UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

In the matter of

The Boeing Company,

Employer,

and NLRB Case No. 10-RC-215878

International Association of Machinists
And Aerospace Workers, AFL-CIO,

Petitioner.

THE BOEING COMPANY'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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INTRODUCTION

The Regional Director below directed an election among two small, artificially gerrymandered subsets of the workforce at The Boeing Company's 787 Dreamliner manufacturing facility in South Carolina. In reaching this result, the Regional Director gave an obligatory, passing nod to the Board's recent decision in *PCC Structurals* that re-established the traditional community-of-interest test, but then immediately proceeded to conduct an analysis that is even more solicitous of fractured micro-units than the overturned *Specialty Healthcare* standard. Since setting the legal standard in *PCC Structurals*, the Board has not had occasion to apply that standard in a case, and it is apparent that the Regional Directors are reluctant to apply the *PCC Structurals* community-of-interest test until the current National Labor Relations Board directs such.

This case therefore presents the Board with a timely and important opportunity to direct what the *PCC Structurals* community-of-interest test requires. The issue is well presented in this case, where Boeing's highly integrated South Carolina Dreamliner facility has never before been subjected to the type of division that flows from such fragmented representation. The micro-unit endorsed below is untenable where the petitioned-for employees perform the *same work* as excluded employees, *side-by-side* with excluded employees, on a daily basis, as part of a highly integrated manufacturing process. The issue is of enormous local and national import, as *Boeing is a major employer in South Carolina, the largest manufacturer in the United States, and the largest exporter in the United States*. If Boeing's integrated workforce can be so easily fractured and on a record that so overwhelmingly requires a wall-to-wall unit, then other manufacturers across the country are sure to face an onslaught of fragmented micro-unit petitions.

Of course, a union is only likely to seek such a cherry-picked unit when it knows it will fail to gain the support of a majority of manufacturing employees. That is exactly what happened

here. Thousands of production and maintenance ("P&M") employees at Boeing South Carolina *already voted just last year*—by a *three-to-one margin* (2,097 to 731)—not to inject exclusive union representation into this highly integrated manufacturing workforce. The union had *agreed* to a unit of all P&M employees for that election. It was only after that resounding "no" *from the presumptively appropriate unit of employees* that the union targeted this sliver of employees. But this subset, comprising *less than 7 percent* of the P&M workforce, is cobbled together from two job categories that perform *different* functions, from *distinct* departments, and under *completely separate* supervision.

The Regional Director endorsed Petitioner's strategic effort by directing an election in this gerrymandered subset of employees. The Regional Director's analysis was perfunctory at best, and its support in the record was paper-thin.[1] The Regional Director's disregard for critical Board precedent and statutory direction raises substantial questions of law and policy. This decision fails the statutory direction set forth in Section 9(b) of the National Labor Relations Act, and undermines the Board's ability to vindicate employees' rights and promote industrial peace, by opening this highly integrated workforce up to the threats of proliferating fractured micro-units; union whipsawing, balkanization, and rivalry; and endless associated and disruptive administrative challenges. The Regional Director's embrace of Petitioner's cherry-picked unit will encourage unions to flout Section 9(c)(5) of the Act and invite even more fragmented organizing. The

[1] Petitioner called *only two witnesses* at the hearing below. Those witnesses testified only as to their own knowledge about the jobs they performed and admitted having "no idea" about the work responsibilities or terms and conditions of the excluded employees. (*See, e.g.*, Tr. 858-59, 865, 872, 875, 887-90, 893, 911). By contrast, numerous additional witnesses testified and presented data that, even as weighed with stinted eye by the Regional Director, established a level of integration and interchange between the petitioned-for and excluded employees, among other factors, that have historically precluded approval of a micro-unit.

Regional Director's Decision also tramples on the Section 7 rights of the *two-thousand-plus* employees who already voted to keep exclusive union representation out of their workforce.

The Decision fails in both its analysis *and* conclusion at each step of the inquiry required by *PCC Structurals* and earlier Board precedent for determining an appropriate bargaining unit: (1) the proposed unit must be itself an appropriate unit, defined in a rational manner and sharing an internal community of interest; (2) the interests of those within the proposed unit must be weighed in light of the shared interests with excluded employees; and (3) consideration must be given to the Board's decisions on appropriate unit definition in the particular type of facility, here manufacturing. Although the Board's review would be warranted to address the Regional Director's departures from Board precedent at any one of those steps, the Decision's errors taken together make the Board's intervention absolutely essential to preserve its most significant recent decision that restored decades of precedent advancing the Act's fundamental purpose.

With respect to the first step of the *PCC Structurals* analysis—whether the two distinct groups of petitioned-for employees share a sufficient "community of interest" to constitute an appropriate stand-alone unit—the Regional Director ignored altogether or gave no weight at all to the following critical and undisputed facts, among many others:

- **Different job functions within the petitioned-for unit:** The petitioned-for flight readiness technicians ("FRTs") perform *different job functions* that are of a mechanical nature, while the petitioned-for flight readiness technician inspectors ("FRTIs") are quality inspectors.

- **Separate departments and supervision within the petitioned-for unit:** The petitioned-for mechanic FRTs and the petitioned-for inspector FRTIs are in completely *separate departments* from each other and share *no common supervision*, unless one considers the CEO of Boeing Commercial Airplanes in Washington State, seven organizational levels removed, to be the "supervisor" of both groups.

- **No interchange within the petitioned-for unit:** The petitioned-for FRTs and the petitioned-for FRTIs have *zero interchange* among and between each other—the record does not disclose any temporary or permanent transfers between the two groups.

Second, the Regional Director failed to apply the standards and burdens restored by *PCC Structurals* that require assessment not simply of whether employees in the petitioned-for unit share interests among themselves, but whether those common interests *outweigh* the interests shared with excluded employees. Whatever minimal interests FRTs share with FRTIs, both of the petitioned-for groups share far more in common with the other P&M teammates excluded by Petitioner including, but not limited to:

- **One functionally integrated manufacturing process:** Boeing's South Carolina facility builds 787 Dreamliner jets, and every stage of the manufacturing process serves that goal. The process at this facility requires flexible job roles, careful coordination of work between stages, and shared support, all of which support the historically favored wall-to-wall unit of all P&M teammates.

- **Frequent interchange with excluded employees:** By Petitioner's own stingy calculation, FRTs spent *9 percent* of their time in 2017 on "travelled work" originally designated for earlier stages of production, and originally assigned to excluded teammates. And Petitioner admits that at least *27 percent* of the work inspected by FRTIs in 2017 was baseline work "owned" at earlier stages of the production system and routinely performed by the other quality inspectors Petitioner excludes. Moreover, Petitioner's witnesses conceded readily that they themselves were among many FRTs and FRTIs who have temporarily transferred to other work stations throughout the integrated production system.

- **Shared departments and supervision with excluded employees:** FRTs share a department and front-line supervision with excluded mechanics—but *not* with FRTIs. And FRTIs share a department with excluded quality inspectors—but *not* with FRTs.

- **Job functions overlap with excluded employees:** The actual job functions performed by the FRTs, the FRTIs, and the other P&M teammates throughout the entire highly integrated production process are overlapping and, in many cases, nearly identical.

These considerations, along with the rest of the community-of-interest factors considered herein, show that the Regional Director's conclusion would have been wrong even under *Specialty Healthcare*. It is plainly incorrect under *PCC Structurals*.

The Board's decision in *The Boeing Co.* (*Charleston AFB)*, 337 NLRB 152 (2001), confirms that the Regional Director's decision departed from the Board's decisions applying the traditional community-of-interest test. It is notable at the outset that the Regional Director

addressed *Charleston AFB* in the same manner in which he addressed the overwhelming evidence adduced by Boeing: that is to say, he *simply ignored it*. The Regional Director did not even as much as cite this controlling authority. In the *Charleston AFB* case, the Board reversed the Regional Director and rejected this same union's efforts to certify a similar unit including *only employees stationed on a flight line*—the area where aircraft operate—at another Boeing facility just across the airport tarmac in Charleston, South Carolina. The Board concluded that the highly integrated work force more than offset even the petitioned-for unit's separate work location, supervision, and lack of temporary transfers. Like the proposed flight-line unit in *Charleston AFB*, the petitioned-for employees here share much of their training with excluded employees and often perform the same work. Even more compelling than in *Charleston AFB*, however, is the fact that the petitioned-for employees here *do* work side-by-side with excluded employees and frequently transfer among other work stages. This confirms that a wall-to-wall unit is *at least* as compelled here as it was in *Charleston AFB*.

Third, the Regional Director's decision cannot be reconciled with the Board's body of decisions regarding appropriate units in manufacturing facilities. No case, prior to the decision below, has approved a separate unit in an integrated manufacturing facility where the petitioned-for employees' core responsibility is *to complete or rework the excluded employees' work.* No case has approved a separate unit in such a facility where the petitioned-for employees *perform the same work elbow-to-elbow with excluded employees* on a daily basis. No case has approved a separate unit in such a facility where the petitioned-for employees so *frequently transfer to work with excluded employees, performing their work functions,* in other production stages. No case has approved a separate unit in such a facility where the petitioned-for employees *perform installation and testing without which the product could not be sold*. Here, not only is *each* of

these factors present at Boeing's South Carolina facility, but *all* of these factors are present, and numerous others as well. In reaching his Decision, the Regional Director neither rejected these uncontested facts nor distinguished them; rather, he simply ignored them.[2]

For these compelling reasons, pursuant to Section 102.67(c) of the Board's Rules, Boeing respectfully requests that the Board grant its Request for Review, reverse the Regional Director's decision, find that the petitioned-for unit is not an appropriate unit, and dismiss the petition.

STATEMENT OF THE CASE

Though the Regional Director largely ignored and omitted undisputed evidence contrary to his decision, even those facts specifically referenced by the Regional Director compel the conclusions that the petitioned-for unit is inappropriate and that a wall-to-wall unit of all P&M employees is the only appropriate unit at Boeing South Carolina. In fact, Petitioner's own two witnesses and exhibits—reinforced by the testimony of 7 non-Union witnesses and nearly 70 non-Union exhibits—confirmed that the petitioned-for unit is not appropriate and that a wall-to-wall unit is necessary here.

I. The IAM's historical representation at Boeing in wall-to-wall units and the first non-wall-to-wall Petition at Boeing South Carolina

The IAM has historically represented Boeing's P&M employees across the nation in broad units comprised of all P&M employees in a particular region or jurisdiction. For 65 years, the IAM has represented "[a]ll production employees of the Employer in the State of Washington," *Boeing Airplane Co.*, 88 NLRB 227, 231 (1950), and continues in the most recent collective-bargaining agreement to represent "[a]ll production and maintenance employees of the Company

[2] In addition to the numerous departures from Board precedent, 29 C.F.R. § 102.67(d)(1)(ii), the Regional Director's decision contains clear and prejudicial errors of fact described below that provide additional compelling bases for granting review, § 102.67(d)(2).

in the State of Washington," including all flight line employees. (Tr. 622-23; ER Ex. 58 at Boeing 0159). So too at Boeing's St. Louis facility (Tr. 625-26, 975-76; ER Ex. 59 at Boeing 0361), and its former facility in Long Beach, California (Tr. 627; ER Ex. 60 at 1).

