

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

THE BOEING COMPANY,

Employer,

and

SOCIETY OF PROFESSIONAL ENGINEERING  
EMPLOYEES IN AEROSPACE, LOCAL 2001,  
IFPTE, AFL-CIO

Petitioner.

Case 19-RC-15419

**PETITIONER'S SUPPLEMENTAL CITATION OF AUTHORITY**

ON NOVEMBER 15, 2011, Petitioner filed a Request for Review of the Regional Director's Decision and Order dated November 1, 2011, dismissing a petition seeking an *Armour-Globe* election in which Field Service Representatives (FSRs) could choose inclusion in an existing professional unit. The Regional Director of Region 19 based this dismissal upon a purported lack of community of interest between the two groups. On March 22, 2012, the Acting Regional

Director in the same Region issued a Decision and Direction of Election (attached) in Case 19-RC-71950, granting an *Armour-Globe* election for a voting group of pilots and simulator only instructors who may elect to join an existing bargaining unit. These decisions, issued in the same Region within five months of each other, take radically contradictory approaches to the determination whether a petitioner may obtain an *Armour-Globe* election. The Board should grant the Petition to Review here to resolve this contradiction. The decisions conflict in at least the following respects:

1. In the Decision and Order in 19-RC-15419, the Regional Director, criticized the focus of the parties at the hearing on the relationship between the existing unit of engineers and the voting group of FSRs in favor of a “macro-level” analysis, emphasizing that the FSRs perform technical support services in conjunction not only with bargaining unit engineers, but also with numerous categories of unrepresented employees and others who also participate in that overall function. (See slip op. at pages 35-36 and 39-41) The Regional Director dismissed the petition, in part, because the FSRs do not constitute “a final unrepresented piece in this technical support process.” (supra at 36) Accordingly, the Regional Director found an insufficient community of interest between the existing unit and the FSRs because the resulting unit would not conform to the “actual workplace structure” of the employer based upon that structure’s inclusion, of “significant numbers of unrepresented engineers, internationally placed co-located FSRs, represented and probably unrepresented (Long Beach) technical unit employees, independent contractors or contracted engineers, certain sales related employees, and more.” (supra at 40) As such, the Regional Director contravened the Board’s long standing practice directing the community of interest inquiry to the

relationship between the existing unit and the proposed voting group and repudiating the proposition that the voting group in an *Armour-Globe* election must include all employees residual to the existing unit. (*St Vincent Charity Medical Center*, 357 NLRB No. 79, slip op. page 3, August 26, 2011, and cases cited therein) Indeed, the Regional Director entirely ignored the recent *St. Vincent* ruling in the November 1, 2011, Decision and Order.

2. By contrast, the Acting Regional Director's decision in 19-RC-71950 rejected the Employer's argument against the pilots' *Armour-Globe* petition based upon the purported failure of the proposed voting group to conform to the organizational structure of the employer. (D & DE slip op. pages 22 – 27) The Acting Regional Director, consistent with Board precedent, declined the Employer's invitation to engage in a "macro analysis" to determine whether the members of the proposed voting group engaged in an overall function which included unrepresented employees, contractors and other irrelevant actors. Instead, the Acting Regional Director followed the prescription of the Board in *St. Vincent*, and determined that the proposed voting group constituted a distinct and identifiable segment of the workforce which shared a community of interest with the existing pilots' unit. (D & DE slip op. page 32) The Acting Regional Director correctly based that determination upon the functional identity of those in the proposed voting group and their close relationship with the members of the existing unit establishing a community of interest.

3. The Board should accept Review and reject the approach of the Regional Director in 19-RC-15419 in favor of that of the Acting Regional Director in 19-RC-71950, to resolve this obvious conflict.

Dated this May 8, 2012.

Respectfully submitted,

s/ Joseph M. Goldhammer  
Joseph M. Goldhammer, #5761  
Buescher Goldhammer &  
Kelman, P.C.  
1563 Gaylord Street  
Denver, CO 80206  
Phone: (303) 333-7751  
tbuescher@laborlawdenver.com

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2012, I electronically filed the **PETITIONER'S SUPPLEMENTAL CITATION OF AUTHORITY** through the National Labor Relations Board website system which will send notification of such filing to the following addresses:

Executive Secretary  
National Labor Relations Board  
Washington, D.C.

and I hereby certify that I have served the document to the following as indicated:

#### VIA FACSIMILE

Regional Director, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, WA 98174-1078  
Fax: (206) 220-6305

#### VIA ELECTRONIC MAIL

Ray Goforth  
April Rebollo  
Susanne Murphy

SPEEA  
15205 52nd Avenue South  
Seattle, WA 98188  
rayg@speea.org  
aprilr@speea.org  
susannem@speea.org

Richard Hankins  
Alston Correll  
Drew Lunt  
McKenna, Long & Aldridge  
303 Peachtree Street, NE, Suite 5300  
Atlanta, GA 30308  
[rhankins@mckennalong.com](mailto:rhankins@mckennalong.com)  
[acorrell@mckennalong.com](mailto:acorrell@mckennalong.com)  
[dlunt@mckennalong.com](mailto:dlunt@mckennalong.com)

s/ Joseph Goldhammer

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

THE BOEING COMPANY

Employer

and

Case 19-RC-71950

AIRLINE MAUFACTURING  
PILOTS ASSOCIATION

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under § 9(c) of the National Labor Relations Act (the Act), as amended, a hearing was held before a hearing officer of the National Labor Relations Board (the Board).<sup>1</sup> Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I make the following findings and conclusions.<sup>2</sup>

**I. SUMMARY**

The Boeing Company (the Employer) designs, manufactures and sells aircraft that are operated throughout the world by airlines, governments and other entities. The Airline Manufacturing Pilots Association (Petitioner), currently represents approximately 38 of the Employer's instructor pilots employed at its Renton, Washington facility (existing unit).

