UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO,

Petitioner,

and Case 10-RC-215878

THE BOEING COMPANY,

Respondent.

Response of the Petitioner
International Association of Machinists and Aerospace Workers, AFL-CIO
To Multiple Amicus Briefs

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Pursuant to the Board's September 7, 2018 Order granting the parties until September 21, 2018 to respond to the six[1] briefs a*micus curiae* filed in this case, the Petitioner, International Union of Machinists and Aerospace Workers, AFL-CIO (IAM), respectfully files this brief.

[1] In its Order, the Board granted the motions for leave to file amicus briefs of (1) the Coalition for a Democratic Workplace, the Independent Electrical Contractors, the National Association of Wholesaler-Distributors, the National Federation of Independent Business, the National Retail Federation, the Restaurant Law Center, and the Retail Industry Leaders Association (the Coalition brief); (2) the Business Roundtable and the Chamber of Commerce of the United States (the Chamber brief); (3) the State of South Carolina Ex. Rel. Alan Wilson, Attorney General (the SC AG brief); (4) the National Association of Manufacturers, the HR Policy Association, and the Society for Human Resource Management (the NAM brief); (5) the South Carolina Chamber of Commerce and the South Carolina Manufacturers Alliance (the South Carolina Chamber brief); and (6) the Governors of South Carolina, Maine, Mississippi, and Kentucky (the 4 Governors brief).

Boeing, justifiably concerned about the merits of its own arguments to the Board, has assembled an array of powerful interests to take its side in this dispute with its employees. However, "might does not make right," at least in a country such as ours, governed by the rule of law. The question for the Board, now that it has granted the amici's motions to file briefs, is thus not how many and how powerful are the interests aligned against the North Charleston flight-line workers, but rather whether those interests have added anything meaningful for the Board to include in its consideration of Boeing's request for review.[2] The answer, as the IAM demonstrates below, is a resounding "No." If anything, the amici briefs are a fertile source of cases demonstrating that the Regional Director's thorough, thoughtful decision here fits well within the historic appropriate unit precedent restored by the Board in PCC Structurals, Inc., 365 NLRB No. 160 (2017).

The amici follow Boeing in contending that the Regional Director misapplied PCC Structurals, and accuse him of de facto applying the overruled standard of Specialty Healthcare & Rehab. Ctr. of Mobile, 357 NLRB 934 (2011), enfd. sub nom. Kindred Nursing Ctrs. East, LLC v. NLRB, 727 F.3d 552 (6th Cir. 2013).[3] Separating their sparse wheat from their voluminous chaff,

[2] Most of the amici's briefs merely regurgitate Boeing's Request for Review. For example, the South Carolina Attorney General's brief quotes the Boeing brief 12 times in its first four pages, then spends one-and-a-half single-spaced pages summarizing Boeing's brief, and concludes with a sentence that begins "Like Boeing," (SC AG brief at 7). The South Carolina Attorney General could have made an equivalent contribution with considerably less cost to South Carolina's taxpayers by filing a brief that simply read: "re Boeing Request for Review: Ditto." Suffice it to say, the Attorney General's brief adds nothing additional for the Board's consideration.

[3] For example, the Coalition brief criticizes the Regional Director for using the phrase "readily identifiable as a group" to describe the petitioned-for unit, contending that this is language from the overruled Specialty Healthcare test, and that such references "no longer have any

amici's contentions are essentially three: (1) PCC Structurals, properly interpreted, requires a wall-to-wall unit in integrated manufacturing enterprises; (2) the Regional Director failed to adequately take into account the interests of the employees outside the petitioned-for unit, thereby failing to comply with PCC Structural, particularly its citation to the Second Circuit's opinion in Constellation Brands, U.S. Operations, Inc. v. NLRB, 842 F.3d 784 (2nd Cir. 2016); and (3) Board guidance on the proper application of PCC Structurals will avoid the dire economic consequences for Boeing, for the State of South Carolina, and for the entire United States that will otherwise obtain if the Regional Director's allegedly improper approval of an allegedly fractured unit is allowed to stand. We will demonstrate the lack of merit of each of these contentions in turn.

1. The Application of the Traditional Community-of-Interest Test Requires an Examination of a Number of Factors to Determine Whether the Petitioned-For Unit is an Appropriate Unit; It Does Not Mandate a Wall-to-Wall Unit in an Integrated Manufacturing Enterprise.