The Union has recently and repeatedly requested a wall-to-wall unit of P&M employees, including these flight line employees, *at this same Boeing South Carolina facility*. In its March 16, 2015 Petition (Case No. 10-RC-148171), *the Union requested* a wall-to-wall unit and then *agreed to* an election by "[a]ll full-time and regular part-time production employees," including "flight readiness technicians." Realizing it lacked support in this appropriate unit,[3] the Union withdrew that Petition just days before the election. *See* Regional Director's Order, Case No. 10-CA-148171 (April 17, 2015).

The Union again requested a similar unit on January 20, 2017 (Case No. 10-RC-191563), then *agreed to* an election by "*all full-time and regular part-time production employees* . . . 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," including the flight readiness technicians and inspectors (emphasis added). The P&M teammates voted 2,097 to 731 against representation by the Union in the February 15, 2017 election.

Now, after twice recognizing that it lacked employee support in the broader, appropriate unit, on March 5, 2018, the Union filed the instant Petition (10-RC-215878) seeking to represent a unit of P&M employees in just two job titles: "full-time hourly DEJ1 flight-line repair [sic]

[3] *See, e.g., Machinists consider withdrawing request for S.C. Boeing vote*, Chicago Sun-Times (April 15, 2015), https://chicago.suntimes.com/news/machinists-consider-withdrawing-request-for-s-c-boeing-vote ("Union spokesman . . . said . . . any decision would be 'based on the results of the house polling effort that is currently underway to determine levels of support.'").

technician (FRT) and DEJ1 flight-line repair [sic] technician inspector (FRTI)." (Bd. Ex. 1(a)). At the start of the hearing on March 13, 2018, Union counsel amended the unit definition to "All full-time hourly DEJ1 flight readiness technicians (FRT) and DEJ1 flight readiness technician inspectors (FRTI)." (Tr. 9).

II. Boeing South Carolina's "freezer to flight" facility and manufacturing process

Boeing South Carolina is a fully integrated facility that manufactures one thing: the Boeing 787 Dreamliner. (Tr. 119, 133-34, 176-77). That requires one highly integrated and mutually interdependent workforce that operates on a single master schedule. (Tr. 97-98, 163, 820). Each stage of the production process is integrated with the other stages, and each and all are indispensable to the common goal of producing a complete Boeing 787 Dreamliner. (Tr. 49, 57-58, 90, 176-77; ER Ex. 1 (aerial view)). Those stages include:

- **Aft-body**, where the rear sections of the airplane are manufactured from scratch out of carbon fiber tape from the "freezer," P&M teammates trim out doors and windows and install aluminum framing, wiring, and other subcomponents, and quality inspectors test and inspect that work (Tr. 54-55, 967);

- **Mid-body**, where P&M teammates join heavy structures and components to the mid-body sections of the aircraft and install wiring and other subcomponents, and quality inspectors test and inspect that work (Tr. 55-57, 70);

- **Component Paint**, where aircraft painters perform the layered painting process. (Tr. 52, 56; ER Ex. 10 at 0061);

- **The Interiors Responsibility Center ("IRC")**, where fabrication specialists—like those stationed at the Delivery Center—and other P&M teammates create interior aircraft components, such as crew rest spaces and overhead bins (Tr. 126-27, 226-27);

- **Final Assembly**, where P&M teammates work to join the aft-body and mid-body sections, perform travelled work from Aft-body and Mid-body, and install components such as wings, stabilizers and fins, the nose section, landing gear, engines, flooring, walls, lavatories and interior components manufactured at the IRC. (Tr. 56-57, 66, 227). Inside Final Assembly, the assembled airplane is powered and tested extensively. (Tr. 56-57). And, as in every other stage of the process, quality inspectors test and re-test systems throughout. (Tr. 56-57); and

- **The "Delivery Center" operation**, including the Delivery Center building, flight line, and decorative paint building, where P&M teammates work side-by-side with teammates normally stationed elsewhere to complete travelled work (the unfinished tasks from earlier stages of the assembly process), rework the same tasks initially performed in earlier stages, and perform the final checks on aircraft systems that had been tested in earlier stages. (Tr. 57, 60-61; ER Exs. 10 & 11).

Because the Petition seeks to organize two subsets of employees stationed at the Delivery Center, this section discusses the Delivery Center and the included flight line component in more detail. The Delivery Center is located only 1,800 feet from the Aft-body building where the manufacturing process began. (Tr. 53-54, 58, 61, 121-122; ER Ex. 3(b)).

In the flight line stalls and related crew shelters near the Delivery Center building, 198 P&M teammates—not just FRTs and FRTIs, but also fabrication specialists on the cabin systems team, painters, and production coordinators—perform baseline Delivery Center work that largely repeats testing and other tasks performed in other buildings as a final check before delivery, such as checking doors, flaps, and rudders. (Tr. 60-61, 88, 845; ER Ex. 10 at 0062). Some of those stalls are only 300 feet from the Final Assembly building—far closer than they are to the stalls at the other end of the flight line. (Tr. 750; ER Ex. 3(b)). The Delivery Center operation also hosts traveling assemblers and other P&M teammates from Final Assembly and other buildings who are working on airplanes alongside FRTs and FRTIs. (Tr. 124, 509-10; Union Br. 11 (acknowledging that FRTs "perform a certain amount of the traveled work themselves" but "the rest of the traveled work is completed by production workers who travel out from their buildings").

Once the statement of work for FRTs and FRTIs is completed, and all other outstanding items generated earlier in the process are resolved (either by FRTs and FRTIs, teammates from other buildings, or a combination), the airplane is submitted for certification to representatives of the Federal Aviation Administration ("FAA"). (Tr. 84). If the FAA approves, the airplane is "ticketed" and ready for public flight. (Tr. 84).

Post-ticketing work is performed under an FAA "repair station" certificate. (Tr. 84). There is no physical "repair station" location; rather, the term describes the status of an aircraft. (Tr. 84). Repair station work is neither exclusive to the petitioned-for employees nor is it a significant percentage of their jobs. Along with the petitioned-for employees, there are 8 fabrication specialists, 11 aircraft painters, and 8 NDT quality test specialists excluded by Petitioner who are also on the authorized "repair station" roster. (Tr. 160, 907-08; Union Ex. 1). Not all FRTs regularly perform repair station work, and *no* FRTs or FRTIs exclusively perform repair station work. (Tr. 217-18). For most planes, only one to two days of the average 119-day manufacturing cycle are spent in repair station status (Tr. 85)—between 0.8 and 1.7 percent of the overall build.

III. Making a Dreamliner requires the Delivery Center to act in concert with the rest of the production process.

A. Teammates at the Delivery Center share similar and even identical work with other stages.

There are nearly 2,700 teammates on the P&M team at Boeing South Carolina (ER Ex. 10 at 062), who are collectively responsible for the roughly 9,000 discrete tasks, known as "shop order instances" ("SOIs"), in the Dreamliner's flexible and collaborative freezer-to-flight build process. (Tr. 181). Each of those 9,000 SOIs is assigned a "baseline" location (Tr. 62-63, 134-35). The baseline Delivery Center work performed by FRTs—including initial fueling, compass setting, and engine testing; the testing of other systems in preparation for flight testing; and addressing concerns identified during flight testing or customer inspections (Tr. 144-45)—is substantively identical or similar to tasks that are performed by assemblers, fabrication specialists, aircraft machinists, and other P&M teammates throughout the facility. (Tr. 144-45). And the inspections performed by the FRTIs likewise reprise inspections performed by product acceptance specialists and other excluded Quality department teammates at earlier stages. *See infra* at 30.

Although SOIs are assigned to a baseline location, in practice and by necessity they "travel" to other stages throughout the production process. In fact, there *has never been a plane* where each stage's baseline work was completed in that stage. (Tr. 67-68, 168, 191, 507, 913; Union Br. 10-11). Planes generally arrive in Final Assembly with up to a dozen unfinished SOIs from Aft-body and Mid-body (Tr. 66), and at the flight line with *hundreds* of unfinished SOIs from earlier stages. (Tr. 81). P&M teammates across the facility therefore spend much of their time doing this "travelled work" for, and/or in, stages of the production process *other* than their home stage. (Union Br. 32; Tr. 65-67, 194, 792). Even by the Union's improperly skewed calculation, FRTs spent at least *9 percent* of their time in 2017 on travelled work originally scheduled for an earlier production stage (not counting rework of work performed earlier), and at least *27 percent* of FRTI inspections were for work assigned to other stages (even excluding the FRTIs who inspected the most non-Delivery Center work). (Union Br. 29; Union Exs. 12, 25).

In addition to performing Delivery Center SOIs that *reprise earlier stages' work* and work that has *travelled from other stages*, FRTs and FRTIs are temporarily transferred to other production stages *frequently* as business conditions require. (Tr. 902-03, 965). For example, when the facility fell behind its production goals in 2017, the shared skills and training among P&M teammates allowed management to temporarily transfer more than 20 FRTs to Mid-body and other stages with little or no additional training. (Tr. 69-70, 93, 389, 464-66; ER Ex. 12; Union Br. 13-14 & n.9). Likewise, the Union's sole FRTI witness admitted that "numerous" FRTIs rotated through Final Assembly over the past year, including *eight* (i.e., *20 percent of all FRTIs*) who spent *30 days or more*. (Tr. 813-14, 886, 911-12). There are even permanent transfers on occasion. But there is *zero* evidence of interchange between FRTs and FRTIs. *See infra* at 17.

B. Teammates at the Delivery Center share common tools with teammates throughout the production system.

There is significant overlap in tools between the petitioned-for employees and the other P&M teammates. Tools and equipment used on the flight line are used elsewhere in the facility and maintained by a central maintenance team—not by, or separately for, the FRTs and/or the FRTIs. (*See, e.g.*, Tr. 652-61). FRTIs also do not regularly use specialized tools unavailable to their other P&M teammates. The FRTIs' primary inspection tools are a mirror and a flashlight, which are similar or identical to those used by quality inspectors in other stages. (Tr. 504, 512-14). Both FRTIs and other P&M teammates—including quality inspectors throughout the production system—also use laptops to track their work. (Tr. 507-08, 514-15). The Union FRTI witness testified he used a single tool he claimed was unique (a "borescope"). (Tr. 793-94, 915). But it is undisputed that 35 of the 38 FRTIs *do not use a borescope at all*, and the Union's FRTI witness had "no idea" whether any non-FRTI P&M teammates also use it. (Tr. 793-94, 915).

C. At each stage, the work is supported and carefully coordinated with that of other stages.

The high volume of interrelated and travelled work requires extensive coordination, which is provided in the "induction meetings" held every time an airplane transitions to the flight line from Final Assembly. These meetings address the process for completing the approximately 200 average traveled jobs and coordinating the traveled work with the baseline flight line work for maximum efficiency. (Tr. 63, 65, 81). The participants in the induction meetings typically include both flight line managers and industrial engineers from both Final Assembly and the Delivery Center, and teammates and managers in Final Assembly. (Tr. 81-82, 160). Even after the transition to the flight line, there are thrice-daily meetings to discuss which jobs remain on each airplane, which teammates will complete them, and when they will be completed. (Tr. 165-

66). As with the induction meeting, both petitioned-for and excluded teammates and their managers from both Final Assembly and the flight line attend these meetings together. (Tr. 165-66).