Petitioner seeks a self-determination election among a voting group of approximately 62 technical pilots, safety pilots, standards pilots, and simulator-only pilots<sup>3</sup> (the "voting

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<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of § 9(c)(1) and § 2(6) and (7) of the Act.

<sup>2</sup> The parties submitted briefs following the initial pre-election and, again, following the re-opened hearing, discussed below. I have carefully considered each of the parties' respective briefs.

<sup>3</sup> The parties have used the terms "simulator-only pilots" and "simulator-only instructors" to refer to the same group of employees. For ease of reference herein, I have generally used the term "simulator-only pilots."

group") to determine whether they wish to join the existing unit.<sup>4</sup> The Employer opposes the amended petition because the voting group does not constitute an identifiable, distinct group of employees; the proposed expanded unit of pilots is not readily identifiable within the Employer's administrative or organizational structures (*i.e.*, is a "fractured" unit); the voting group and the existing unit do not share a sufficient community of interest; and/or because the self-determination or *Armour Globe* election process is inappropriate here, where the proposed voting group is nearly twice the size of the existing unit.

While Petitioner asserts the amended, petitioned-for voting group is appropriate for purposes of a self-determination election, it stated a willingness to proceed to a self-determination election in any alternate voting group found appropriate by the Acting Regional Director. Although Petitioner does not seek an election in a stand-alone unit of technical, safety, and standards pilots, the Employer does not oppose the direction of an election in such a unit.

I have carefully reviewed and considered the record evidence and the arguments put forth in the parties' respective post-hearing briefs. For the reasons expressed below, I find that the proposed voting group constitutes a distinct, identifiable segment of the Employer's workforce and, thus, constitutes an appropriate voting group. Additionally, I find that a combined unit composed of the voting group and the existing unit of pilots does not constitute a "fractured" unit. Moreover, I find that the voting group (technical, safety, standards, and simulator-only pilots) shares a sufficient community of interest with the existing unit pilots to allow the former group the opportunity to vote to be included in a combined unit with the latter. Accordingly, I am directing an election in the amended petitioned-for voting group.

Below, I have set forth the relevant evidence contained in the record, and articulated the legal standards utilized by the Board in regard to self-determination elections and community of interest factors. I have then applied those standards to the evidence and articulated the rationale for my determination. Following that, I have directed an election and addressed the process for requesting review of this decision.

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<sup>4</sup> An "Order Reopening Record and Notice of Representation Hearing" issued in this case following the initial pre-election hearing. The reasons for reopening the record are detailed in the Order. Among the reasons were certain issues and/or arguments raised in the Employer's initial brief, including the argument that Petitioner's initial petition failed to include simulator-only pilots, BTE pilots, and certain other pilots. The Employer's initial brief also argued that the voting group and existing unit, as a combined unit, fell short of an all "pilots" unit. The Employer's arguments in this regard appeared to conflict to a degree with the parties' joint stipulation that the petitioned-for voting group represented a distinct and identifiable segment of the Employer's work force and joint stipulation to exclude the BTE pilots, ADPX pilots working remotely, executive pilots, and pilots who are on "Pilot Early Leave." At the reopened hearing, Petitioner amended its petition to add the simulator-only pilots to the voting group. The Employer, in response to the amended petition, withdrew from that portion of the parties' prior joint stipulation that "[t]he Employer is not raising issues that the voting group does not constitute a distinct and identifiable segment of the work-force." Notwithstanding the foregoing, the Employer continues to adhere to the parties' joint stipulation regarding the four exclusions described above.

## II. RECORD EVIDENCE<sup>5</sup>

In the following sections, I have addressed the collective bargaining history relating to the existing unit and background information regarding the Employer's operations and where the existing unit and voting group fit within those operations. Following those two sections, I have set forth the record evidence regarding the community of interest factors relating to the voting group and existing unit.

### A. Bargaining History

The Employer employs tens of thousands of employees in the United States and numerous foreign countries in developing, manufacturing, selling, and servicing commercial and military aircraft. The production of aircraft requires design and manufacturing capability on a vast scale and while the Employer has a worldwide presence, many of its employees are clustered at several large bases of production in the United States. A single one of the Employer's facilities, located in Renton, Washington, is relevant to the instant case.

Petitioner has represented a bargaining unit consisting of instructor pilots since 1997.<sup>6</sup> The Employer and Petitioner are currently party to a collective-bargaining agreement, which by its terms is effective February 10, 2009, until the "close of February 9, 2013, and which covers the existing unit of pilots. The record reveals no history of bargaining covering the voting group.

### B. The Employer's Operations

The Employer's organizational structure is divided into four major business units, including its Boeing Commercial Airplanes unit (BCA), which manufactures and sells commercial aircraft. Within BCA is a department called Commercial Airplane Services (CAS), which sells services to the Employer's commercial airplane customers. Within CAS, a group or organization called Training & Flight Services is responsible for providing instruction, resources, and training materials to the Employer's customer airlines. The 38 instructor pilots in the existing unit, as well as the 62 pilots in the voting group are all employed within the Training & Flight Services organization. The BTE and executive pilots are employed in units other than BCA.