Amici parrot Boeing and argue that the Regional Director erred because the Board's recent decision in PCC Structurals, properly applied, mandates a wall-to-wall unit here. Amici's argument comes down to (a) the prior standard, established in Specialty Healthcare, basically

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place in bargaining unit analysis." Coalition brief at 13. This criticism is demonstrably incorrect, as the use of the phrase "readily identifiable as a group" in Board representation case precedent has occurred in the application of the traditional community-of-interest test to describe a coherent group of petitioned-for employees for at least 57 years, well prior to Specialty Healthcare. See American Cyanamid Co., 131 NLRB 909, 910 (1961) ("[W]e find on the basis of the evidence in this record that maintenance employees are **readily identifiable as a group** whose similarity of function and skills create a community of interest such as would warrant separate representation.") (emphasis supplied). See also Bartlett Collins Co., 334 NLRB 484, 486 (2001) ("These employees are **a readily identifiable group** with common interests distinct from other employees.") (emphasis supplied).

required that a petitioned-for less-than-plant-wide unit be found appropriate, (b) Specialty Healthcare was overturned by PCC Structurals, and (c) therefore, ipso facto, plant-wide units must now be required under PCC Structurals, particularly where Boeing has an integrated manufacturing enterprise at which everyone in North Charleston works together to produce a single product, the Boeing 787 Dreamliner. This simple-minded approach misrepresents the holding of PCC Structurals and ignores well-established, long-standing Board law applying the traditional community-of-interest test to find appropriate clearly identifiable and functionally distinct groups with common interests distinguishable from those of other employees. It also completely fails to acknowledge the overwhelming record evidence and Boeing's own admissions that it treats the North Charleston flight readiness technicians (FRTs) and flight readiness technician inspectors (FRTIs) differently with respect to wages, hours, and other crucial terms and conditions of employment, all of which Regional Director Doyle comprehensively catalogued in concluding the petitioned-for unit is appropriate.

At the outset, it is appropriate to emphasize that, in the Board's exercise of its authority under Section 9(b) to determine, in each case, whether "the unit appropriate for purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof," certain axioms apply. First, and fundamentally, as the above-quoted language of the statute makes clear, a plant-wide unit is not the minimum unit that the Board is authorized to find appropriate. Specifically, two less-than-plant-wide units are statutorily denominated: the craft unit and the subdivision of the plant unit. It should not need repeating, but in light of some of the contentions of the amici it seems necessary to emphasize: the statute explicitly provides

that less-than-plant-wide units, like the one in which the IAM overwhelmingly won the election here almost four months ago, are appropriate.

Second, and equally fundamentally, the Board's job is to determine whether the **petitioned-for** unit is **an** appropriate unit. American Hosp. Ass'n v. NLRB, 499 U.S. 606, 610 (1991). "The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends." The Boeing Co., 337 NLRB 152, 153 (2001). "There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be 'appropriate.'" Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950) (emphasis in original). And, the union is not obligated to seek representation in the most comprehensive possible group of employees. Ballantine, P. & Sons, 141 NLRB 1103, 1107 (1963); Bamberger's Paramus, 151 NLRB 748, 751 (1965); Purity Food Stores, Inc., 160 NLRB 651 (1966). In fact, the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees. Bartlett Collins Co., 334 NLRB at 484.

These precepts, fundamental to representation case law, are not of recent vintage, as the age of the citations supporting them attests. Acting in line with these fundamental principles, the Board has, in determining whether the petitioned-for unit is an appropriate unit, traditionally applied the community-of-interest test. Recently, the Board overruled Specialty Healthcare and "reinstate[d] the traditional community-of-interest standard as articulated in, e.g., United Operations, Inc., 338 NLRB 123 (2002)." PCC Structurals, Inc., 365 NLRB at 1. Contrary to the amici's and Boeing's position, as the IAM has pointed out at pages 5-6 of the

Opposition to Boeing's Request for Review, by reinstating the traditional community-of-interest test the Board nowhere mandated plant-wide units in manufacturing enterprises. Rather, the United Operations test assesses multiple factors:

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

United Operations, 338 NLRB at 123.