IV. The Regional Director's Decision and the Election

After an eight-day hearing held between March 13, 2018, and March 23, 2018, the Regional Director issued a Decision and Direction of Election on May 21, 2018. He bypassed the presumptively appropriate wall-to-wall unit of all 2,700 P&M teammates and instead deemed the petitioned-for unit combining the FRTs and FRTIs to be appropriate. DDE 24-25. Skating past the absence of similarities within the mismatched unit of FRTs and FRTIs, the Regional Director found that six of the eight community-of-interest factors weighed in favor of the petitioned-for unit, and questioned whether the functional integration and interchange factors even weighed against that unit. DDE 31-33. Finally, he found that the combination of FRTs and FRTIs was not improperly "fractured" merely because it had—in his view—some rational basis. DDE 33. The Regional Director thus endorsed a gerrymandered unit composed of less than 7 percent of the relevant workforce at Boeing South Carolina, contrary to all of the Board's precedents.[4]

[4] In a footnote, the Regional Director stated that Boeing did not serve its Statement of Position on the Union "until several hours after the time for doing so." DDE 33 n.31. There is, however, no record evidence that supports this conclusion beyond Petitioner's ipse dixit objection. Boeing moved to continue the hearing if necessary to address the objection, but that offer was declined by the hearing officer because the objection was correctly overruled. (Tr. 13-14). In any event, the Regional Director is correct that this issue is irrelevant: Regardless of the Employer's position, the Board has an affirmative statutory obligation to determine whether the Petitioner has met its burden under *PCC Structurals* of establishing the appropriateness of the petitioned-for unit, which is not presumptively valid on its face. 365 NLRB No. 160, at *7 (Dec. 15, 2017). Nor does this issue affect the Board's ability to review the resulting DDE. *See* 29 C.F.R. § 102.67(c) ("Upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director."); *see also e.g.*, *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016).

On May 31, 2018, the Board conducted the secret ballot election directed by the DDE at the flight line Stall 1 and Stall 7 crew shelters. The Tally of Ballots reflected that of the 176 voters in the gerrymandered unit, sixty-five (65) voted against representation by Petitioner, while one hundred-and-four (104) voted for representation by Petitioner.

REASONS FOR GRANTING THE REQUEST FOR REVIEW

I. The Regional Director violated the first step of *PCC Structurals* by stitching together two cherry-picked groups of employees into a single fractured unit.

Under *PCC Structurals*, "step one" requires "'identify[ing] shared interests among members of the petitioned-for unit.'" 365 NLRB No. 160, at *9 (Dec. 15, 2017) (endorsing the quoted analysis from *Constellation Brands v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). That formulation echoes earlier Board precedent that describes the first step in the traditional appropriate-unit analysis: "[E]mployees in the petitioned-for unit must be readily identifiable as a group *and* the Board must find that they share a community of interest using the traditional criteria." *Bergdorf Goodman*, 361 NLRB 50, 51 (2014). A unit without that internal shared community of interest is an inappropriate, fractured unit.

The Regional Director paid lip service to the principle that "[t]he Board will not approve fractured units," *see* DDE 24 (citing *Seaboard Marine*, 327 NLRB 556 (1999)), but never put the required analysis in action. Any fair assessment of the undisputed facts compels the conclusion that the significant differences between the petitioned-for FRTs, on the one hand, and the petitioned-for FRTIs, on the other, preclude their amalgamation in a stand-alone bargaining unit.

In *Bergdorf Goodman*, the Board reversed the Regional Director and rejected an inappropriate fractured unit even though it consisted of a "readily identifiable" job classification (all women's shoes sales associates at the Employer's retail store, 361 NLRB at 51) and even though the petitioned-for employees within that classification shared some unique community-of-

interest factors. For example, the petitioned-for employees shared a unique commission structure and "the highest commission rates of any sales associates," *id.* at 51-52—roughly *twice* the rate of all other sales associates, *id.* at 50. They also had a unique shared work purpose: "they are the only employees in the store who are dedicated to selling women's shoes." *Id.* at 51. Finally, there was almost no evidence of interchange between other sales employees and the women's shoes sales employees—with only four examples in twelve years. *Id.*

Despite the significantly higher pay, distinct work responsibility, and lack of interchange, the Board held unequivocally that the unit was inappropriately fractured because it did not conform to the employer's organizational structure. Women's shoes sales associates were split among two departments: the Salon shoes employees constituted their own exclusive department, while Contemporary shoes employees were part of a different, larger department. *Id.* at 52. That departmental separation was important because even under *Specialty Healthcare*, "'the community-of-interest test focuses almost exclusively on how *the employer* has chosen to structure its workplace.'" *Id.* (quoting *Specialty Healthcare*, 357 NLRB 934, 942 n.19 (2011)) (emphasis in original). Although the Board indicated it might have found the unit appropriate "if the Salon shoes and Contemporary shoes employees shared common supervision despite being located in different departments," they had different managers at least three levels up the chain of supervision. *Id.* To boot, neither Salon nor Contemporary shoes employees "interchange[d] with each other on either a temporary or a permanent basis." *Id.*

By any fair comparison to *Bergdorf Goodman*, the unit approved by the Regional Director here is inappropriately fractured.

A. FRTs and FRTIs do not share a common department.

FRTs (like many other mechanics' classifications) are part of the Operations Department, but FRTIs (like other quality inspectors) are in the Quality Department. Operations teammates like FRTs are subject to distinct supervision from Quality teammates like FRTIs because FRTIs inspect the work of FRTs. (Tr. 117). Indeed the Regional Director *expressly recognized* that Boeing "designates the FRTs and FRTIs in two different departments." DDE 26. He then ignored that departmental separation and concluded that their common DEJ1 classification somehow unites FRTs and FRTIs by department. But there is no "DEJ1 Department," and the "Board does not favor organization by . . . classification." *See Airco, Inc.*, 273 NLRB 348, 349 (1984); *see also Bergdorf Goodman*, 361 NLRB at 52 ("[T]he community-of-interest test focuses almost exclusively on how *the employer* has chosen to structure its workplace.").

B. FRTs and FRTIs do not share common supervision.

As in *Bergdorf Goodman*, FRTs and FRTIs also lack common supervision. Unlike the FRTs who are in the Operations department and whose first-line supervisor is an operations manager, FRTIs are in the Quality department and their first-line supervisor is a field quality manager. (Tr. 103, 176). They "have different chains of command" and *do not share any common supervision*. (Tr. 860). "It is only at the highest level of management," *Bergdorf Goodman*, 361 NLRB at 52, that they have common managers: *seven levels up, at the CEO of Boeing Commercial Airplanes.* (Tr. 117).[5] That separate supervision is not coincidental, but a deliberate means to ensure independent quality checks. (Tr. 117).

[5] In *Bergdorf Goodman*, the Board held that the General Manager of two adjacent stores, three levels up from the petitioned-for employees, was insufficient common management to establish a community of interest. 361 NLRB at 52. Yet here the closest common "supervision" was at the CEO of a *national* business unit, *seven levels up*, at the CEO whose office is almost 2,000 miles from Boeing South Carolina.

C. FRTs and FRTIs have fundamentally different job functions.

FRTs and FRTIs form an even less cohesive group than the employees who *all* sold women's shoes in *Bergdorf Goodman* because, as detailed further below, *see infra* at 29-31, they perform fundamentally different jobs. FRTs perform "hands-on" mechanical production work using similar equipment and tools as other P&M mechanics in the Operations department, finalizing the manufacture of the aircraft and readying it for flight test and delivery (Tr. 859). The FRTIs, on the other hand, perform inspection work using the standard tools of quality inspectors throughout the Quality department. (Tr. 512, 859-60). As a result, there is *zero* interchange between FRTs and FRTIs—the record contains no evidence that FRTs permanently or even temporarily transfer into FRTI positions or vice versa.

D. Any incidental similarities between FRTs and FRTIs do not justify a stand-alone unit.

To the extent the Regional Director identified similarities between FRTs and FRTIs, they cannot overcome the many substantial fault lines; and, in any event, as outlined in greater detail in Part II.C, *infra*, each group also shares most of those similarities with the excluded employees as well. For example, FRTs and FRTIs are not paid so differently from other P&M teammates to merit a separate unit. The Regional Director relied on an alleged wage rate differential compared to other P&M teammates of 32 percent, ignoring that many of those teammates are paid as well or *even more* than FRTs and FRTIs. DDE 29. In *Bergdorf Goodman*, the women's shoes employees had approximately *double* the commission rate of other employees—and a different commission structure—yet they did not warrant a separate, stand-alone unit. 361 NLRB at 51-52. Likewise, the Regional Director relied on the "airframe and powerplant" ("A&P") licenses held by FRTs and FRTIs, DDE 26-27, but those licenses are also held by *175 other P&M employees Petitioner would exclude*. (ER Ex. 67). Finally, while FRTs and FRTIs are subject to random drug testing, so too

are the 27 other P&M teammates on the repair station roster Petitioner seeks to exclude. (Union Ex. 1; Tr. 907-08).[6]

Thus, *Bergdorf Goodman* should have precluded the Regional Director from finding that FRTs and FRTIs constitute an appropriate unit even at the outset of the *PCC Structurals* analysis. Indeed, *Bergdorf Goodman* shows that the petitioned-for unit would have failed even under the overruled *Specialty Healthcare* standard.

II. The Regional Director all but ignored the second step of *PCC Structurals* that requires a comparative analysis of the communities of interests of excluded and included employees.

The Board should also grant review and reverse the Decision because it butchers the required comparative analysis between excluded and included employees of *PCC Structurals*, and provides a roadmap for backsliding to the very analysis that decision emphatically rejected. In *PCC Structurals*, the Board restored the traditional community-of-interest analysis, reaffirming that it requires the Board in each case to determine whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." 365 NLRB No. 160 at *11. Notably, it rejected the misguided *Specialty Healthcare* decision which shifted a heavy burden onto the employer to show an *overwhelming* community of interest between the petitioned-for unit and excluded employees.

The Regional Director's analysis is irreconcilable with *PCC Structurals* and numerous Board decisions applying the traditional community-of-interest test as discussed throughout this Request for Review. Tellingly, the Regional Director nowhere attempted to explain how his

[6] Somehow, the Regional Director found it "unclear" whether these excluded teammates on the roster were also subject to drug testing, DDE 16 n.20, *even as the Union's own witness admitted repeatedly that they are.*

(Tr. 907-08).

Decision could be reconciled with *The Boeing Co. (Charleston AFB)*, 337 NLRB 152 (2001), which applied that test to reverse an earlier Regional Director's approval of a "flight line only" unit at a neighboring Boeing facility just across the tarmac in Charleston, South Carolina.

A proper assessment of the relevant factors shows that a wall-to-wall unit is the only appropriate unit. The Board should review the Decision to confirm that the Board precedent restored by *PCC Structurals* is a binding rule and not a suggestion.

A. The Regional Director failed to determine whether excluded employees have meaningfully distinct bargaining interests that outweigh similarities with unit members.