The members of the voting group and the existing unit are all licensed pilots who work on a common undertaking: to provide the Employer's customers with operational,

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<sup>5</sup> The Employer called six witnesses to testify: Bradley Byrd (Assistant Chief Pilot, Flight Technical and Safety); Craig Blankenstein (Director, Maintenance Training and Training Resource Management); Linda Orlady (Chief Pilot, Flight Technical and Safety); Matthew Kempf (Benefits Director, SPEEA); Allen Gordon Thompson (Chief Pilot, Flight Training Simulator); and Chuck Killberg (Chief Test Pilot and Director of Flight Operations, Boeing Test & Evaluation). Petitioner called eight witnesses to testify: Mike Coker (Lead Safety Pilot, Training & Flight Services); Rich Plunkett (Director of Strategic Development, SPEEA); Lisa Clark (Instructor Pilot); Wayne Ridenour (Assistant Chief Pilot, Flight Training Airplane); Robert Botnick (Chief Pilot, 787 Flight Standards); Doug Allington (Chief Technical Pilot, 757 and 767); William Reed (Safety Pilot); and Jon Sites (Instructor Pilot).

<sup>6</sup> The Union was originally known as the "Lazy B Pilots Association" and changed to its current name in approximately 2008.



safety and technical training and support.<sup>7</sup> Instructor pilots and simulator-only pilots deliver flight operations training to customers' pilots. Technical pilots draft and maintain the manuals setting forth the procedures and operations of the various aircraft involved. Safety pilots ensure that the customers operate aircraft safely, including investigating accidents. Standards pilots ensure that the Employer and its customers operate in compliance with FAA and other regulatory guidance.

With the exception of the standards pilots, all of the voting group and existing unit pilots work in the same building on the same floor at the Employer's Renton, Washington facility. For this and other reasons, the record is replete with evidence of work-related contact and significant interchange between the voting group and existing unit.

### **C. Community of Interest Factors**

#### **1. Departmental Placement**

##### **(a) Training, Safety, Instructor and Simulator-Only Pilots**

The training, safety, simulator-only pilots, as well as the currently represented instructor pilots, all indirectly report to Chief Pilot Suzanna Darcy-Hennemann, who heads a department within Training & Flight Services. Within this department, the technical and safety pilots together form the Employer's "Flight Technical and Safety" group. The instructor pilots work in another group called "Flight Training Airplane." The simulator-only pilots work in yet another group, called "Flight Training Simulator."

##### **(b) Standards Pilots**

The standards pilots are also part of the Training & Flight Services group, but report through a group called the "Office of Independent Affairs." Documentary evidence suggests that two or three additional groups report to the Employer's Office of Independent Affairs, each with separate supervision. However, the record does not detail how many individuals work within these two or three additional groups, what their job classifications and/or functions are, and does not detail what if any contact, interchange and/or functional integration they may have with the voting group or existing unit of pilots.<sup>8</sup>

##### **(c) BTE Pilots**

The record reveals that the Employer employs three BTE Pilots who report to a military-related business unit separate and apart from BCA. Further, the Employer uses a system of job classifications or "job codes" to identify its employees. The BTE pilots work under the same job code, "APDX," as do the safety, technical and standards pilots. However, the record does not reveal evidence of any significant relationship or connection between the military unit in which the BTE pilots work and the commercial airplane unit

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<sup>7</sup> These customers include those who purchase the Employer's planes as well as internal customers or employees of the Employer.

<sup>8</sup> Notwithstanding this lack of details, the Employer argues in its second brief that Petitioner's voting group and/or combined unit of pilots is inappropriate because it fails to include the individuals working in these two or three additional groups working in the Office of Independent Affairs.

(BCA) in which the voting group and existing unit work. Moreover, the parties stipulated that these three pilots are excluded from the proposed voting group.<sup>9</sup>

**(d) Executive Pilots**

The Employer employs an additional two pilots under the APDX job code who work in its Executive Flight Operations division. These pilots work remotely from Gary, Indiana. Again, the record does not reveal any relationship or connection between the work of the executive pilots and the pilots in the voting group or existing unit. At hearing, the parties stipulated that the executive pilots are excluded from the proposed voting group.

**2. Bargaining History**

As noted above, there is no history of bargaining within the voting group. Petitioner has represented the instructor pilots for approximately 14 years. No other labor organization seeks to represent the proposed voting group and/or the existing unit of pilots.

**3. Skills, Training, and Job Functions**

In order to describe the skills and functions of the various job classifications at issue in this case, it is necessary to place them in the context of the Employer's training, flight operations and safety program, in which both external customers and the Employer's own pilots are trained and informed of operational and safety matters. In the following sections, the skills and job functions of the different job classifications are described in turn. Specific examples of individuals using these skills to perform their job functions are contained in the next section dealing with the community of interest factor of functional integration between the voting group and the existing unit.

**(a) Job Functions**

**(i) Technical Pilots**

The Employer employs 17 technical pilots.<sup>10</sup> The technical pilots are assigned their job duties based on specific model numbers, and typically remain in that role unless they desire to move to a different model.

Technical pilots do not provide training to customer air crews. Rather, their chief task is to maintain and update publications, including a flight crew operation manual and a "quick reaction" manual, for each airplane model. These manuals contain procedures for operating the aircraft and a description of the aircraft's various systems. Creating the

<sup>9</sup> The record is relatively sparse regarding the BTE pilots. They work at the Employer's 3800 Building at the property known as Boeing Field in King County, Washington, where they prepare presentations, bulletins and monthly flying safety meetings. They do not investigate accidents, but serve an accident prevention function, whereby they instead analyze and compile information from accidents and incidents and present that information to Boeing's own pilots to make them more aware of potential safety issues. The nature and extent of such presentations was not detailed in the record.