In United Operations itself, the Board did not find appropriate the larger unit urged by the Employer. Rather, in that case (1) while not a craft, the HVAC techs had special skills that no other employees had; (2) they were required to maintain EPA certification to handle refrigerants and most also maintained a boiler license; (3) there was minimal job overlap with other classes of employees; (4) there was no significant functional integration; (5) there was no evidence of temporary transfers, and scant evidence of permanent transfers, into the unit; and (6) the HVAC techs had significantly higher wages, the Board held that the petitioned–for unit of HVAC techs "constitute a readily identifiable and functionally distinct group of highly skilled and licensed employees, with common interests distinguishable from the Employer's other field service employees." Id. The United Operations Board could have just as easily been describing the unit of FRTs and FRTIs found appropriate by Regional Director Doyle.

And, as the IAM further detailed at pages 8-9 of its Opposition to Boeing's Request for Review, while applying the traditional community-of-interest factors the Board has developed

lengthy lines of cases finding a less-than-plant-wide unit appropriate in an integrated enterprise,[4] and, in many instances, has found less-than-wall-to-wall units appropriate where there are readily identifiable groups with common interests distinct from those of other employees.[5]

Moreover, the additional cases cited by the Board in PCC Structurals and relied on by amici, particularly Wheeling Island Gaming, Inc., 355 NLRB No. 127 (2010) and Newton-Wellesley Hosp., 250 NLRB 409 (1980), are in line with the precedent cited by the IAM, fully support the Regional Director's decision here, and in no way require a wall-to-wall unit.

[4] See, for example, American Cyanamid, Co., 131 NLRB at 909 (separate maintenance unit found appropriate); Crown Simpson Pulp Co., 163 NLRB 796, 797 (1967) (separate maintenance unit appropriate despite the integrated nature of employer's pulpmill operation); Herron Testing Labs., Inc., 182 NLRB 508, 509 (1970) (despite drilling department being only one of ten departments, drillers appropriate departmental unit); The Dahl Oil Co., Inc., 221 NLRB 1311 (1975) (oil burner servicemen constitute appropriate departmental unit despite employer's "highly integrated operation"); Ore-Ida Foods, Inc., 313 NLRB 1016, 1019 (1994) (separate maintenance unit appropriate where employer's operations "not so highly integrated as to destroy the maintenance employees' identity as a separate and distinct function"); Sundor Brands, Inc., 334 NLRB 755 (2001) (skilled maintenance unit appropriate despite employer's highly integrated production operation); Anheuser-Busch, Inc., 170 NLRB 46, 48 (1968) (craft unit of electricians appropriate despite "the highly integrated nature of the production process of the employer"); MGM Mirage, 338 NLRB 529, 532 (2002) (in casino hotel with 6200 employees, craft unit of 18 carpenters and 5 upholsterers appropriate despite "integrated nature of the Employer's operation").

[5] See, for example, Del-Mont Constr. Co., 150 NLRB 85, 87 (1964) (heavy equipment operators constitute a separate appropriate unit where they constitute "a clearly identifiable and functionally distinct group with common interests which are distinguishable from those of other employees."); Dick Kelchner Excavating Co., 236 NLRB 1414, 1415 (1978) (same); Stott, R.L., Co., 183 NLRB 884 (1970) (separate unit of oil burner and air conditioner servicemen and installation employees appropriate); Bartlett Collins Co., 334 NLRB at 484 (smallest appropriate unit includes 12 mold cleaning employees in addition to petitioned-for 18 mold repair employees where this unit is a readily identifiable group with common interests distinct from other employees).

Wheeling Island Gaming, relied on heavily by the amici (particularly the Coalition brief), involved an application of the community of interest factors to a hotel/casino/dog-racing track enterprise. The decision did not involve a wall-to-wall unit; rather, the Board determined that a unit including all table games dealers, some 420 in number, was appropriate instead of the petitioned-for unit of 60 poker dealers. Notably, however, there were 5 other separate bargaining units of the employer's employees already on the site,[6] facts that hardly support the amici's uniform contention that the community-of-interest test requires wall-to-wall units as an antidote to unnecessarily fractured bargaining.