The Regional Director endorsed a micro-unit that constitutes less than *7 percent* of the P&M teammates at Boeing South Carolina, with barely any consideration of the commonalities between the included and excluded employees.[7] That decision reflects the improper one-sided analysis of *Specialty Healthcare*, instead of the comparative analysis required by *PCC Structurals*. Like the analysis in *Specialty Healthcare*, the Decision encourages "the proliferation of fractured bargaining units because it ignores the importance of shared interests among petitioned-for and excluded employees," and otherwise fails to consider the Section 7 rights of the employees. 365 NLRB No. 160, at *3.

The lopsided *Specialty Healthcare* inquiry that the Board overruled in *PCC Structurals* did not account for the community of interest between the petitioned-for employees and the excluded

[7] In opposition to Boeing's motion for stay, Petitioner asserted that this is not a "micro-unit" because the combination of FRTs and FRTIs is larger than the median unit approved for recent elections. Opp. to Stay 11-12. But that raw unit-size data says nothing about the *relative* size of each unit compared to the relevant facility, nor about what type of facility is involved. It is only the relative size of the unit and its relation to the employer's integrated operation—not its absolute size—that pose the dangers of proliferation of units within a workforce. On these facts, where the petitioned-for unit constitutes *less than 7 percent* of the roughly 2,700 P&M teammates in this highly integrated manufacturing workforce, finding a fragmented non-craft unit appropriate was literally unprecedented.

employees, unless the employer carried an improperly inflated burden of showing that the community of interests was "overwhelming" such that the factors overlap "almost completely." 357 NLRB at 944. By "creat[ing] a regime under which the petitioned-for unit is controlling in all but narrow and highly unusual circumstances," *Specialty Healthcare* had improperly "shifted [the burden of proof] to the employer." *PCC Structurals*, 365 NLRB No. 160, at *10. *PCC Structurals* corrected that error by requiring a determination "whether 'excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.'" *Id.* at *11 (quoting *Constellation Brands*, 842 F.3d at 794) (emphasis in original). When the Board "decide[s] in each case" what "the unit appropriate for the purposes of collective bargaining shall be," 29 U.S.C. § 159(b), the *petitioner* bears "the burden with respect to the critical part of the analysis—whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from that unit to warrant a separate bargaining unit." *PCC Structurals*, 365 NLRB No. 160, at *10-11 (emphasis in original).

Under *PCC Structurals*, the Regional Director should have required the Union to prove that the similarities within the proposed unit outweigh the similarities with excluded employees. But the Regional Director never even purported to perform the mandatory "weighing [of] both the shared and the distinct interests of petitioned-for and excluded employees," *id.* at *11, as reflected in both the Regional Director's conclusion and the fact that he never as much as bothered to quote the portion of the *PCC Structurals* test requiring him to weigh the interests of included and excluded employees. Instead, the Decision *purportedly* "focused on the interests shared among employees *within* the petitioned-for group, without examining whether those interests were distinct from the interests of excluded employees." *Id.* at *10. Other than one passing statement that the interests of excluded employees should be "consider[ed]," DDE 24, the Decision is devoid of any

meaningful analysis in this regard, let alone the required determination that the interests shared by FRTs and FRTIs outweigh the interests shared with excluded employees.

This fundamental error pervades the entire Decision, as the discussion of the community-of-interest factors below demonstrates. The Regional Director's Decision focused throughout on a limited number of similarities between FRTs and FRTIs, but it never considered the ultimate question of whether the limited shared interests that might exist among the petitioned-for employees *outweighed* the interests shared with the rest of the P&M teammates. For example, he failed to conduct the absolutely essential weighing of the fact that FRTs and FRTIs regularly transfer on a temporary basis to other stages to perform the work of other Operations or Quality teammates, respectively, against the fact that FRTs *never* temporarily transfer into FRTI positions, or vice versa. If the Regional Director never asked the right question, he could not possibly come to the right answer—and of course he did not.

B. The Regional Director completely ignored the Board's on-point decision in *Charleston AFB*, which held a unit limited to Boeing flight line employees inappropriate.

The polestar for the Regional Director's community-of-interest analysis should have been the Board's decision in *The Boeing Company*, 337 NLRB 152 (2001) ("*Charleston AFB*"). Instead, and tellingly, the Regional Director chose to ignore that on-point authority *entirely*. The *Charleston AFB* decision reversed the Regional Director and rejected a proposed micro-unit limited to flight line employees under the traditional community-of-interest test that *PCC Structurals* reinstated. If anything, the case for such a unit is substantially weaker here. Under the Decision, a single airplane manufacturer is subject to differing treatment at its facilities adjoining and on either side of *the very same airport runway*.

In *Charleston AFB*, the IAM had petitioned for a unit of employees in the "recovery and modification (RAM) group" that worked on the flight line of the Charleston Air Force Base, where Boeing maintained and repaired C-17 cargo aircraft. 337 NLRB 152, 152 (2001). The RAM group, which included mechanics, tools and parts attendants, and quality assurance employees, was "responsible for repairing, inspecting, and maintaining the engines of C-17 aircraft" *on the flight line*. *Id.* The petitioned-for unit excluded, however, two groups that worked primarily in nearby buildings: the "engine support equipment (ESE) group," which primarily maintained and repaired the support equipment used by the RAM group; and the "repair of repairables (ROR) group," which stored and delivered parts and materials needed for C-17 repairs. *Id.*

As here, the Regional Director found that the flight line-based unit of RAM employees was appropriate. Indeed, the Regional Director there focused on many of the same factors highlighted in the decision here as putative justification for a separate flight line unit: there was "significant geographic separation in day-to-day working conditions, which contributes to the infrequent contact and interchange"; the groups "work on different equipment"; the RAM group daily meetings are not attended by other groups; there were minimal transfers of other employees into the RAM group; there was variation in the groups' uniforms; the RAM group used different parking facilities; and even though all employees had access to the same dining and break facilities, there was little evidence that all the groups "in fact use these facilities in common." *Id.* at 155.

The Board reversed: "[T]he smallest appropriate unit must include *all production and maintenance employees* at the Charleston Air Force facility." *Id.* at 152 (emphasis added). Even though the RAM employees worked on different equipment, in separate areas, under separate supervision, and had minimal contact or interchange with the ESE and ROR groups, the Board found that these distinctions "are offset by the highly integrated work force, the similarity in

training and job functions . . . and the comparable terms and conditions of employment" of the excluded employees. *Id.* at 153. Because the ESE employees are responsible for the support equipment used by RAM employees, and ROR employees supply the repair kits to the RAM employees, the "servicing of the C-17 aircraft is only accomplished through the coordinated efforts of the RAM, ESE, and ROR groups." *Id.*

As further described below, the Regional Director's assessment of many of the community-of-interest factors here cannot possibly be reconciled with the *Charleston AFB* decision, for the community of interests that the Board found insufficient for a separate unit in that case is demonstrably weaker in the present case For instance, as to the supervision and separate department factors, the FRTIs and the FRTs are in different departments (with other quality and operations P&M teammates, respectively) and lack a common first (or even *sixth*) level supervisor. Whereas in *Charleston AFB*, *all* of the petitioned-for employees reported to the same direct supervisor, but had no shared front-line supervision with ESE and ROR employees. 337 NLRB at 155. The RAM supervisor had no authority over ESE and ROR employees, and the ESE and ROR employees had no authority over RAMs employees. *Id.* When this and the other community-of-interest factors are weighed together, they likewise compel a wall-to-wall unit.

C. A proper analysis of the community of interest factors reveals that only a wall-to-wall unit is appropriate, or at the very least, the petitioned-for unit is not an appropriate unit.

Under the traditional community-of-interests analysis used in *Charleston AFB* and fully restored by *PCC Structurals*, the smallest appropriate unit "must include all production and maintenance employees" at Boeing South Carolina. *Id.* at 152. That analysis considers:

> whether 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.

PCC Structurals, 365 NLRB No. 160, at *5. And of course, the unit is not appropriate unless the "excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *Id.* at *11 (emphasis in original).

Even a cursory examination of these factors should have thrown up a red flag for the Regional Director. No case, prior to the decision below, has approved a separate unit in an integrated manufacturing facility where the petitioned-for employees' core responsibility is *to complete or rework the excluded employees' work*. No case has approved a separate unit in such a facility where the petitioned-for employees *perform the same work elbow-to-elbow with excluded employees* on a daily basis. No case has approved a separate unit in such a facility where the petitioned-for employees so *frequently transfer to work with excluded employees, performing their work functions,* in other production stages. No case has approved a separate unit in such a facility where the petitioned-for employees *perform installation and testing without which the product could not be sold.*

As the discussion of each factor in the order addressed by *PCC Structurals* demonstrates below, *every single* factor individually supports the conclusion that all P&M employees share a community of interests that is stronger than any the FRTs and FRTIs share with each other. Even assuming for the sake of argument that one or two factors supported the proposed unit, the collective weighing of the factors required by *PCC Structurals* would still compel the conclusion that only a wall-to-wall unit of P&M employees is appropriate. That conclusion is compelled not just by the facts but by the law: no case applying the community-of-interest analysis has found a micro-unit on facts like this. The decision below is an unprecedented and dangerous aberration that the Board must set aside.

1. <u>Separate Departments</u>: FRTs and FRTIs share departments with their respective Operations and Quality teammates, but not with each other.

There is no "DEJ1 Department," and FRTs and FRTIs are strictly separated in two different departments. *See Airco, Inc.*, 273 NLRB 348, 349 (1984) ("The Board does not favor organization by . . . classification."). Unlike the FRTs who report upward through the Operations department and whose first-line supervisor is an operations manager, FRTIs report upward through the Quality department and their first-line supervisor is a field quality manager. (Tr. 103, 176). That FRTs and FRTIs lack common leadership and do not share a supervisor until the CEO of Boeing Commercial Airlines is by design. (Tr. 117). Operations teammates like FRTs are subject to distinct supervision from Quality teammates like FRTIs. (Tr. 117). By contrast, FRTs share the Operations department with numerous other P&M teammates, and FRTIs share the Quality department with many product acceptance specialists and other teammates. *Supra* at 16.

The Regional Director nevertheless concluded that the "separate department" factor weighed in favor of the combined petitioned-for unit. DDE 26. The only way to reach that conclusion was to ignore Boeing's departmental structure altogether. The impact of that error is magnified because the Decision concluded that this was one of the two "[p]articularly important" community-of-interest factors. DDE 24. Nothing in the decision it cited for that proposition, *Gustave Fischer, Inc.*, 256 NLRB 1069, 1069 n.5 (1981), or the decision *Gustave Fischer* cited, held that these factors are "particularly" important or weightier than the others. *See International Paper Co.*, 96 NLRB 295, 298 n.7 (1951) (finding it "obvious" that "the administrative set-up of the employer" is "an important consideration"). But to the extent that the Regional Director asserted it *is* a more important factor, the separation of the FRTs and FRTIs into completely separate departments, and their respective inclusion in those departments with groups of excluded employees, weigh overwhelmingly against their fractured isolation by the Regional Director here.

2. <u>Distinct Skills and Training</u>: The skills and training of FRTs and FRTIs overlap with the rest of the production team.