<sup>10</sup> As noted, two of these pilots, who work on out-of-production models, work virtually from locations in other states. The parties stipulated at hearing that these two employees are excluded from the proposed voting group.

procedures involves verification, in which the technical pilots try out their procedures in a simulator to ensure the procedures work and are not vulnerable to human error. Various groups are required to sign off on the flight crew operation manual, including representatives of the standards pilots, the instructor pilots and the simulator-only pilots.

The technical pilots are also responsible for maintaining existing publications. This involves ensuring the integrity of edits and additions to the publications, which may result from the need to incorporate procedures for new equipment, software, or FAA mandates. This further involves clarifying procedures based on customer requests or correcting mistakes in the publications as written. In the case of new airplane models, the technical pilots are also responsible for drafting initial procedures contained in these new manuals. Further, technical pilots issue bulletins on airplanes that are in the design phase and interim bulletins on airplanes that serve as updates in between manual publications.

The technical pilots are also responsible for answering customer questions about how a particular airplane model works, or how to interpret the specific language of the publications. These questions come in through the Employer's online communication system, which allows different departments to respond to the questions. When the technical pilots receive a customer query, often certain portions of the query have already been responded to by the Employer's flight operations engineering personnel, leaving the technical pilot to respond to any remaining questions. In the process of responding to questions, the technical pilots may also consult with engineers as needed to get the question answered.

On occasion, technical pilots also participate in "Flight Operations Support Program" ("FOSP") visits alongside safety pilots. FOSP visits entail a group of pilots, headed by a safety pilot, visiting a customer to assess, from a safety perspective, the performance of the customer's pilots by riding along on flights and observing training sessions. Technical pilots participate in FOSPs when a particular customer is expected to ask many technical questions about the aircraft. Two or three technical pilots participated in FOSPs during 2011. Technical pilots also perform customer visits when a customer is experiencing issues with an airplane and requests assistance in figuring out the root cause of the problem. The record further reveals that technical pilots also perform flight simulator certifications and perform all certifications on customer-owned simulators.

Technical pilots are not required to fly airplanes as part of their job duties. However, they are required to maintain currency on the airplane, but this can be accomplished using a flight simulator. Technical pilots book the flight time required to maintain their pilots' licenses by flying "ferry flights," that is, actually piloting an empty Employer-manufactured plane for delivery, maintenance, production flight testing, or for some other reason. This happens on a relatively ad hoc basis when the pilot normally performing these duties is not available.

All technical pilots attend monthly aircrew meetings, held at the 3-800 building at Boeing field, which are also attended by instructor pilots and safety pilots.<sup>11</sup> The monthly meetings address operational issues in flying the Employer's airplanes and are about 1½

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<sup>11</sup> The technical pilots' assigned work area is in building 10-18 on an Employer campus approximately 4 miles from the building (25-01) in which the other voting group and existing pilots work.

hours long. The technical pilots also attend a monthly "technical excellence hour," along with safety, standards and instructor pilots, during which all receive additional training. Technical pilot Ted Grady, who performs functions at times as an instructor pilot, also attends "Pilot Instructor Training" (PIT) meetings. These meetings are normally held bi-weekly and are focused on how to train new instructors, and are attended by instructor pilots and standards pilots (and Grady).

## **(ii) Safety Pilots**

There are currently six safety pilots. Safety pilots are on call for accident investigations, which means that they may be called upon to provide operational support to the Employer's safety engineers (who are based in Everett, Washington). This occurs approximately 6-8 times per year. The safety pilots may also be assigned to assist the National Safety Transportation Board or other, foreign governmental entities in investigations regarding airplanes manufactured by the Employer, which involves preparing reports and working with regulators on the investigation.

Safety pilots also provide training to customers, as well as briefings on safety-related topics, and spend a considerable amount of their time at aviation industry forums, symposiums and meetings representing the Employer. They also perform research on safety-related topics and develop new ideas in the field. They bring these ideas to the standards meetings to discuss. The safety pilots attend a staff meeting once a week for safety pilots only.

Safety pilots do not regularly provide training in the flight simulators or in the air. They do, however, serve as leads on FOSP visits, which were described in part above. A typical FOSP involves a briefing, during which the nature of the visit or process is explained to the customer, followed by the safety pilots' observation, either in the simulator and/or in flight, of the customer's operation of the aircraft. FOSPs may also involve observing a simulator training session conducted by the customer. FOSPs also include safety seminars of 4-8 hours in which the safety pilots brief the customer's pilots.

After completion of a FOSP, the safety pilots prepare a final report summarizing their findings. This report is reviewed by the other safety pilots, as well as their manager, before it is shared with the customer and the Employer's upper management. The FOSP process provides the Employer's customers with feedback on their operations, as well allows the Employer to observe how its airplanes are actually being used. In 2011, the Employer's safety pilots performed eight FOSPs.

All safety pilots attend monthly aircrew meetings attended by technical and instructor pilots as well technical excellence hour meetings attended by technical, standards and instructor pilots. Safety pilots meet their air time licensing requirements by flying Employer production test flights and ferry flights, much like the other voting group and existing unit pilots.

## **(iii) Standards Pilots**

The Employer employs four standards pilots. "Standards" in the airline industry refers to the process of ensuring compliance with procedures for operating aircraft.