Similarly, in Newton-Wellesley Hospital, the petitioned-for unit was 453 registered nurses. The hospital employed 1800 full and part-time employees, and the employer sought to include 143 other professional employees in the registered nurses' unit. The Board found the nurses to be an appropriate unit, despite the fact that they were divided into three different departments and that all professional employees, including the nurses, were subject to common personnel policies and employee benefits. The Board examined "whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit" and found, as did the Regional Director here, that the petitioned for unit was appropriate. Again, Newton-Wellesley Hospital provides no support for

[6] The petitioning union, UFCW Local 23, already represented a unit of 300 valets, facilities cleaning and maintenance employees, cage associates, and slots associates. UNITE HERE represented two units – 300-350 food service employees and 50 security guards – under separate collective bargaining agreements. And, IATSE represented 10-15 stagehands under an additional separate agreement.

amici's assertion that application of the traditional community-of-interest factors require wall-to-wall units.

Finally, Airco, Inc., 273 NLRB 348 (1984), which both the Coalition brief and the Chamber brief rely on, is not to the contrary. In Airco, the union sought a plant-wide production and maintenance unit including plant operators, truckdrivers, and mechanics. The Employer sought a smaller unit, excluding the operators. The Board found the petitioned-for unit appropriate, disagreeing with the Regional Director on the rationale for inclusion of the truck drivers. The Regional Director had relied on "a petitioner's desires alone" while the Board emphasized that: "[T]here are no per se rules to include or exclude any classification of employees in any unit. Rather, we examine the community of interest of the particular employees involved, considering their skills, duties, and working conditions, the employer's organization and supervision, and bargaining history, if any, but no one factor has controlling weight." Id. This is precisely the manner in which the Regional Director proceeded here. The Board in Airco therefore, in light of the explicit "plant unit" language in Section 9(b), applied a plant-wide presumption in support of the petitioned-for unit and placed a burden on the employer to demonstrate that the employees which it wished to exclude had such disparate interests that they could not be represented in the plant-wide unit. This presumption in favor of a petitioned-for plant-wide unit has no application here, where the petition seeks a less-than-plant-wide unit.[7]

[7] Kalamazoo Paper Box Corp., 136 NLRB 134 (1962), also cited by amici, involved a petition seeking to sever truck drivers from a plant-wide production and maintenance unit certified some 17 years before. In that case, the Board's mention of the plant-wide presumption referred to the pre-existing unit. The Board did not apply the presumption to the severance

Thus, amici's contention that PCC Structurals mandates a wall-to-wall unit simply does not comport with what PCC Structurals actually says, or with the Board's pre-Specialty Healthcare cases cited in this response at footnotes 4 and 5, or with Wheeling Island Gaming or Newton-Wellesley Hospital. To the contrary, adopting the result advocated by amici would constitute a substantial, unwarranted departure from such established precedent.

2. The Regional Director's Decision Did Not Fail To Properly Consider The Non-Petitioned For Employees' Community Of Interest Factors; He Properly Weighed Them and Concluded that the Petitioned-For Group's Interests Were Sufficiently Distinct From Those of Other Boeing Employees.

Amici next join Boeing in contending that a primary aspect of the Regional Director's misapplication of PCC Structurals is his failure to take sufficient account of the interests of the employees outside the petitioned-for unit. They note in particular the Board's discussion in PCC Structurals of the Second Circuit's decision in Constellation Brands, and contend that a more rigorous analysis of the non-petitioned-for employees than that conducted by the Regional Director is necessary. See, e.g., the Chamber brief at p. 8; the Coalition brief at note 6, p. 12; and the South Carolina Chamber brief at p. 3.

The argument that the Regional Director ignored the interests of Boeing's employees outside of the petitioned-for unit is simply not factually accurate, as a review of his Decision and Direction of Election (DDE) conclusively demonstrates. On pages 5-23 of the DDE, the Regional Director details the facts concerning each of the traditional community-of-interest

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petition, but rather reexamined its prior precedent and required that, before granting severance, the truckdrivers demonstrate that they constitute a functionally distinct group with overriding separate special interests. Id. at 139.

factors listed in United Operations and reinstated by the Board in PCC Structurals. For each factor, he summarizes the relevant record evidence, both as to Boeing's workforce as a whole and as to the employees in the petitioned-for unit. See, as but two examples, the chart at the top of page 6 of the DDE, breaking the entire workforce out by job code and the first two full paragraphs of the discussion of "Job Functions and Work" on page 10, describing the roles of all Boeing's employees in the aircraft production process. After discussing the appropriate legal considerations on pages 23-25, he then, on pages 23-33, applies the correct legal standard to the facts very thoroughly, again going through the community-of-interest factors and comparing and contrasting the similarities and differences between the employees in the petitioned-for unit and the other Boeing employees, concluding that "the petitioned for employees share a sufficiently distinct community of interest under the Board's traditional criteria." DDE at 33. See also the IAM's Opposition to the Request for Review at pages 11-46 for a detailed review of the record evidence supporting the Regional Director's conclusions.

