “transactions”. (Tr. 156-57). Therefore, the Union’s expectation for Boeing to respond to the Request, as written, was both unrealistic and unreasonable.

3. The ALJ erred in failing to find that Boeing sought clarification of the Request and that the Union refused to provide any clarifications.

Because of the breadth and ambiguity of the Request, the ALJ Decision must also be reversed because the Union, despite requests by Boeing, refused to provide any clarifications. The record evidence establishes that Boeing requested on multiple occasions that the Union explain the relevance of its Request, narrow the Request, and clarify what information it needed. However, each time SPEEA refused, which is inimical to the purposes of the National Labor Relations Act:

Congress enacted the National Labor Relations Act to reduce industrial strife which resulted in labor disputes disrupting commerce. 29 U.S.C. Section 151. Long-term collective-bargaining relationships, in which the parties respect each other and work out their differences in good faith, foster industrial stability and peace. In such a partnership the parties find ways to compromise.

***The Board contemplates that when an information request would impose a great burden, the parties, if possible, will try to negotiate an arrangement satisfying both sides.*** Thus, it places a duty on a party burdened by an information request to inform the requesting party and seek an accommodation. *Mission Foods*, 345 NLRB 788 (2005).

*United Parcel Service*, 2013 WL 4429506, NLRB Case No. 16-CA-028064 (Aug. 15, 2013) (emphasis added).

In *United Parcel Service*, the union made a number of information requests, several of which the judge found “broad and burdensome.” The employer wrote multiple letters to the union steward saying that they needed “to find some middle ground so that we don’t have to respond to unreasonable requests that costs thousands of dollars and hours and hours and hours.” *Id.* The employer also asked the union steward “what [he] was really looking for,” but the union

steward refused to give an inch, and merely stated that the burdensomeness of the union's information request "was not [his] problem." *Id.* Based on the union's failure to discuss the information requests and the employer's good faith attempt to comply by asking for an accommodation, the administrative law judge found that the employer did not violate the Act when it provided no information in response to those broad and burdensome requests:

It is true that the requested information enjoys a presumption of relevance because it pertains to bargaining unit employees, but that presumption does not affect a union's duty to provide a genuine answer when an employer says, "This request is very burdensome. Why do you really need all this information? Can't we cut it down?" ***If the union simply replied, "it's presumed relevant," that terse response would not be useful in discussing a compromise or accommodation. After all, parties acting in good faith are supposed to work these things out, if they can, and one indication of good faith is the willingness to make an honest effort.***

*Id.* (emphasis added).

Similar to the employer in *United Parcel Service*, Boeing complied with its obligations under the Act when it informed the Union of the breadth of the request and sought to determine what the Union "was really looking for." Specifically, the record establishes that Boeing:

- wrote the Union on April 2, 2014, stating that it was "struck by the breadth and scope of the request," questioning the relevance of the Request given the speculative nature of Boeing's studies, refuting the Union's mischaracterization of Zarfos' statement, questioning why the information presented at the Joint Workforce Committee meetings was insufficient, and asking the Union to identify specific meetings with employees in order to facilitate Boeing's response (GC Ex. 6);
- wrote the Union on April 30, 2014, offering to discuss with the Union what information it might need for effects bargaining relating to any decision to

relocate bargaining unit work and again asking the Union to identify specific meetings with employees (GC Ex. 9); and

- in April and May 2014, Zarfos asked Plunkett, the Union’s Director of Strategic Development and the sender of the Request, directly for clarification by asking, “What types of information are you looking at above and beyond what we’ve already provided?,” and explaining that some of the information that the Union was seeking simply was not available yet. (Tr. 172-75).

However, SPEEA never provided any clarification in response to Boeing’s letters, and Plunkett, like the union steward in *United Postal Service*, refused to clarify or narrow the Request.

Yet, the ALJ inconceivably asserts that “[d]espite Zarfos’s vague assertions to the contrary, there is no credible evidence that Boeing genuinely sought to clarify the breadth of the SPEEA’s request.” (ALJ p. 11:37-38). The ALJ’s dismissal of Zarfos’ testimony as “vague assertions” is clearly erroneous. First, Zarfos’ testimony was sufficiently specific to establish that Boeing asked the Union for clarification:

Q Isn’t it correct that these two letters are the only effort Boeing made to get SPEEA to differentiate, redefine in any way, or to define, what it meant by the realignment, relocation of work?

A No, that is not correct.

...

Q Okay. But no one ever said to SPEEA, in these letters or any other time, “What do you really mean by relocate the work? Are you talking about this temporary or are you talking about something else?” That didn’t happen, did it?

A No. I believe I had conversations with Rich.