Standards pilots are responsible for ensuring the Employer complies with all applicable regulations, including federal aviation regulations (FARs). This involves interpreting regulations and at times resolving competing or conflicting regulations. Standards pilots are also charged with interacting with the FAA. This may take the form of responding to FAA audits or negotiating resolutions to disputes with the agency over interpretation of FARs.

Standards pilots do not fly airplanes in the course of their job duties. However, they do work in the simulators to perform two instruction and evaluation functions. First, all standards pilots perform "check rides," which means running a complete FAA required assessment of pilots' performance in the simulator in real time from takeoff, through and including approaches, landings, and malfunctions. A "check ride" is the ride at the end of a training course to validate the student's performance. Standards pilots perform check rides on the Employer's instructor pilots to ensure that they are in compliance with all applicable regulations. In addition to check rides, the standards pilots conduct "line oriented flight training" (LOFT) which is FAA-mandated training for pilots whose flying is substandard during the year.

Standards pilots ensure that the instructor's delivery of training complies with external regulatory requirements and the Employer's own standards. In this regard, instructor pilots are expected to consult with the standards pilots in the event that a question arises in training about what method or process is correct in a given situation. Further, instructor pilots seek the approval of the standards pilots to change the order of training, if necessary.

Standards pilots issue memoranda summarizing their interpretation of particular regulations, which are posted on a designated intranet site for use by the instructor pilots. They also send email alerts to instructor pilots on smaller issues. Standards pilots' interpretation of the regulations may also result in making a change to the flight crew training manual, created by the technical pilots. Standards pilots are also responsible for identifying and addressing compliance problems that are reflected in post-training paperwork.

Standards pilots also attend monthly "technical excellence hour" meetings along with technical, safety, and instructor pilots. Further, standards pilots attend "Pilot Instructor Training" (PIT) meetings, which are focused on how to train new instructors for the 787, and are attended by both instructor pilots and technical pilots.

#### **(iv) Simulator-only Pilots**

There are 37 simulator-only pilots. These individuals use flight simulators to teach internal Boeing pilots, including technical, standards, safety and instructor pilots, as well as outside customers' pilots. Training in the flight simulator entails using a computer operating system to set up scenarios with parameters providing a realistic flight training environment for trainees. The majority of the simulator-only pilots spend approximately 70% of their work time in a particular area where the simulators are located, as described in more detail below.

The first kind of simulator training delivered by the simulator-only pilots is "type rating training." This typically takes the form of "recurrent training," which is required of all pilots to

retain their specific type-ratings in their aircraft. The simulator-only pilots may also deliver "performa training," which involves a full training package for first-time customers of a particular model. Simulator-only pilots do not perform the majority of this work however; instead, performa training is first assigned to the instructor pilots, and simulator-only pilots perform any excess work. Simulator-only pilots and instructor pilots may work together in delivering performa training, by splitting up the fixed-base and full-flight simulator portions of the training.

The record further reveals that simulator-only pilots teach in a fixed-base, non-moving simulator device, and may also teach in a full flight simulator (if they have the right credentials). Fixed-base training is the portion of the type rating training that focuses on systems and procedures. Full-flight training takes place in a full-motion simulator (i.e. the cockpit of the airplane on a motion and visual system) to replicate the actual flying experience. The majority of the simulator-only pilots spend the majority of their time performing full-flight simulator training. The Employer aims to have the simulator-only pilots perform 100% of their work in the simulator, although this is not always possible.

Simulator-only pilots do not fly the Employer's aircraft or perform "line assists"<sup>12</sup> and do not participate in FOSPs. While simulator-only pilots may attend technical review board meetings with the other pilots mentioned above, they generally do not and are not required to attend. Approximately 15 of the Employer's simulator-only pilots administer check rides. Simulator-only pilots may also act as PITs (i.e., to teach non-employee/contract instructors how to evaluate pilots).

The simulator-only pilots perform secondary duties, including assisting with curriculum development, acting as subject matter experts (SMEs) on various committees and working on special projects as SMEs.

#### (v) Instructor Pilots

There are 38 instructor pilots in the existing unit. The instructor pilots provide instruction to customer pilots of the Employer's airplanes, as well as to the Employer's own pilots. They train both in flight simulators and during actual flights. Instructor pilots also evaluate trainees to determine whether they may progress to the next level of training. The majority of the instructor pilots spend approximately 60-70% of their time in the simulators.

In delivering simulator training, the instructor pilots use the flight crew operation manual drafted by the technical pilots. The first kind of simulator training delivered by the instructor pilots is type rating training. Generally, this training is delivered in connection with the initial sale of an aircraft to one of the Employer's customers.

As noted above, the instructor pilots perform the majority of the performa training. They do, however, also use the simulators to deliver recurrent training, which is chiefly performed by the simulator-only pilots. Lisa Clark, a former simulator-only instructor who transferred to an instructor pilot position, testified that her duties in both positions were

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<sup>12</sup> Line assists are also referred to as "initial operating experience" or "IOE," and involve an instructor pilot flying with and training one of the Employer's customer's pilots on the type of aircraft that they have newly received from the Employer.

essentially the same. Like standards pilots, instructor pilots also conduct LOFT training in the simulators, which is FAA-mandated training for pilots whose flying is substandard during the year.

Training in the air typically consists of performing line assists, *i.e.*, flying with and training one of the Employer's customers' pilots on the type of aircraft that they have newly received. Instructor pilots spend approximately 30% of their time doing this function. The instructor pilots use procedures from the flight crew operation manual when training in the air, although they do not actually reference the manual while flying.