The Regional Director not only did a thorough job of weighing the interests of all Boeing's employees; he certainly did a much more thorough, legally sufficient job of weighing the interests of the non-petitioned-for employees and articulating the sufficient distinctions possessed by the petitioned-for unit than certain Board precedent applying the traditional community-of-interest factors. Much of that precedent under the traditional standard is fairly subject to the criticism – understatedly levelled by the Board in Wheeling Island Gaming, Inc., 355 NLRB at note 2, against its own prior cases – that the necessary inquiry concerning the sufficiently distinct interests was "perhaps not articulated in every case." Failure to articulate the distinctions did not happen here. As amici argue was required (see Chamber brief at p. 3),

Regional Director Doyle conducted a "vigorous assessment of unit appropriateness." PCC Structurals at *12. He did not rely on "arbitrary exclusions" based on "meager differences" (Chamber brief at 3, quoting Nestle's Dreyer Ice Cream Co. v. NLRB, 821 F.3d 489, 496 (4th Cir. 2016))[8]; rather, after considering the terms and conditions of both the petitioned-for employees and those outside of the unit sought, he found substantial distinctions sufficient to justify the petitioned-for unit, relying on the petitioned-for group's distinct job functions, distinct skills, separate training and required[9] certifications, substantially higher wages (by 32.55%, Union Ex. 24), distinct shifts and hours (including leave and overtime), separate supervision, separate work location, separate policies and procedures, and distinct attire. Amici are able to take issue with the Regional Director's analysis only by ignoring the actual content of his decision or belittling the extensive record evidence on which he relied.

Amici's arguments have nothing to do with any lack of consideration by the Regional Director of the non-petitioned for employees' terms and conditions of employment, but instead manifest a desire to hold on for dear life to the results of the prior 2017 election in the wall-to-

[8] It bears noting that, in Nestle's Dreyer Ice Cream, the Fourth Circuit upheld the Board's determination that a separate 113-person maintenance unit was appropriate in an ice cream production facility; the employer, supported by many of the same amici present in this case, had argued that 578 production employees had to be included in the unit found appropriate. In reaching its conclusion, the Court stated: "And it is of no consequence that a unit including production employees may also be appropriate." Nestle's at 821 F.3d at 498.

[9] As the Regional Director found (DDE 8), the FRTs and FRTIs are the only employees that Boeing requires, as a job prerequisite, to have the Federal Aviation Administration Airframe and Powerplant license. Thus, the fact that other employees may also have an unused license, see, e.g., South Carolina Chamber brief at p. 6, is irrelevant.

wall unit.[10] They continuously hark back to the February 2017 vote – see, e.g., 4 Governor's brief at 2 ("When the question of third-party representation was properly presented to the appropriate unit of the Boeing SC team, the vast majority soundly rejected the Petitioner despite these advantages.") – and lament that the voters' choice there is being somehow countermanded by the subsequent election in the lesser-included unit found appropriate by the Regional Director. Their position seems to be that the February 2017 vote is immutable and binding and has decided once and for all that the North Charleston employees do not want a union to represent them. The IAM and the Regional Director are accused of a subterfuge, "fracturing" the ideal wall-to-wall unit to try to evade the workers' prior exercise of their choice to refrain from union participation.

There are many answers to this nonsense. First, the **results** in a prior election in a broader unit have nothing to say about whether a lesser-included bargaining unit is an appropriate one in which to proceed to a subsequent election. As the language of the NLRA makes clear, Section 9(c)(3) bars an election in any "bargaining unit **or any subdivision**" within

[10] The February 2017 election was in Case 10-RC-191563, and the stipulated unit was: "All full-time and regular part-time production employees including aircraft machinists, aircraft painters, assemblers, equipment maintenance specialists, fabrication specialists, facility plant maintenance specialists, flight readiness technicians, product acceptance specialists, production coordinators, tool & fixture specialists, NDT quality test specialist, employed by the Employer at its North Charleston, South Carolina 787 Dreamliner production, fabrication and assembly facilities and at its Ladson, South Carolina Interiors Responsibility Center (IRC) and the Propulsion South Carolina facilities, but excluding all temporary or contract employees, sales employees, fire protection operations specialists, all other employees, confidential employees, technical employees, office clerical employees, professional employees, guards, and supervisors as defined by the Act." Contrary to the amici's contentions that this stipulated unit is the only appropriate unit of Boeing's employees, the stipulation's exclusions list at least four groups that, under current Board law, could also form additional appropriate units: the statutory guards unit, the office clerical employees, the technical employees, and the professional employees.