The skills and training that FRTs and FRTIs share with their fellow P&M teammates establish a strong community of interest. Because the FRTs' baseline work in the Delivery Center "is almost identical to the work that occurs in Final Assembly," it uses "the same skill set." (Tr. 87-88). Thus, the training required of FRTs, FRTIs, and other P&M teammates overlaps almost completely. All new Boeing South Carolina teammates—petitioned-for and excluded—receive the same orientation. (Tr. 728-29; ER Ex. 13). All new production employees, including FRTs and FRTIs, attend the same 12 weeks of baseline training, commingled in these training sessions with the excluded employees. DDE 7-8. In fact, Union FRTI witness Chris Jones testified that he has training sessions in the Final Assembly building that last days or even weeks. (Tr. 873). Just like the excluded teammates who take a few additional training courses specific to their particular roles (Tr. 219-20), FRTs and FRTIs also have an additional one or two weeks of additional separate training. DDE 7-8. Yet the Regional Director improperly elevated to a determining factor the additional "one or two weeks" of separate training over the *twelve weeks* of *identical* training taken in the *same* classrooms with the excluded employees.[8]

For travelled work and rework, FRTs necessarily share a similar skill set with their P&M teammates from Final Assembly because they often do the same work, side-by-side. There is also significant overlap in the certifications held by the petitioned-for FRTs and the other P&M teammates. (Tr. 219-21).

[8] The Regional Director also noted that FRTs and FRTIs received several months of additional training when the facility opened, DDE 7, but ignored that that training was driven by the absence of aircraft at the flight line *eight years ago*—because the facility *had just opened*. (Tr. 882-83).

Likewise, the skills that FRTIs utilize to perform their daily work are substantially similar to those of their fellow quality inspector teammates, the product acceptance specialists. (Tr. 504, 506-07). Jones admitted that much of the work at the Delivery Center is also performed by other teammates elsewhere in the facility, such as strut installation and checks, actuator checks, debris checks, and flight control checks. (Tr. 865-66, 869). He also uses the Velocity task-tracking system in the same manner in Final Assembly as at the Delivery Center. (Tr. 886).[9]

The skills shared by FRTs, FRTIs, and their respective counterparts in the Operations and Quality departments naturally result from shared ongoing training requirements. After the initial P&M training at Boeing South Carolina, common to all P&M teammates (Tr. 219), FRTIs receive additional quality training along with all of the other quality inspector teammates who work at Boeing South Carolina, often inside the Final Assembly building. (Tr. 287, 873).

FRTs and FRTIs also follow nearly identical safety protocols as their P&M teammates. (ER Exs. 21, 61). Teammates on the flight line use many important tools and equipment also used in other parts of the production system.[10] (Tr. 652-61). Because aircraft are powered and taxi in the flight line area, there are additional training requirements for anyone who enters that area. But that training is not limited to FRTs and FRTIs. It applies to other P&M teammates stationed at the Delivery Center, other P&M teammates stationed in other production stages, contractors, and even administrators and visitors who walk across the flight line. (Tr. 673-74, 847, 887).

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[9] The Velocity system tracks the progress of each manufacturing task performed by each P&M teammate during the integrated production process. The petitioned-for teammates and all the excluded teammates alike enter information about their progress into the system via computer. (Tr. 183-86; 886; 980-81).

[10] The Regional Director found borescope use to be "a typical task" for an FRTI. DDE 12. That was clear error because it is undisputed that only *three* of the petitioned-for FRTIs can even use a borescope, and there is no evidence that other P&M teammates cannot. *See supra* at 12.

The Regional Director relied in error on the A&P license held by FRTs and FRTIs to divide them from other P&M teammates. FRTs and FRTIs are required by Boeing to have the A&P certification, DDE 26-27, but there are roughly as many A&P-licensed teammates in other P&M classifications as within the petitioned-for unit. (ER Ex. 67; *see also* Union Br. 7 n.6). One hundred seventy-five (175) other P&M teammates have the A&P license, including 112 assemblers, the most common classification at the facility. (*Id.*; ER Ex. 11). Many painters and facilities plant maintenance teammates also hold the license. (ER Ex. 67). That is analogous to *Charleston AFB*, where the RAM and ESE employees had the same certifications, but not the ROR employees. 337 NLRB at 153; *see also Cessna Aircraft Co.*, Case 17-RC-12276, 2004 NLRB Reg. Dir. Dec. LEXIS 362, at *4-5 (July 1, 2004) ((A&P licensure did not justify severing employees responsible for "repair of aircraft declared to be airworthy" from IAM-represented P&M unit, noting 50 employees outside the sought unit also had the A&P license); *L-3 Commc'ns Integrated Systems, L.P.*, Case 15-RC-8752, 2008 NLRB Reg. Dir. Dec. LEXIS 223, at *74 (Sept. 17, 2008) (finding an Air Force base-wide unit of mechanics appropriate, even though an A&P license was preferred or required for mechanics assigned to one specific project, because "a mechanic not assigned to [that] project may also possess an A&P license" and the mechanics on that project "work in close geographic proximity with other employees").[11]

[11] Petitioner speculated below that some of the many licenses held by other P&M teammates may not be active. (Union Br. 7 n.6). But one does not lose an A&P license once certified, and the right to exercise one's privileges under the license merely requires certification from an administrator within the last two years that the mechanic "is able to do [the relevant] work," 14 C.F.R. § 65.83(a), *or*, alternatively, six months of relevant experience within the last two years, § 65.83(b). Petitioner's own witness testified that after he left the aerospace industry for several years, he was able to perform maintenance under his A&P license again—without taking any additional coursework or exams—merely by "being around the contractors performing the maintenance and stuff" for six months. (Tr. 854-57).

Moreover, the license is not a legally required credential for any job performed by the Delivery Center under FAA regulations. Apparently acknowledging the lack of necessity for this license, Boeing and the Union agreed in 2013 that the A&P license would no longer be required for any employees in Boeing's Puget Sound production facilities (Tr. 86, 91)—not even for the aviation maintenance technicians (AMTs) or aviation mechanic technician inspectors (AMTIs) who are equivalent to the FRTs and FRTIs, respectively, at Boeing's South Carolina facility. (Tr. 91, 269, 926). Although it is not necessary for all FRTs and FRTIs to have A&P licenses, it is consistent with Boeing South Carolina's desire to remain flexible and avoid slowing production to find a specific individual to perform the minute portion of work in repair station status, because it is one of three ways in which an individual can be certified to perform repair station work. (Tr. 86-87). Repairman's certificates (such as those held by NDT quality test specialists) also permit the employee to perform those post-ticketing tasks at a certain facility. (14 C.F.R. § 65.103; Tr. 85). Even employees *who hold no FAA certificate at all* can perform post-ticketing tasks under proper supervision after demonstrating the required skills. (14 C.F.R § 145.153(a); Tr. 85). The ability to work on the airplanes in post-ticket, "repair station" status is—like most other aspects of the job—not unique to either FRTs or FRTIs.

3. <u>Distinct Job Functions and Work</u>: The job functions and work of FRTs and FRTIs overlap significantly with that of their respective teammates in the Operations and Quality departments.

FRTs and FRTIs do much of the same work as their respective excluded P&M teammates, and often on *identical* equipment. *See Charleston AFB*, 337 NLRB at 153 ("ESE and RAM employees do the same type of work, albeit usually on different types of equipment."). In fact, the majority of the Delivery Center's baseline work repeats mechanical work and testing performed

at earlier stages of the production process as a "final check" that the airplane is ready for delivery. (Tr. 60-61).

Just like their P&M teammates in Final Assembly, FRTs check components including hydraulics, struts, actuators, and control surfaces such as flaps and rudders. (Tr. 88, 864-67; Union Br. 9 (acknowledging that "individual components may have been tested in the factory when first installed")). Those tests are mostly "redundant checks" that had "already been done in Final Assembly." (Tr. 144). In addition, FRTs perform the same sort of "hands-on" mechanical production as their Operations department teammates. (Tr. 859). The Union FRT witness testified, for example, that two weeks before the hearing, five FRTs spent days replacing wiring throughout the cargo bay (Tr. 964)—work regularly performed by wiring teams of excluded assemblers in Mid-body (Tr. 965) or repaired in Final Assembly (Tr. 980).

FRTIs primarily visually inspect work performed on the aircraft, just like product acceptance specialists, the quality inspection teammates stationed in Aft-body, Mid-body, and Final Assembly. (Tr. 504, 506-07; *see also* Tr. 518-19 & ER Ex. 47 (describing the work of product acceptance specialists)). When an FRT, assembler or other P&M teammate on the operations team throughout the production system has completed a task, they place a "call" on the Velocity system "call board." (Tr. 507-08). Quality inspectors throughout the facility—including FRTIs—monitor the call board and answer calls by performing the necessary inspection. (Tr. 508). If appropriate, the quality inspector issues a "stamp" that the product meets the requisite standards. (*Id.*). And the Union FRTI witness testified he could not tell the difference between the mechanical work performed by petitioned-for or excluded employees—he could not distinguish flight line SOIs and Final Assembly SOIs—by looking at the order. (Tr. 921; *see also*

Tr. 920 ("I have no idea what job is final assembly or what is—what is what. I answer a job and work it and sign it off.")).

In addition, FRTs and FRTIs address the same "non-conformances" (or "NCs") as other P&M teammates, since NCs can occur—and may be reworked—at any stage of the process. (Tr. 917-18). And FRTs and FRTIs address "squawks," which are just NCs or "discrepancies" that happen to be identified during flight tests, rather than at earlier stages. (Tr. 153-54, 515, 817, 826). Regardless of when a discrepancy, "squawk" or even a customer issue is discovered in the production system, it is *resolved by the same exact same process* using whichever P&M teammates are best suited and available. (Tr. 515-518, 817, 845).

The extensive interchange between FRTs and other Operations teammates, and between FRTIs and other Quality teammates, illustrates the overlap in their respective job functions. FRTs and FRTIs spend substantial amounts of time completing travelled work from other stages and tracking the progress of these tasks on the same Velocity tracking system that follows each aircraft throughout the production process. *See supra* at 27 n.9. On top of that, the FRTs spend significant additional time reworking—and FRTIs inspecting—the very tasks initially completed in other stages. Even by Petitioner's own stingy calculation, *five percent* of all FRT time in 2017, or over 16,000 hours, was spent on rework (Union Ex. 25; Union Br. 29). And without additional training, both FRTs and FRTIs temporarily transfer throughout the facility to assist on work that is behind schedule (Tr. 69-70, 228), which is only possible due to the similarity of job functions on the flight line and elsewhere. That interchange powerfully illustrates that FRTs and FRTIs perform much work that is *identical* to that in other stages.

4. <u>Functional Integration</u>: FRTs and FRTIs are functionally integrated with the entire P&M team for the shared purpose of building the Dreamliner.