Instructor pilots also have non-training duties. They assist in training development, by acting as test subjects for the instruction programs as they are being developed. This has involved an instructor pilot being subjected to a practical test in the simulator to determine if Employer-developed courseware was valid. Six instructor pilots are training center evaluators (TCEs). TCEs are pilots to whom the FAA's pilot "check ride" instruction and evaluation functions are delegated. As TCE's, the standards pilots attend annual TCE training for 4 hours. Thus, the six instructor pilots/TCEs perform check rides, including rides for standards pilots. Instructor pilot Wayne Ridenour testified that he spends 25% of his time performing check rides. Further, instructor pilots may also act as PITs (*i.e.*, to teach contract instructors how to evaluate pilots). Instructor pilots perform simulator certifications, but only on the Employer's own simulators, not customer-owned simulators.

The record reveals that instructor pilots have participated in some FOSPs. Mike Coker, Lead Safety Pilot for Training & Flight Services, testified that, since September 2010, there have been two instructor pilots who have participated in the flight observation phase of an FOSP. Instructor pilot Whitacre testified that he participated in a FOSP in November or December of 2009, along with safety and technical pilots. The safety pilots lead the FOSP, according to Whitacre, and all of the pilots delivered safety briefings and made observations during flights. In 2011, no instructor pilots participated in an FOSP.

Like technical and safety pilots, instructor pilots fly "ferry flights" to obtain the air time training required to maintain their pilots' licenses.

## **(b) Training and Certification**

### **(i) Technical Pilots**

The Employer's technical pilots are required to be FAA-rated as "commercial pilots" at a minimum, but the Employer prefers them to be FAA-rated as "airline transport pilots" ("ATP"), which is a higher rating than "commercial." They are also required to be FAA "type" rated for the airplane to which they are assigned, and the Employer prefers (but does not require) that they be type rated in more than one particular aircraft. "Type rating" is an FAA certification that an individual pilot is qualified and trained on a particular aircraft model.

As type-rated pilots, the technical pilots must, in order to maintain their rating, have a minimum number of check rides (*i.e.*, the FAA-required assessment of a pilot's performance done in real time from takeoff, through and including approaches, landings, and malfunctions, administered by an Employer standards pilot), within an allotted time period. Technical pilots must also engage in recurrent training, which involves a multi-day training

course. Technical pilots are further required to attend annual refresher training required by the FAA for all pilots who fly planes. Technical pilots are expected to be qualified to fly the Employer's planes (*i.e.*, large planes), and therefore are required to obtain and keep current a medical clearance.

None of the Employer's technical pilots is licensed as a TCE, and they do not deliver check rides.

## **(ii) Safety Pilots**

Safety pilots are required to be FAA-rated as "commercial pilots" as well as FAA "type" rated for the airplane to which they are assigned. As type-rated pilots, they are required to have a minimum number of check rides within an allotted time period, and must also engage in recurrent training. Safety pilots are required to attend annual refresher training required by the FAA for all pilots who fly planes. Further, safety pilots are expected to be qualified to fly the Employer's planes and, therefore, are required to obtain and keep current a medical clearance.

Although they are generally subject to the same training requirements as technical pilots, safety pilots are regarded as "generalists" because they may participate in accident investigations involving a number of airplane models. Thus, they are expected to be familiar with all models and licensed in a number of them, even if they are not current in them all. The safety pilots attend cross-model review boards, which are aimed at applying the safety lessons learned about one model airplane to other models.

Safety pilots are also required to be certified by the University of Southern California in engineering safety, which involves taking six courses. The courses, which last a week to 2 weeks each, are designed to prepare the pilots for their role in accident investigations. Instructor, technical, and standards pilots are not required to gain this engineering safety certification.

None of the Employer's safety pilots is licensed as a TCE, and they do not deliver check rides.

## **(iii) Standards Pilots**

Standards pilots are required to be instructor rated in at least one type of aircraft. As type-rated pilots, they are required to have a minimum number of check rides within an allotted time period, and must also engage in recurrent training. Standards pilots attend annual refresher training required by the FAA for all pilots who fly planes, even though the standards pilots are not required to fly planes in their work for the Employer.

Because they perform the "check ride" function, standards pilots are required to be TCEs (training center evaluators to whom the FAA's pilot check ride instruction and evaluation functions are delegated). As TCEs, the standards pilots attend annual TCE training for 4 hours.



#### **(iv) Simulator-only Pilots**

To be a full flight instructor, the simulator-only pilots are required to have an airline transport pilot's license. They are also required to be type rated on the model for which they are providing instruction and to maintain currency in that rating by performing a minimum number of check rides within an allotted time period. Additionally, they must engage in recurrent training. They do not fly the Employer's planes. Therefore, they are not required to maintain a medical clearance, as are the other pilots.

There are approximately 15 simulator-only pilots among the FAA certified TCEs who perform check rides. Thus, these 15 simulator-only pilots also attend the 4-hour annual TCE training.

#### **(v) Instructor Pilots**

The represented instructor pilots are required to be instructor rated in at least one type of aircraft, and must maintain their currency by performing check rides and engaging in recurrent training. They also have an additional day of training added to their recurrent training, which consists of a line orientation flight from point "a" to point "b" with simulated incidents occurring along the way of this actual flight, *i.e.*, simulating what could happen on a typical flight.

Instructor pilots are required to attend annual refresher training required by the FAA for all pilots who fly planes. Instructor pilots are expected to be qualified to fly the Employer's planes, and therefore are required to obtain and keep current a medical clearance.