Q With Rich Plunkett?

A At the JWC [meetings]. I mean, we have a lot of ongoing conversations. Rich and I transact a lot of business. And my offer was, as it has been, we’ve

communicate a lot of information, we're going to communicate status, and as we go forward, we'll provide the types of – and level of detailed information.

I mean, *the primary focus on this was asking specific information that, at the time of the announcements, was not yet available. We couldn't tell you specifically which people and where, because it was still being formulated.* And we did say that this plan was going to evolve over the next two years. And it is still developing.

Q That's talking about BR&T, right?

A BR&T, yes, in that particular context, yes.

Q Okay. Was there any other conversations you had with Mr. Plunkett that focused on asking SPEEA, getting SPEEA to explain in any way what it meant by relocated or realigned or relocate or realign work as used in General Counsel Exhibit 6?

A I believe we talked about both BR&T and CAS, the CAS announcement, those together, and it was in the context – I can't honestly recall that I – did I say the word "Relocate" or "Realign," but *my questioning with Rich was around "What types of information are you looking at above and beyond what we've already provided?"*

Q And did that take – *that conversation you had with Mr. Plunkett at a JWC meeting?*

A *That's what I recall, yes.*

...

Q So you're talking about April, May 2014?

A Yes.

Q And you remember whether Mr. Leonard was present at either of those meetings?

A Sean is at most of them, but no, I – without looking at notes – and I don't even always write down everybody's names. And I should say...that I have a lot of conversations [with] Rich that aren't necessarily with the whole board. I mean, we talk before, we talk after. And some of that conversation very well was like a hallway conversation, for lack of a better characterization.

...

Q ... Did he respond?

A Rich always responds.

Q You and I both know that, but okay, what did he respond specifically to your question?

A I think it was under the terms of “Our members are concerned, they’re hearing a lot about these studies, they’re asking us for more details.”

*And my response was point out to Rich that we – that’s why we provide our internal communications, we provide overview presentations, we try to provide them as much information as we have at point of use so that they can be responsive to our employees and their members.* That’s my prime – my prime mission is to – and I frequently am sending internal communication messages to the contract administrator, because I know they’re getting the phone calls.

(Tr. 172-75) (emphasis added).

Second, Zarfos’ testimony was un rebutted, a fact the ALJ failed to note and address in the Decision. As the ALJ Decision only asserts that Zarfos testimony was “vague” and unconfirmed in writing, and does not provide any other reason for discrediting his testimony, Zarfos’ testimony should be credited by the Board. *See Starcraft Aerospace, Inc.*, 346 NLRB 1228, 1231 (2006) (holding that the ALJ failed to acknowledge and credit un rebutted testimony and Board can conduct independent evaluation when ALJ’s credibility findings are based upon factors other than demeanor); *Double D Construction Group*, 339 NLRB 303, 304 (2003) (holding that ALJ erred in giving no weight to testimony when witness “referred to his *belief*” that something occurred when there was no “reference to [the witness’] demeanor, or to any other factor that suggests equivocation by the witness or casts doubt on his knowledge and recollection).

Further compelling the factual finding that Zarfos asked the Union for clarification is that neither Counsel for the General Counsel nor the Union called Plunkett as a witness to rebut Zarfos’ testimony. “[W]hen a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual

question on which the witness is likely to have knowledge.” *Douglas Aircraft Co.*, 308 NLRB 1217, fn. 1 (1992). *Property Resources Corp.*, 285 NLRB 1105, fn. 2 (1987), enf’d 110 CCH LC Sec. 10872 (D.C. Cir. 1988). *See also Parksit Group*, 354 NLRB 801 (2009); *Martin Luther King Sr. Nursing Center*, 231 NLRB 15, fn. 1 (1977). Accordingly, not only was Zarfos’ testimony specific enough to compel a finding that Boeing requested clarification of the Request, but the ALJ should have drawn an adverse inference against Counsel for the General Counsel and the Union on that factual issue precisely because Mr. Plunkett was available and did not testify.

Consequently, the record, contrary to the ALJ’s conclusions, confirms that Boeing complied with its obligations under the Act by asking SPEEA to clarify the Request. However, SPEEA refused to engage in any good faith discussion regarding the Request thereby excusing Boeing from any purported duty to respond. *See United Parcel Serv., supra*. Accordingly, the Complaint must be dismissed.