which a valid election has been held in the preceding twelve-month period. Thus, the statute explicitly contemplates an election in a larger unit followed by an election in a lesser included subdivision of that larger unit – the only requirement is that the second election in the smaller unit must take place more than 12 months after the first election. This has been so since Section 9(c)(3) was added to the statute in 1947. See, e.g., Vickers, Inc., 124 NLRB 1051, 1052 (1959) ("The earlier election was held in a larger unit of all salaried employees and the present petition requests a smaller unit of some of those same employees.").

Moreover, the notion of an immutable choice runs contrary not only to the language of the statute, but to any proper understanding of how and when employees choose to exercise their Section 7 rights. The meaningful exercise of Section 7's protections necessarily entails that employees retain the right to decide, as events unfold and employees confer, whether or not to band together with their co-workers. As the Supreme Court has famously stated in the right-to-resign context: "[T]he vitality of § 7 requires that the member be free to refrain in November from the actions he endorsed in May . . . " NLRB v. Granite State Joint Bd., Textile Workers Union of Am., Local 1029, 409 U.S. 213, 217-18 (1972). In the representation case context, this undisputedly means that where a question concerning representation exists, employees are free to change their minds and vote for the union if they previously opposed it or vote against the union if they previously supported it. Here, the choice the non-petitioned for employees will make going forward is in no way constrained by the choice that the petitioned-for employees have made. The outside-of-the-unit employees are free to choose whether to attempt to form a union or not; neither their prior vote nor the fact that their

fellows voted for a union in a lesser-included subdivision in any way constrains the exercise of their rights.

And, finally, the logic of amici's arguments meets itself coming around the bend. They posit, on the one hand, that the Regional Director's decision disrespects the immutable choice for no union that the non-petitioned for employees made back in 2017, and then, in the next breath, conjure up a parade of horribles with multiple unions besieging Boeing in additional fractured units, with Boeing's obligation to bargain with this "Balkanized" (see Chamber brief at p. 15) and speculative crazy quilt of bargaining units destroying Boeing's ability to run a successful enterprise. Of course, the only way Boeing will have an obligation to bargain outside the current unit is if (a) the Regional Director finds the relevant petitioned-for unit(s) appropriate and (b) the petitioning union wins the election in that unit. On this latter point, if amici are as confident as they say they are in the non-petitioned-for group's commitment to no union representation, then logically they cannot be concerned that future votes within that group or portions of that group will reach a different result.

3. Bargaining With The North Charleston FRTs and FRTIs Will Not Hamstring Boeing's Business Or Ruin Either The South Carolina Or National Economy.

Amici predict all manner of disaster for collective bargaining, for the South Carolina economy, and for national competitiveness if the Regional Director's decision is allowed to stand. The Board should see right through these inherently preposterous and wildly speculative contentions. Boeing has become the self-proclaimed largest U.S. exporter and a major industrial force while 35,000 of its employees nationwide are represented by the IAM. Many more (some 24,000) of its professional engineers and technical employees are

represented by the Society of Professional Engineering Employees in Aerospace (SPEEA), affiliated with the International Federation of Professional and Technical Engineers. See The Boeing Company, 365 NLRB No. 154 (2017) at p. 45. Amici would have the Board believe that, despite these facts, requiring Boeing to bargain with an existing collective bargaining partner over 178 additional employees will somehow bring the Boeing juggernaut to its knees. This notion is contrary to logic, experience, and common sense, and, as the IAM pointed out at page 6 of its prior Opposition to the Amicus briefs, essentially assumes collective bargaining incompetence on Boeing's part.