There are six represented instructor pilots among the TCEs who perform check rides. As TCEs, these six attend the 4-hour annual TCE training. Instructor pilots, who provide 787 flight instruction, attend PIT meetings alongside standards pilots. These meetings focus on how to train third party contract-instructors for the 787.

### **4. Functional Integration**

The work of the technical, safety, standards, and instructor pilots, as well as the simulator-only pilots, is functionally integrated and interdependent. This can be seen in numerous circumstances, including: the development of new procedures and maneuvers; the validation and codification of these procedures and maneuvers; the Employer's training and compliance functions; curriculum development and training; safety protocols; and special projects. Each of these areas is described in more detail below:

#### **(a) Development of New Procedures and Maneuvers**

The pilots in the petitioned-for voting groups and existing unit work together to develop and vet safety and operational procedures, as well as to codify these changes into handbooks and procedures. Proposed changes to the written procedures are subject to a formal review process which typically occurs on a monthly basis. Before an idea is submitted for this review process, it is jointly vetted by the technical pilots, safety pilots and standards pilots. This occurs during "standards meetings," which are joint working meetings

that occur every other week. The purpose of these meetings is to discuss and debate the wisdom of potential changes to one of the manuals before the formal submission and review process is initiated. Ideas for potential changes are proposed by technical, safety, and/or standards pilots, as well as by customer requests in this regard. Instructor pilots and simulator-only pilots do not attend standards meetings. However, the record reveals that instructor pilots do have constant input even at this early stage, in that technical pilots consult with instructor pilots when the former are overriding procedures or contemplating maneuvers for the flight crew training manual, and in particular ask the instructor pilots for their impressions of which procedures are working or need fixing.

The first stage of formal review is performed by the Employer's technical review board, which is comprised of technical pilots and safety pilots, as well as representatives from the Employer's standards (the group composed of standard pilots), flight technical data, and flight operations engineering.<sup>13</sup> These meetings occur at least monthly and are held in a conference room on the third floor of the "Longacres" (25-01) Building.<sup>14</sup> Also present during technical review board meetings (usually by phone) is instructor pilot Wayne Ridenour, who acts as a representative of the instructor pilots' department. Ridenour testified that he participates actively in these meetings. The evidence discloses that instructor pilots are involved in new procedures at the very first stage, because they need to write courseware and develop teaching methods for training on the new procedure or maneuver. At these meetings, which last approximately 90 minutes, the language of the proposed revision is discussed, edits are made based on consensus among the meeting participants, and it is decided whether to proceed with the proposed change.

#### **(b) Validation and Codification of Procedures and Maneuvers**

Before a proposed new procedure is sent to the next (and final) stage of review, instructor pilots work with technical pilots in the testing and validation of the procedure. Instructor pilots assist in the validating process by operating the simulator and trying out a procedure, or by sitting in the other pilot seat while the technical pilot operates the simulator. The safety pilots are involved in evaluating the proposed procedures from the view point of the "end user" (i.e., the customer's pilot), and opining whether this user will interpret the publications in manner acceptable from a safety perspective.

Next, proposed changes are taken up by the Employer's flight operations review board, which meets a week following the technical review board meeting (in the same conference room) and is made up of chief pilots and other supervisory personnel from the same departments involved in the technical review board. Also present is instructor pilot Ridenour, who participates actively. Once a procedure has been approved, the technical pilots are responsible for integrating it into the manuals.

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<sup>13</sup> It is not clear from the record whether employees and/or supervisors/managers attend these meetings as the representative of their respective group.

<sup>14</sup> The assigned work area of the voting group and existing unit, with the exception of standard pilots, is located on the third floor of this building.

### **(c) The Training and Compliance Functions**

The manuals created by the process described above serve as training guides for the instructor pilots. That is, type and recurrent training for each model aircraft is based on the flight crew operations manual for that model. The instructor pilots use the flight crew operations manual (written by the technical pilots) as the basic foundation for operating an aircraft; they also use the flight crew training manual and "quick reaction handbook" as teaching materials. When training in the simulators, the instructor pilots and simulator-only pilots use the manuals. While delivering actual in-flight training, the instructor pilots do not utilize the manuals. However, their familiarity with the manuals allows the instructor pilots to rely on the stated procedures during the training flight.

In addition, the manuals serve as a guide for standards pilots to ensure compliance with the Employer's standards. About 80% of the standards pilots' time spent ensuring compliance with the manuals is spent interacting with the instructor pilots on a day-to-day basis. For example, an instructor pilot may stop by and ask a standards pilot for clarification on guidance contained within a manual. Following this discussion, the standards pilot will research the matter, consult with a technical pilot, and then the standards pilot will get back to the instructor pilot in a few days via email regarding the matter.

Standards pilots serve a compliance function, in that they ensure the Employer's overall adherence to the standards set forth in the technical pilot's manuals and procedures. In addition, the standards pilots disseminate a monthly newsletter that the instructor pilots and simulator-only pilots are required to read. On occasion, standards pilots also monitor the instructor pilots' and simulator-only pilots' instruction in the simulator to ensure it complies with the Employer's policies as well as FAA regulations.

### **(d) Curriculum Development and Delivery**

The instructor, standards, and technical pilots work together to develop training materials, which involves meeting and reviewing current training materials to see what changes could or should be made to improve the courseware. Instructor pilots may also work with standards pilots and technical pilots as "subject matter experts" to create courseware or curricula for student pilots. Instructor pilot Ridenour testified that he is currently working with a standards pilot and a technical pilot on a course to take 787 pilots and qualify them as 777 pilots. This ongoing project has the various pilots, mentioned above, contacting each other 5-6 times per day and holding meetings (either face-to-face in the Longacres building or virtually) to review the courseware and monitor its progress.