Functional integration exists where employees participate in the same "production work flow" of a facility and where their work "has a shared purpose." *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017-18 (2011), *enf. denied on other grounds sub nom. NLRB v. Enterprise Leasing Co. Southeast LLC*, 722 F.3d 609 (4th Cir. 2013); *see also Phoenix Resort Corp.*, 308 NLRB 826, 827 (1992) (finding functional integration even without any interchange because the petitioned-for and excluded employees "work together on common projects on a regular basis"). For instance, *Charleston AFB* relied heavily on the fact that the excluded employees' work "is highly integrated with that of the RAM employees" and "the Employer's servicing of the C-17 aircraft is only accomplished through the coordinated efforts of the RAM, ESE, and ROR groups." 337 NLRB at 153; *see also Seaboard Marine, Ltd.*, 327 NLRB 556, 556 (1999) (finding the petitioned-for unit inappropriate where "there is a high degree of functional integration in [the Employer's] operations and . . . the work performed by these employees is directly related to and integrated with the work of the majority, if not all, of the Employer's remaining employees").

The Regional Director said only that this factor "arguably" weighed in favor of a wall-to-wall unit, DDE 31, when he should have found from the extensive overlap in work at Boeing South Carolina that the petitioned-for unit was singularly inappropriate and that a wall-to-wall unit is the only appropriate unit. Extensive coordination is necessary to achieve that integration between production stages, such as the induction meeting every time a plane enters the flight line and the multiple daily coordination meetings between P&M managers from all stages of the production system. *See supra* at 12-13; *see also Threads-Incorporated*, 191 NLRB 667, 668 (1971) ("the

careful scheduling which is required to keep all departments operating on a continuous basis" demonstrates integration).

There is a seamless continuation from initial work in Aft-body all the way through the nearby Delivery Center, (Tr. 53-54; ER Ex. 3(b)), with teammates moving between the various locations to ensure the job gets done, particularly through the process of travelled work. *See Exemplar, Inc.*, 363 NLRB No. 157, at *4 (2016) (noting that relevant considerations for functional integration are whether employees perform on the same contract, work in different locations, and can be temporarily assigned to other positions). All of those teammates use the same Velocity tracking system to monitor their progress, creating a build record that flows with the aircraft throughout the production process and is eventually delivered to the customer along with the aircraft. And managers from various stages of the process attend meetings at least three times daily to coordinate the work that is shared among those stages, including one manager who reports to Final Assembly but is permanently stationed on the flight line to supervise the high volume of travelled work. (Tr. 254). By contrast, the work of FRTs and FRTIs is intentionally divided to preserve the strictures of quality control.

5. <u>Frequent Contact</u>: FRTs and FRTIs have frequent contact with the rest of the production team.

FRTs and FRTIs have daily, close and recurring contact with their fellow P&M teammates. The Regional Director's analysis inexplicably discounted the constant contact with the excluded employees also stationed at the Delivery Center, such as the fabrication specialists on the cabin systems teams. The extensive travelled work—and the traveling teammates who often perform it with each other—across the facility, and including the flight line, also necessitates frequent contact. Yet the Regional Director utterly ignored that FRTs and FRTIs work side-by-side with their traveling teammates *on a daily basis*.

There are typically *two hundred or more* travelled jobs—in some cases *four hundred fifty or more*—that must also be completed in the Delivery Center stage. (Tr. 65, 67, 194). These travelled jobs are completed by a team of Delivery Center personnel and teammates from earlier stages of production who physically "travel" to the flight line to assist in their completion, including a permanently stationed "travel team" of excluded employees. (Tr. 98-99).[12] And the FRTs and FRTIs work side-by-side with their fellow P&M teammates during their frequent temporary assignments to other stages of the production process. *See infra* at 38-40.

The close physical proximity of the petitioned-for employees to their excluded teammates—the Delivery Center is roughly 1,800 feet from the Aft-body building where the production process begins—also facilitates frequent contact. (ER Ex. 3(b)). FRTs and other P&M teammates work across roughly the same three shifts, which are staggered to prevent traffic jams, and share overlapping break and lunch times. (Tr. 323, 410; ER Ex. 8). And during these shared breaks, they share break areas in the flight line stalls with P&M teammates from Final Assembly and other stages who are working on travelled work, as well as the large, centrally located café known as the "Hub" with other P&M teammates from throughout the site. (Tr. 127-29, 215, 755-56, 914; *see also Charleston AFB*, 337 NLRB at 153 (RAM, ESE, and ROR employees "share a common lunch area")). Union FRTI witness Chris Jones admitted to eating in the Hub for weeks at a time with other P&M teammates. (Tr. 873-75).

In addition, FRTs and FRTIs use the same Boeing services and amenities as all the other P&M teammates—such as the Boeing health services building (Tr. 216; Tr. 366), and credit union

[12] The Regional Director erroneously assumed that on the flight line, travelled work is completed only by FRTs or "a group of 10 MTs (mechanic technicians) from the factory who are dedicated to completing this traveled work on the Flight Line on a regular basis." DDE 13. It is undisputed that there are far more teammates who travel to the flight line to complete travelled work beyond the permanent travel team. (Tr. 62-63, 99-100, 129, 155).

and ATM (Tr. 388). FRTs and FRTIs also participate in all-team meetings and all-team celebrations when a 787 is delivered (Tr. 216-17, 760, 922-23). FRTs and FRTIs participate with all other P&M teammates in Boeing South Carolina's business resource groups like the Boeing Employees' Veterans Association (Tr. 376-77; ER Ex. 43). And FRTs and FRTIs celebrate special events—like Family Day, teammate appreciation days, and Presidential visits—with their fellow P&M teammates. (Tr. 372-73, 378, 385-86, 900; ER Exs. 41, 43, 44).

While acknowledging that the fabrication systems specialists participate in daily meetings with FRTs and FRTIs, share common supervision, and have frequent contact with them, the Regional Director failed to assess the impact of these commonalities in his weighing of any of the community of interest factors. DDE 6-7, 12, 14, 19, 29, 31. Instead, he relegated a discussion of this issue to a dismissive footnote in the conclusion of his decision. DDE 33 n.30.

6. <u>Interchange</u>: There is far more interchange between petitioned-for and excluded teammates than found dispositive in numerous earlier Board decisions.

The Board's decisions recognize that even a moderate level of temporary interchange is a powerful sign that the boundary between the petitioned-for and excluded teammates is too fluid to warrant a separate bargaining unit. *See, e.g.*, *Casino Aztar*, 349 NLRB 603, 605 (2007) (rejecting a narrower unit because the petitioned-for employees' 10 average hours of annual interchange showed "significant functional integration and temporary interchange"); *Colorado Interstate Gas Co.*, 202 NLRB 847, 848-49 (1973) (rejecting a narrower unit due to "substantial temporary interchange" where employees spent "3.7 percent of their total working time" outside of their district over the last 2.5 years, and 6 percent over the last six months). For instance, in the *Charleston AFB* decision, the Board found a wall-to-wall unit necessary—despite RAM employees "never temporarily transfer[ring]" and permanently transferring only "on occasion"—

where the ESE employees sometimes repaired engines in their building when it could not be repaired by RAM employees on the flight line. 337 NLRB at 153. Here, although the Regional Director proclaimed this factor "at most neutral," DDE 32, there is undisputed evidence of interchange that far exceeds what the Board has found significant in prior cases.

a. Travelled work, originally assigned to excluded employees, is a core responsibility of FRTs and FRTIs.

The Union admitted that the "core" work of FRTs and FRTIs includes "complet[ing] or correct[ing] work not reached or mishandled by production employees" in earlier stages. (Union Br. 32). In fact, the Union's FRTI witness testified that "first" among his responsibilities on the flight line is travelled work. (Tr. 792). There are typically two hundred or more of these "travelled" jobs—in some cases *four hundred fifty or more*—that must be completed in the Delivery Center stage. (Tr. 65, 67, 194). This dwarfs the 100 or so jobs that are considered baseline Delivery Center work. (Tr. 807-08, 821). These travelled jobs are completed by a combination of Delivery Center personnel and teammates from earlier stages of production who physically "travel" to the flight line. (Tr. 98-99). Allowing those jobs to "travel" is essential for this highly integrated system to "continually flow." (Tr. 80).[13]

It is undisputed that FRTs spend collectively many thousands of hours annually on work assigned to other stages of the integrated manufacturing process. The largest source of travelled work for FRTs is the interior, which is completed by FRTs, fabrication specialists on the cabin systems team, or other P&M teammates from the IRC or Final Assembly, depending on their relative availability. (Tr. 154-55, 173-74, 177-78, 819-22). Most often, the interior work is

[13] Travelled work is performed throughout the integrated production system, and is not unique to FRTs, FRTIs, or the other P&M teammates working on the flight line. For example, P&M teammates in Final Assembly perform work that has travelled throughout and from Aft-body and Mid-body. (Tr. 66).

completed by FRTs and Final Assembly P&M teammates working side-by-side. (Tr. 125-26, 173-74, 178-79). Travelled work on the flight line is often performed simultaneously with baseline Delivery Center work. (Tr. 295-96). The high volume of travelled work requires a dedicated travelled-work supervisor who reports to Final Assembly but is permanently stationed in the Delivery Center area. (Tr. 254). She and the FRT managers alike give instructions to FRTs and other P&M teammates doing travelled work. (Tr. 175). There are generally not separate supervisors on the same plane for FRTs versus other P&M teammates. (Tr. 175).

The Union's own exhibit shows that in 2017, FRTs spent nearly 30,000 hours on travelled work or "CC3." (Union Ex. 25). That averages over *200 hours per FRT*. Even by the Union's reckoning, travelled work that was originally scheduled to be done by FRTs' P&M counterparts in earlier stages amounted to *9 percent* of FRT time. (Union Br. 29). That does not even account for rework or "CC4" that, like travelled work, involves tasks that were meant to be fully accomplished in other stages. Such rework accounts for another *16,000 hours*. (Union Ex. 25).[14]

Just as FRTs share responsibility for completing travelled work with operations P&M teammates from other stages, FRTIs share responsibility with quality P&M teammates from other stages for inspecting travelled work and other work originally assigned to other stages. In fact, the Union admits that *27 percent* of the inspections that FRTIs performed in the fourteen months ending on March 1, 2018, were for work assigned to earlier stages of the production

[14] The true proportion of non-Delivery Center work is even higher than the Regional Director found. DDE 28 n.26. Counting the working time for rework from other stages but excluding non-working labor loss time, FRTs spent *45,787 hours, or 26 percent of their working time*, doing work that was originally scheduled to be done by their production counterparts in earlier stages of the manufacturing process. (ER Ex. 48). In a virtual confession of error, the Regional Director candidly admitted that this larger percentage of interchange would not change his ruling anyway. DDE 28 n.26. Indeed, even the stingy interchange calculation that was adopted by the Regional Director far exceeds that in any Board decision approving a fragmented unit, let alone in an integrated manufacturing workforce.

process. (Union Ex. 12). But the Union's calculation arbitrarily excluded the four FRTIs with the *most* non-Delivery Center stamps. (Union Br. 31-32). When they are properly included, *nearly half* of the FRTI stamps were for work originally assigned outside the Delivery Center. (ER Ex. 52).[15] Either number goes far beyond any case in which the Board has approved a micro-unit.