**C. The ALJ Erred In Finding That Boeing Had An Obligation to Provide Decisional Information Because The Union Did Not Clearly And Unmistakably Waive Right To Bargain Movement of Work Decisions**

The ALJ also erred by failing to find that Boeing had no obligation to provide decisional information because the parties’ collective bargaining agreement gives Boeing the unfettered right to relocate work and to decide the occurrence and existence of any conditions necessitating a workforce reduction. The duty to furnish information stems from the underlying statutory duty to bargain with respect to mandatory subjects of bargaining. *Cowles Communications*, 172 NLRB at 1909. Accordingly, where an employer has no obligation to bargain a decision with the union by virtue of the Act or by contract, it has no duty to furnish information regarding that decision. *See BC Industries, Inc.*, 307 NLRB at 1275; *California Pacific Medical Center*, 337

NLRB 910 (2002); *Ingham Regional Medical Center*, 342 NLRB at 1259; *Chemical Solvents, Inc.*, NLRB Case No. 8-CA-39218 (May 15, 2012).

In *California Pacific Medical Center*, 337 NLRB at 910, the Board affirmed the administrative law judge's finding that the employer had no duty to provide information regarding its decision to conduct layoffs or to consolidate and close hospital units because the employer had no obligation to bargain the decision pursuant to the parties' collective bargaining agreement and past practice. Similarly, in *Ingham Regional Medical Center*, 342 NLRB at 1259, the employer decided to subcontract certain work, and the union requested information regarding the subcontracting decision. The Board affirmed the administrative law judge's ruling that the employer had no duty to furnish information related to the decision because it had no duty to bargain over the decision to subcontract by virtue of the parties' collective bargaining agreement.

In *Chemical Solvents, Inc.*, NLRB Case No. 8-CA-39218, the employer closed and outsourced its trucking operation for various business and economic reasons. The union filed a class-action grievance asserting that the outsourcing decision violated the collective bargaining agreement and requested information regarding the decision to close and outsource the trucking operation. The administrative law judge held:

Since the decision to close the trucking division was made a nonmandatory subject of bargaining by virtue of the management-rights clause in the collective-bargaining agreement, and the Respondent was not obligated to bargain over the closure decision, it logically follows that the Respondent was not legally required to comply with the Union's information request to the extent that it dealt with the decision to close. See *Ingham Regional Medical Center*, 342 NLRB 1259, 1262 (2004); *BC Industries, Inc.*, 307 NLRB 1275, 1275 (1992).

Id.<sup>9</sup>

---

<sup>9</sup> See also *Rai Radio Televisione Italiana SpA*, NLRB Case No. 02-CA-079087 n.18 (Div. Advice Nov. 16, 2012): "Because the Union's information request relates to Rai SpA's decision  
{footnote continued}

Just as in those cases, the parties' collective bargaining agreements give Boeing the unfettered right to relocate bargaining unit work outside the Puget Sound and to determine the occurrence and existence of any condition necessitating a layoff. (GC Ex. 2; GC Ex. 3). Article 2 of the parties' collective bargaining agreements give Boeing the exclusive right to manage and direct the workforce, and expressly reserves to the Company "all matters not specifically and expressly covered or treated by the language of this Agreement." (GC Ex. 2, GC Ex. 3). Nothing in the contract places any limitations on Boeing's ability to relocate bargaining unit work. (GC Ex. 2; GC Ex. 3). Rather, Boeing's ability to unilaterally relocate work is confirmed by Article 8.2, which expressly permits it even when the movement of work results in layoffs of SPEEA-represented employees:

reductions will be made equitably, expeditiously and economically, and at the same time will result in ***retention on the payroll of those employees regarded by management as comprising the workforce that is best able to maintain or improve the efficiency of the Company***, further its progress and success and contribute to the successful accomplishment of the Company's current and future business. ***The location, occurrence and existence of any condition necessitating a workforce reduction, and the number of employees involved, will be determined exclusively by the Company.*** Following such determination, the Company will notify the Union of the location and the estimated size and job family and skills management code(s) involved in the anticipated workforce reduction.

(GC Ex. 2, GC Ex. 3) (emphasis added). Thus, pursuant to Article 8.2, Boeing has the unfettered right to determine the location, occurrence, and the existence of any condition necessitating a reduction in the bargaining unit. As such, the collective bargaining agreements give Boeing the right to move bargaining unit work even if it results in a workforce reduction.

---

*{continued from previous page}*

to contract unit work, and because we have concluded that the Employer did not have an obligation to bargain over that decision, the information sought is not relevant and the Union is not entitled to it. *See Ingham Regional Medical Center*, 342 NLRB 1259, 1262 (2004)."

