From:	(b) (6), (b) (7)(C)
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Subject:	Boeing Company, 19-CA-254845 (case closing email)
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The Region submitted this case for advice on whether the Employer violated Section 8(a)(5) by unilaterally reclassifying an employee who had earlier transferred out of the bargaining unit but to whom the Employer had continued to apply contractual terms and benefits prior to reclassification. We conclude that the Employer was under no duty to bargain over the reclassification. The Region should dismiss the complaint, absent withdrawal.

The Employer and the Union have a long-standing collective-bargaining relationship covering a unit that, as consistently described in successive agreements, includes fire inspectors employed in the state of Washington. The unit employee in question started performing occasional work in a Portland, Oregon facility that is outside the Union's geographic jurisdiction in 1995. (b) (6), permanently transferred to Portland in 2001 and began performing primarily non-unit duties. The Employer nevertheless continued to extend contractual benefits to (b) (6), (b. In 2019, the Employer reclassified (b) (6), (b from "fire inspector" to "multiple operations specialist," consistent with the duties (b) (6), had been performing in Portland through the years, and stopped applying the contractual terms to (b) (6), (b. The Union contends that the Employer unilaterally violated an established past practice of having a bargaining unit fire inspector employed in Portland, essentially arguing that the past practice of applying the collective bargaining agreement to this individual employee modified the contractual bargaining unit.

The evidence about the parties' understanding at the time of the transfer is scant; the affected employee refused to cooperate. The Employer contends that application of the contract to this employee after (b) (6), transfer to Portland was an oversight. The Union contends that the Employer at the time extended contractual benefits to this one individual after (b) (6), transfer at (b) (6), request. Whether an inadvertent error or a concession to the employee upon his transfer, there is no evidence of an intention by the parties to modify the bargaining unit. Through many years and successive contracts, there was no attempt by the parties to change the contractual language to add this Portland based position to the bargaining unit or otherwise modify the scope of the unit, which is geographically limited to the state of Washington. Indeed, such a modification might have been inappropriate, given that the position consists primarily of different duties than those performed by unit employees, entails no contact with the rest of the unit, and is outside the Union's geographic jurisdiction.

Accordingly, we conclude that unintentionally applying successive contracts to this lone employee did not constitute a modification of the contractual unit. The Employer therefore had no duty to bargain over the reclassification of an employee performing non-unit duties or the consequent changes in the employee's terms and conditions of employment. *See*, *e.g.*, *Boeing Co*., 212 NLRB 116, 116 (1974) (no violation when employer unilaterally reclassified and removed from contract coverage employees who were performing work that was different from contractually-defined bargaining unit work). *Compare McDonnell Douglas Corp*., 312 NLRB 373, 377 (1993) (unilateral removal of employees from unit upon transfer to different facility was unlawful where employees' job duties and functions were not "sufficiently dissimilar" to warrant their unilateral removal from unit).

The Region should dismiss the charge, absent withdrawal. This email closes the case in Advice. Please let us know if you have any questions.