There is at least one quality inspector from Final Assembly (a product acceptance specialist) on the flight line on a daily basis, in the same stalls as other flight line teammates. (Tr. 507, 510). Those product acceptance specialists combine with FRTIs to "answer calls" to inspect completed travelled work; FRTIs answer travelled calls on a daily basis. (Tr. 507-08). The product acceptance specialists can likewise inspect baseline flight line work as long as they have the Boeing certification required for that specific task. (Tr. 511-12).

b. FRTs and FRTIs temporarily and permanently relocate and transfer to other stages of the production system.

In addition to performing other stages' baseline work mixed in with their own at the Delivery Center, FRTs and FRTIs frequently relocate on a temporary basis to those stages *exclusively* to perform that other baseline work *there*. (*See* Union Br. 12). For six months during 2017, for example, there was not enough baseline Delivery Center work for all of the FRTs. (Tr. 69). To avoid layoffs (Tr. 73), over 20 FRTs were involuntarily transferred into Mid-body and other buildings for some or all of that period (Tr. 69-70, 93, 389, 464-66; ER Ex. 12; Union Br.

[15] The Regional Director asserted without explanation that he found the Union's portrayal of the FRTIs' non-Delivery Center work "more persuasive." DDE 28 n.26. That was clearly erroneous because there is no basis in the record to justify the Union's arbitrary exclusion of FRTIs whose statistics are unfavorable for the Union. The Union argued that one FRTI may have had elevated non-Delivery Center stamps because he was temporarily stationed in Final Assembly—which hardly justifies kicking him out of the FRTI statistics. (Union Br. 31 & n.17). But the Union excluded three *other FRTIs* simply because they "account for similarly large numbers of sign-offs of [F]inal [A]ssembly work." (Union Br. 31-32). There is no evidence justifying the exclusion of any of those FRTIs—let alone the latter three. In any event, even the remaining FRTIs perform *over a quarter* of their inspections on non-Delivery Center tasks. (Union. Ex. 12).

13-14 & n.9). There, the FRTs performed baseline tasks to the same instructions and under the same supervision as the other P&M teammates in those buildings. (Tr. 69-70). The FRTs were generally moved to Mid-body and other buildings "without any additional training." (Union Br. 14 n.9; *see also* Tr. 228).

As another example, the Union's sole FRT witness testified that he was temporarily assigned to Mid-body for two to four weeks on a wire repair team a few years ago, along with five or six other FRTs, because the Mid-body production was "behind schedule." (Tr. 965). Likewise, he testified that just a few months before this Petition was filed, he was sent to the Aft-body building for ten days at the end of 2017. (Tr. 967-68). The reason for that transfer was that jobs in Aft-body were "behind schedule." (Tr. 967). There, consistent with the Aft-body baseline statement of work, he drilled, shimmed and installed aluminum frames in aft sections of the 787 (Tr. 967-68, 980), just like his P&M teammates in Aft-body. (Tr. 980).

In addition, both FRTs and FRTIs were temporarily transferred to other stages to assist with the new 787-10 model ("Dash 10"). (Tr. 73-74, 532-33). During that time, FRTs partnered with P&M teammates in Final Assembly and Mid-body to install wiring and other equipment for the flight test program. (Tr. 74, 112-13; ER Ex. 69 (work histories for assemblers who participated in the program)). After the flight testing, FRTs again worked in concert with P&M teammates in Final Assembly and Mid-body to strip out the flight test equipment and configure the aircraft for customer delivery. (Tr. 77-78).

FRTIs also temporarily transfer to other stages to inspect work belonging to those stages. The quality manager who oversees the front-line managers of the FRTIs testified that FRTIs have in the past been loaned to Final Assembly to inspect Final Assembly work. (Tr. 508-09). The Union's sole FRTI witness testified that he was among the "numerous" FRTIs who have

"rotat[ed]" through and actually performed inspection work in the Final Assembly building. (Tr. 812). He testified that *at least eight other FRTIs*—a quarter of them—*have spent 30 days or more* on rotations there in the past year—including one who had worked in Final Assembly for an entire year. (Tr. 813-14, 886, 911-12). While there, the FRTIs performed the same work as the other Quality teammates. (Tr. 913).

FRTs and FRTIs also permanently transfer to other positions. Since December 2016, at least three FRTs or FRTIs transferred away from the flight line to another stage of the production system. (ER Ex. 12 at 11407, 11418, 11446). The Board has never approved a micro-unit where there is such extensive interchange in the form of permanent transfers, frequent and prolonged temporary transfers, and daily travelled work.

7. <u>Distinct Terms and Conditions of Employment</u>: The terms and conditions of employment are largely identical for FRTs, FRTIs, and the excluded P&M teammates.

The Board reviews wages, hours, and other working conditions to evaluate whether there are unique wages, benefits or working conditions within the proposed unit such that the unit is distinct and identifiable based on these factors. Here, the terms and conditions of employment also command a wall-to-wall unit. All P&M teammates have the same compensation structure. They also share the same employee benefits and recognition programs, and are subject to the same safety, ethics, security, and other policies. These common terms and conditions confirm that the interests of the petitioned-for employees are not meaningfully distinct from the interests of other teammates along the Dreamliner manufacturing line.

First, FRTs and FRTIs have the same compensation and benefits structure as other P&M teammates. They are all paid on an hourly basis and on the same bi-weekly payroll cycle. (Tr. 128, 338). FRTs and FRTIs work one of three standard eight- or seven-hour shifts along with most

other P&M teammates, (ER Ex. 8). And FRTs and FRTIs share the same performance-based incentive bonus program as other P&M teammates. (Tr. 386).

Although their average wage rates are somewhat higher than some of the average rates of other P&M classifications (ER Ex. 64), FRTs and FRTIs are not even the highest-paid among the P&M teammates. The Regional Director's "weighted average" obscures the significant overlap in wages between the petitioned-for employees and their P&M teammates:

- As the Union admits, "[t]here are three job classifications"—facilities plant maintenance specialist Level D and NDT quality test specialist Levels 4 and 5—"with higher average wages than the FRTs and FRTIs." (Union Br. 15; ER Ex. 65).
- There are 7 NDT quality test specialists, 2 facilities plant maintenance specialists and even 2 assemblers paid more than the highest paid FRTs or FRTIs. (ER Ex. 64).
- 58 percent (47 of 81) of the facilities plant maintenance specialists are paid within or above the range of pay of the FRTs & FRTIs. (ER Ex. 64).
- 27 percent (20 of 73) of the tool and fixture specialists are paid within the range of pay of the FRTs & FRTIs. (ER Ex. 64).
- 39 assemblers (out of 1259) are paid within *or above* the range of pay of FRTs and FRTIs. (ER Ex. 64).

That FRTs and FRTIs' wages are on average higher does not establish a separate community of interest given that substantial overlap with their P&M teammates. *See Wal-Mart Stores, Inc.*, 328 NLRB 904, 908 (1999) (holding a separate unit for meatcutters inappropriate where "[o]n average, meatcutters' rates of pay are higher than those of employees in other departments, but in the same range as some other highly paid employees scattered throughout the store"). In *United Rentals, Inc.*, 341 NLRB 540 (2004), the Board found the petitioned-for unit of mechanics, yard employees, and drivers inappropriately excluded counter employees, parts associates, and other members of the wall-to-wall unit. The Board focused on the fact that the petitioned-for employees had wage ranges that were comparable to some of the *better-paid* excluded employees: "The wages of the

excluded counter employees [$16-17.50] is comparable to the wages of drivers [$15-17] and most mechanics [$15-16.50]." *Id.* at 541. It did not change the analysis that some excluded employees were paid far less—$11 to $13.65. *Id.* The Regional Director's improper weighted average calculation thus obscured the more important fact that the Board has repeatedly relied on: the wages of FRTs and FRTIs are in the same range as—or even *lower than*—other groups of P&M teammates.[16]

Compensation increases are determined using the same performance management and production and maintenance salary review processes for all P&M teammates. (Tr. 338-41; ER Ex. 15). Historically, FRTs and FRTIs have received the same annual across-the-board raises as all P&M teammates. (Tr. 461). In December 2016, after a review of local market conditions, some FRTs and FRTIs received a raise, but others did not. (Tr. 339-40; *see also* DDE 16). The Regional Director gave significant weight to the purported pay differential between FRTs and FRTIs and the average excluded P&M teammate, but this was obviously no obstacle to the Union arguing there was a community of interest among FRTs, FRTIs, and the rest of the P&M teammates in 2015 and 2017. And even after the one-time 2016 market adjustment to many (*but not all*) FRT and FRTI salaries (Tr. 339-40), FRT and FRTI wages are "in the same range" as assemblers, and

[16] Even the primary case Petitioner relies on, *United Operations, Inc.*, 338 NLRB 123 (2002), did not use the Regional Director's artificially narrow comparison of the average wage inside and outside the petitioned-for unit. Instead, the Board separately compared the average wage of the petitioned-for HVAC technicians ($19.78 per hour) to that of the excluded policers ($14.69) and building serve employees ($15.83). *Id.* at 125 & n.2. Unlike *United Operations*, where the average HVAC technician wage was *at least 25 percent greater* than *every group of excluded employees*, there are multiple groups of excluded P&M teammates whose average wages are higher than FRTs and FRTIs. In any event, a divided Board approved the petitioned-for unit of HVAC technicians in *United Operations* based on considerations that are evidently non-existent here, including notably "the lack of any evidence of interchange, shared skills, crosstraining, contact, or functional integration, [and] the minuscule amount of job overlap." *Id.* at 125.

even *less* on average than the NDT quality test specialists and facilities plant maintenance specialists referenced above. *Wal-Mart*, 328 NLRB at 908.

FRTs and FRTIs also share the same employment guidelines, benefits, and recognition programs as other teammates. The same policies for attendance, shift preference, overtime, and paid and unpaid leave apply to FRTs and FRTIs, on the same terms as other P&M teammates. (Tr. 324-25, 337-38, 342-43, 353-55; ER Exs. 9, 14, 16, 17, 25-26). All P&M teammates record their time worked, vacation, sick leave, and other time accounting in the same system, called ETS (Employee Timekeeping System). (Tr. 337-78; ER Ex. 14). And all P&M teammates share the same benefits including health, dental, vision, life, and disability insurance plans (Tr. 355-61; ER Exs. 27-31, 33).

The Decision states that the petitioned-for unit may be "distinguished" because first-line supervisors exercise discretion over FRTs and FRTIs as to overtime, leave, and discipline. But the evidence cited by Petitioner shows that that power is common to first-line supervisors generally, not just FRT and FRTI supervisors. (Union Br. 14 (citing Tr. 422, 424, 443, 445)). And there is no evidence in the record that this discretion is exercised differently by the first-line supervisors of FRTs and FRTIs than by other supervisors. Put simply, even if front-line supervisory discretion were pertinent to the analysis, that fact is *common* among all P&M employees as the required comparative analysis would have disclosed.

Ultimately, even assuming for the sake of argument that the weighted-average pay differential could be deemed to support of the petitioned-for unit—which it plainly does not under the Board's precedent—this factor would be overwhelmingly outweighed by the other factors that counsel in favor of a wall-to-wall unit.

8. <u>Separate Supervision</u>: FRTs and FRTIs have overlapping supervision with their respective Operations and Quality teammates, but not with each other.