The record in this case is replete with instances of Boeing dealing with multiple other parties in order to accomplish the production and sale of its planes. There are two suppliers of engines (Rolls Royce and General Electric); there is a seat supplier that apparently is not always timely and reliable; there are inspectors and regulations issued by the Federal Aviation Administration; there are multiple plane customers who send their own teams to test pilot the planes and give feedback to which Boeing must respond. Boeing has built a successful enterprise by navigating all these relationships, as well as the multiple collective bargaining agreements that it has with representatives of its employees at other locations, in addition to undoubtedly complex negotiations with legal representatives of its executives to determine their employment contracts and compensation packages. The amici posit that Boeing manages all these relationships successfully in its operation of an extremely sophisticated corporate enterprise, yet if it comes to bargaining with one coherent group of skilled employees that it has already treated separately in numerous documented ways, Boeing will suddenly be unable

to operate its production facility in North Charleston. Merely stating this proposition demonstrates its foolishness.

The speculative arguments predicting damage from the Regional Director's opinion to the South Carolina and national economies fare no better. They are based solely on a clearly expressed bias for a non-union environment. While it is tempting to engage in a policy argument about whether South Carolina's citizens (currently ranked 43rd in median household income among the fifty states, see https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk, last visited September 19, 2018) are well-served by a low-wage, anti-union environment, suffice it to say that an expressed preference for no union presence, and for Boeing's unilateral imposition of terms and conditions of employment on all employees, does not tell the Board anything useful about what groups of employees are appropriate for "collective bargaining," a statutory and mandatory process (even in South Carolina) that can only be lawfully engaged in if the employees are represented by a union. See PCC Structurals at *4 ("Thus, questions about unit appropriateness are to be resolved by reference to the 'purposes' of representation, should a unit majority choose to be represented – namely, 'collective bargaining.'" (footnote omitted)).

4. The Regional Directors Have Applied PCC Structurals on Numerous Occasions Since It was Decided; There is No Evidence that They Are Inappropriately Misinterpreting It In Favor Of Smaller Units.

On a final note, the Coalition brief is simply wrong when it states, at page 13, that: "To Amicis' knowledge, the Decision is the first case, besides the remand of *PCC Structurals* itself, in

which the *PCC Structurals* standard has been applied by a Regional Director. As such, the decision carries outsize weight inasmuch as other Regional Directors may look to it for guidance on how they should apply *PCC Structurals* in a future case." PCC Structurals issued on December 15, 2017, and Regional Director Doyle's decision in this case issued on May 21, 2018. On December 19, 2017, four days after PCC Structurals was published, Regional Director Dennis Walsh applied it to find inappropriate a petitioned-for unit of graduate students at seven of the schools at the University of Pennsylvania; he found that to constitute an appropriate unit it must include graduate students in both the Wharton School and the School of Engineering and Applied Science. Decision and Direction of Election in The Trustees of the University of Pennsylvania, Case 04-RC-199609 (December 19, 2017). Between that time and the date of Regional Director Doyle's decision, at least 18 Regional Director decisions citing PCC Structurals issued. In these cases, and those decided since Regional Director Doyle's DDE in this case, there is no discernable trend favoring smaller units. In some cases, like Trustees of the University of Pennsylvania and Davidson Hotel Company LLC, d/b/a Chicago Marriott at Medical District /UIC, Case 13-RC-215790 (March 29, 2018) (petitioned-for unit of food and beverage employees and housekeeping employees is inappropriate; appropriate unit must include front desk employees), the petitioned-for unit was found inappropriate and additional employees were added. In others, like the remand of PCC Structurals itself, the petitioned-for unit was found appropriate applying the traditional community-of-interest test. PCC Structurals, Inc., Case 19-CA-202188 (May 4, 2018). There is no evidence that Regional Directors need additional guidance in applying a test that, but for the brief Specialty Healthcare interregnum, has been utilized throughout the Board's history.

CONCLUSION

Amici support Boeing in its erroneous contention that the Board needs to grant review in this case to send a message to its Regional Directors about the proper interpretation of PCC Structurals. As the IAM has demonstrated and any fair review will support, Regional Director Doyle's decision here is careful, thoughtful, well-reasoned, and amply supported by precedent and by the record in this case. Given the sound basis for his ruling, denying Boeing's Request for Review will send the proper message to the Regions and to participants in cases before the Board: what matters most is the merits of the particular case, and not the economic power and political connections of the parties. That is a message worth sending.

Respectfully submitted,

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Dated: September 21, 2018

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I certify that, on September 21, 2018, the foregoing Response of the Petitioner International Association of Machinists and Aerospace Workers, AFL-CIO To Multiple Amicus Briefs was electronically filed with the Board through the Board's website and was served electronically, on:

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