The ALJ incorrectly asserts that Article 8.2 relates only to layoffs and not to relocation of bargaining unit work. However, the parties have always interpreted Article 8.2 to govern both, which is confirmed by the parties' past practice and bargaining history. "Where past practice has established a meaning for language that is used by the parties [in their agreement], the language will be presumed to have the meaning given it by past practice." *Pan-Adobe, Inc.*, 222 NLRB 313, 325 (1976) (quoting *Pekar v. Local 181, Brewery Workers*, 311 F.2d 628, 636 (6th Cir. 1962), cert. denied 373 U.S. 912 (1963)). Here, Boeing has at least a 25-year history of openly relocating bargaining unit work without first bargaining with the union, and not once has the union challenged Boeing's asserted contractual right with a grievance or unfair labor practice charge. (Jt. Ex. 1). Indeed, in 2013 and 2014 alone, Boeing made at least 16 unilateral decisions to relocate bargaining unit work, and the Complaint contained no allegation that Boeing's unilateral decisions to relocate work violated Section 8(a)(5). (Jt. Ex. 1, ¶ 2).

Once again the ALJ Decision mischaracterizes the record in its conclusion that "[t]here is simply no evidence in the record to support a finding that, 'the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter.'" (ALJD at 13:32-35). The ALJ Decision completely ignores and fails to mention Zarfos' un rebutted testimony that SPEEA proposed changes to Article 8 during every collective bargaining negotiations since at least 2002 in an effort to limit Boeing's ability to move bargaining unit work without first bargaining with the Union. (Tr. 124, 161, 165; R. Ex. 12). As an example of both the Union seeking to limit Boeing's ability to move bargaining unit work and the parties' application of Article 8.2 to both movement of work and layoffs, during the 2002 negotiations SPEEA sought to require a "joint review of the business case" for any layoffs due to the movement of work. (Tr. 165; R. Ex. 12).

However, the proposal was never accepted. (Tr. 165; GC Ex. 2, GC Ex. 3). Thus, the ALJ's failure both to credit Zarfos' testimony and to find that the Union waived its rights warrant reversal of the ALJ Decision. *See Starcraft Aerospace*, 346 NLRB at 1231 (finding the ALJ's analysis of the evidence "flawed" where the judge "failed to acknowledge the uncontradicted testimony").<sup>10</sup>

Moreover, Marx conspicuously asserted in her April 2nd letter that Boeing "maintains the legal and contractual right to locate engineering work in any location...", (GC Ex. 7), a fact that SPEEA did not contest or dispute in its April 11th letter. Marx's April 30th letter similarly states that Boeing had no bargaining obligation based on the language in Section 8.2 of the collective bargaining agreements, which was never disputed or contested by the Union. (Tr. 105; GC Ex. 9). As such, SPEEA's April 11th letter and SPEEA's failure to refute Marx's statement in her April 30th letter are further acknowledgement of Boeing's right to unilaterally move bargaining unit work. *See Speidel Corp.*, 120 NLRB 733, 741 (1958) ("In the face of the Respondent's bargaining position, the Union's complete silence, and its failure at any time thereafter to contradict the Respondent's interpretation of the clause, must be taken to mean that the Union acquiesced in the Respondent's understanding"). Consequently, contrary to the ALJ's finding, the record evidence compels a finding that the issue of whether the collective bargaining agreements give Boeing the unilateral right to relocate bargaining unit work has been fully discussed and consciously explored by Boeing and SPEEA on multiple occasions, and each time the union consciously yielded its interest in the matter. *See Rockwell Int'l Corp.*, 260 NLRB

---

<sup>10</sup> Counsel for the General Counsel's and the Union's failure to call Plunkett to testify as to the parties' bargaining history also warrants an adverse inference on this factual question.

1346 (1982); *Speidel Corp.*, 120 NLRB at 741. Accordingly, SPEEA clearly and unmistakably waived its right to bargain any decision to relocate bargaining unit work.

Given that SPEEA had no right to request bargaining of such decisions, and the March 27th information request was based on SPEEA's purported need to evaluate its decisional bargaining options, Boeing had no duty to provide the requested information. As a result, any alleged failure by Boeing to produce the requested decisional information cannot violate the Act. Accordingly, the ALJ Decision must be reversed and the Complaint dismissed.

## **VI. CONCLUSION**

Based on the attached Exceptions and this Brief in Support thereof, the Respondent respectfully requests the Board to reverse the Decision in this matter and find that Boeing did not violate Sections 8(a)(1) and (5) of the Act.

Respectfully submitted this 11th day of August, 2015.

s/Richard B. Hankins

Richard B. Hankins  
Brennan W. Bolt

**McGUIREWOODS LLP**  
1230 Peachtree Street, NE  
Suite 2100  
Atlanta, GA 30309  
(404) 443-5700  
Attorneys for The Boeing Company