Perhaps one of the best examples of the Regional Director's upside-down analytical process is his shocking conclusion that this factor *supported* the petitioned-for unit: The petitioned-for employees here actually have much stronger supervisory ties to the excluded employees than to each other. The petitioned-for FRTs and the FRTIs do not even share common front-line or immediate supervision among themselves. *Supra* at 16. That absence of common supervision, alone, "weigh[s] against the appropriateness of a separate [FRT and FRTI] unit." *Buckhorn Inc.*, 343 NLRB 201, 203 (2004). By contrast, FRTs *do* share common supervision with their P&M teammates. FRT supervisors also supervise fabrication specialists. (Tr. 125, 160; Union Ex. 2 at 321-22). And FRTs share supervision on travelled work in the flight line, baseline work for other stages when FRTs are temporarily transferred, and even while performing "repair station" work. (Tr. 70, 160, 254, 965-66).

FRTIs and other quality inspectors travelling to the flight line were directly supervised by field quality managers, until a few months ago. (Tr. 510-11). Even now, the field quality managers who supervise FRTIs are located in the same stalls as those travelling quality inspectors. (Tr. 510). Those field quality managers accordingly give instructions to those other quality inspectors while they are on the flight line. (Tr. 510-11; *cf. Charleston AFB*, 337 NLRB at 155 ("[T]he supervisor of the [RAM] Team has no authority over the ESE or ROR employees.")).

* * *

In summary, not one of the traditional community-of-interest factors supports the decision below: the teammates in the petitioned-for unit are an interdependent part of a highly integrated manufacturing process; there is frequent interchange as the petitioned-for teammates perform

travelled work and rework, and temporarily transfer to other areas; the petitioned-for teammates are strictly separated from each other in different departments with no common supervision; their skills, training, and job functions overlap extensively with those of other P&M teammates; they share the same important terms and conditions of employment with those teammates; and they are in frequent contact with their teammates as part of one integrated, co-located team. Even if one or two of these factors did support the petitioned-for unit—which they do not—the overwhelming interests that FRTs and FRTIs share with their fellow P&M teammates in this highly integrated manufacturing facility would still dominate any other concerns. And those interests shared with the other P&M teammates are particularly dominant when compared—as *PCC Structurals* requires—to the minimal interests that FRTs and FRTIs share with each other. There is simply no support for this micro-unit in any remotely similar Board precedent.

III. The Decision ignores the Board's precedent that reflects the integrated nature of the manufacturing process.

The Regional Director's cursory analysis would accommodate nearly any micro-unit in an integrated manufacturing workplace. The Board has consistently held that a presumption exists that a plant-wide unit is appropriate. *See PCC Structurals*, 365 NLRB No. 160, at *9 n.44 ("[T]he Board will continue to apply existing principles regarding bargaining units that the Board deems presumptively appropriate."). This presumption recognizes that when all employees are working toward the common goal of producing a finished product, certain groups should not be artificially segregated from their co-workers simply because they may focus on one step of the unitary production process. *See, e.g.*, *Clinton Corn Processing Co.*, 251 NLRB 954, 955 (1980) (finding only a wall-to-wall unit appropriate due to the "highly integrated production process" in which "if any one of [its] functions becomes inoperable, 'The process must stop; goes down'").

Here, the Regional Director relied on a largely ephemeral distinction between the last steps of the manufacturing process and all the preceding steps, holding that the completion and final testing of the 787 Dreamliner on the flight line is meaningfully different from work at all other stages in the production process. *See* DDE 25 (asserting that "the FRTs and FRTIs fulfill a unique job function of assuring the airworthiness of airplanes at the end of the Employer's process after manufacture is essentially completed"). The very few distinctions that the Regional Director did draw are not only distinctions without differences; they are distinctions that the Board has explicitly rejected. In fact, the purported distinctions should have led the Regional Director to the opposite conclusion, for they suggest that the quality inspections performed by the FRTIs is meaningfully different from the operational tasks performed by the FRTs. The Board should accordingly grant review and reverse the Regional Director's decision because it is contrary to the governing law on appropriate units in manufacturing facilities.

A. The Board recognizes that it is improper to divide an integrated manufacturing process, which is presumed to be an appropriate unit.

The Regional Director purported to rely on two principal cases: *PCC Structurals* (which the Decision flouted, as just discussed), and *United Operations*, 338 NLRB 123 (2002). DDE 1, 24. The Regional Director did not explain why he found *United Operations* particularly relevant. In fact, *United Operations* is neither an integrated manufacturing case nor relevant here. The Regional Director's heavy reliance on such a distinguishable case demonstrates his failure to appreciate the realities of an integrated manufacturing process.

The employer in *United Operations* employed 50 field service employees who provided general building maintenance services to commercial property owners scattered throughout a 40-mile radius. 338 NLRB at 123. The Board found that the petitioned-for unit of heating, ventilation, and air conditioning ("HVAC") technicians who responded to HVAC service requests was

appropriate. Unlike in this case, where FRTs and FRTIs work alongside other employees in the shared task of manufacturing a Dreamliner on a daily basis, the HVAC technicians performed work that was by its nature highly compartmentalized, responding to service calls relating to HVAC units in the field while other employees responded to independent service calls in their respective areas of expertise at other locations. *Id.* at 124-25.

Counsel is unaware of a case from a manufacturing facility—particularly an *integrated single-product-line facility* like Boeing South Carolina—where the Board condoned a fragmented micro-unit like this one.[17] Instead, the Board has held petitioners to their burden of rebutting the presumption of the appropriateness of a plant-wide unit. *See, e.g.*, *Airco, Inc.*, 273 NLRB 348 (1984) (rejecting the attempt of the employer, a manufacturer of industrial gases, to exclude plant operators from the petitioned-for unit of all P&M employees at a single manufacturing facility); *Avon Products, Inc.*, 250 NLRB 1479, 1482 (1980) (wall-to-wall P&M unit was appropriate and, specifically, *must include* those employees who make up the entire order flow process—*i.e.*, receipt, filling, and shipment of orders); *Chromalloy Photographic Industries*, 234 NLRB 1046, 1047 (1978) (unit of all P&M employees—including "repair" technicians—was appropriate given that the employer was engaged in a single highly integrated process); *Kalamazoo Paper Box Corp*., 136 NLRB 134, 136 (1962) (applying the presumption to preserve a single unit of all production and maintenance employees, instead of severing an isolated unit of drivers proposed by union). Although the *Charleston AFB* decision concerned a repair facility, that facility had a similar integrated structure that illustrates why only a wall-to-wall unit is appropriate. That this is an even more integrated *manufacturing* facility only underscores why a wall-to-wall unit is necessary.

[17] The Regional Director at least correctly recognized that "the unit sought is not a craft unit." DDE 24 n.25.

Thus, there is a compelling need for review here, because of the converging threats the decision below presents both to *PCC Structurals* and the manufacturing space. If a cursory conclusion that similarities among petitioned-for employees is all that is required, then the Regional Director's decision will be a road map to fracturing integrated manufacturing facilities nationwide.

B. That FRTs and FRTIs perform work at the conclusion of the manufacturing process does not mean they have a distinct community of interest from employees working at other stages of the manufacturing process.

The Regional Director drew, and then relied upon, an illusory distinction between earlier and later steps in the manufacturing process. The Regional Director found it meaningful that FRTs and FRTIs perform work at the final stages of this process, which includes ensuring that the final product is ready for delivery. DDE 25 ("FRTs and FRTIs fulfill a unique job function of assuring the airworthiness of airplanes at the end of the Employer's process after manufacture is essentially completed."); DDE 28 (similar). But every manufacturing process is composed of a series of steps, the final steps of which are readying the final product for delivery to the customer or end user. The conclusion that these final steps are inherently different artificially segregates the manufacturing process and contradicts the plant-wide presumption of appropriateness.

Setting aside for the moment that FRTs and FRTIs also perform a significant amount of work that is not exclusive to the final readying of the aircraft—which itself dictates rejection of this micro-unit—the work of FRTs and FRTIs cannot be distinguished by any focus on testing and preparation for flight. (Tr. 792). As the Board has recognized, product testing is an integral part of the production process. *Airesearch Manufacturing Co.*, 137 NLRB 632 (1962) involved an employer "engaged in the development and manufacture of units and systems for use in aircraft and space industries." *Id.* at 633. After manufacture, these items were "transported to the testing

laboratory for functional testing." *Id.* at 634. The petitioner sought to exclude from its proposed bargaining unit the engineering and laboratory employees that conduct this testing. *Id.* at 633-34. The Board refused. In a manufacturing facility, "the testing function and the instrumentation utilized therein is an integral part of, and inextricably related to, the total production process. A product which has not been tested, or could not meet test specifications would be as unfinished a product as one whose parts had not been fully assembled." *Id.* at 635. "It therefore follows that *employees engaged in testing are not by reason of their duties and functions such a distinct and homogeneous group as would justify constituting them a separate appropriate unit*." *Id.* (emphasis added); *see also Tracerlab*, 158 NLRB 667, 669-70 (1966) (excluding technical employees who perform research and testing from a wall-to-wall unit was inappropriate because they "form an integral part of, and are inextricably related to, the Employer's production process").

As a result, the Board concluded that the testing employees belonged in the same unit as the other P&M employees because "their interests are closely allied." *Airesearch*, 137 NLRB at 636. Although FRTs and FRTIs do far more than just testing at the end of the production process, even that alone would be enough to make them an integral part of Boeing's production system. In sum, where employees in a manufacturing facility "perform work which is closely related to the production of the Employer's final product," they should not be artificially segregated from other employees. *Chromalloy Photographic*, 234 NLRB at 1047. The Regional Director's analysis would approve nearly any micro-unit in American manufacturing workforces, and the Board's intervention is necessary to correct that departure from Board precedent.

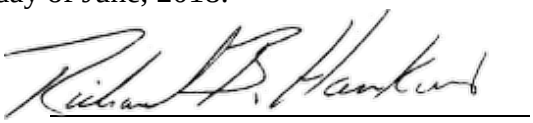
CONCLUSION

For these reasons, Boeing respectfully requests that the Board grant the request for review, vacate the Decision, and hold that the petitioned-for unit is not appropriate. The Regional Director

devised an improper analysis that, while purporting to implement *PCC Structurals*, reached a result that would have been unobtainable even under the overruled *Specialty Healthcare* scheme. Whether one looks to the nonsensical nature of the proposed unit itself, or to the fact that its interests are overwhelmingly shared with those of the other P&M teammates, the fact remains that no previous case has ever approved a micro-unit like this in an integrated manufacturing facility. The legal departures from Board precedent—especially when coupled with the Regional Director's clearly erroneous factual findings—require the Board's review to address when integrated manufacturing facilities are subject to fractured unit organization.

The determination of an appropriate bargaining unit here is of enormous consequence not just to Boeing and its teammates, but to the national economy as a whole. This case is also enormously consequential to the law itself. The Regional Director's errant decision calls for the Board to direct that the community-of-interest standard recently reinstated in *PCC Structurals* is the governing law and to instruct the Regional Directors on its proper application.

Respectfully submitted this 26th day of June, 2018.



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CERTIFICATE OF SERVICE

I certify that the foregoing *Employer's Request for Review* was electronically filed with the Board through the Board's website and was served electronically, on:

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This the 26th day of June, 2018.

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