The process of rolling out new training and submitting it for FAA approval was also the subject of collaboration between the instructor, standards, and technical pilots. The technical pilot provided expertise to ensure that the training was tailored properly to the airports they wanted to simulate in the training, and the standards pilot ensured that the training contained all of the tasks required by the FAA. Instructor pilot Ridenour further testified that he recently travelled to administer 787 - 777 training to a client. Based on this experience, he informed his standards and technical pilot team members that the course was appropriately designed, had the right tasks in it, and was ready to be delivered to the FAA validators. Consequently, the standards pilot then relayed this information to the FAA.

Instructor pilots also work with technical pilots to prepare for training a particular customer. This involves both pilots sitting down and discussing the concerns that the customer has already shared with the technical department, so the instructor is aware of these concerns when he shows up to do the training. Instructor pilots advise technical pilots before the latter responds to customer inquiries (e.g., "am I doing this right?"). A customer typically contacts the technical pilot because his name is listed first in the manual.

Technical and safety pilots also serve a supporting role in the delivery of training. Specifically, instructor pilots rely on technical pilots to address complex questions that arise during training. About once a month, for example, instructor pilot Whitacre asks a question of the technical pilots following Whitacre receiving a question during instruction that he is unable to adequately answer. On other occasions, instructor pilots will approach technical pilots with questions about why certain procedures are required or utilized. Further, instructor pilots often visit the safety pilots and ask safety-related questions relating to training. Instructor pilots may also contact technical pilots from an in-flight observation of a customer's flight operations to obtain advice on resolving problems that arise in that context.

#### **(e) The Safety Protocols**

Safety, technical, and instructor pilots are called upon at times to work together to evaluate accidents and design safer procedures based on these events. This involves the various pilots working together in the simulators on the design and testing of new procedures. Safety pilots also work with technical pilots and instruction pilots to validate proposed maneuvers and procedures. Standards pilots then evaluate whether the proposals comport with the Employer's (and the FAA's) requirements.

The safety pilots do not work directly on a daily basis with the instructor pilots. However, the safety pilots attend joint staff meetings every other week with the technical pilots where safety issues are identified; in response, the technical pilots may then change the curriculum that is eventually taught by the instructor pilots.

#### **(f) Special Projects**

Occasionally, technical, standards, instructor, and/or simulator-only pilots work together on special projects. A recent example is the Employer's "iPad" pilot program, in which a group of simulator-only pilots work with instructor and technical pilots to develop training programs in iPad format, to deploy the iPads to instructor and simulator-only pilots, and then to receive feedback to determine the sustainability of using iPads to deliver training.

In another special project, instructor pilot Whitacre, with two standards pilot and another instructor pilot, developed scenarios to help standardize other instructor pilots' grading procedures. Standards pilots may also be involved in special projects, typically at the completion stage, to determine whether the project's end result is acceptable (i.e., determine whether the special project's outcome will comply with FAA and/or Employer policies and procedures).

## **5. Contact and Interchange**

### **(a) Contact**

The previous sections addressing the functions and functional integration of the technical, safety, standards, simulator-only and instructor pilots in the Employer's safety, operational support and training functions, illustrate much of the contact between the voting group and the existing unit. The record discloses additional contact between the existing unit and the petitioned-for pilots.

#### **(i) Worksite Contact**

The technical, safety, instructor, and simulator-only pilots work in close proximity to each other and see each other regularly at work. The safety and technical pilots work in adjoining office space on the third floor of the Employer's 25-01 Building on its Longacres campus in Renton, Washington. The instructor pilots and simulator-only instructors work on the same floor, in office space approximately 200 feet away from the technical and safety pilots. While the standards pilots' assigned work area is located approximately 4 miles away from the voting group and existing unit employees, standards pilots appear regularly (one to four times per week) in the 25-01 Building when collaborating on projects with the safety and/or technical pilots. Some of the standards pilots still use their old (now vacant) cubicles in the 25-01 Building, from which they were moved to their current location about 6 months prior to the initial pre-election hearing in this case.

The instructor, technical, safety, and simulator-only pilots, each regularly deliver training and/or administer check rides in the flight simulators in the 25-01 Building. Further, standards pilots perform "check rides" in the simulator several times per week. While the simulator schedules are "staggered," so the pilots do not necessarily share break times together when they are delivering simulator training, the record reveals that instructor, simulator-only, technical, and safety pilots have some contact near the simulators when they are not actually performing training.

Notwithstanding the foregoing, the pilots may see each other in the simulators themselves, where they deliver training to each other and/or may receive training together. For example, the record reveals that safety pilots receive their recurrent training in the simulator alongside instructor pilots, and that this training may be delivered by either an instructor pilot or a simulator-only instructor. This 4 day-long training, depending on the number of models on which a pilot is rated, may occur over 3-4 times per year. There is also evidence that instructor pilots may receive check rides (which last about 5 hours) in the simulators from simulator-only pilots who are TCEs.

#### **(ii) Break Rooms, Hallways and Cafeteria**

The 25-01 Building includes an employee cafeteria. Several witnesses testified that technical pilots, safety pilots and instructor pilots have casual interaction with each other at work and eat together in their shared cafeteria (located in the 25-01 Building) between 3-5 days per week. Pilots regularly sit at the same table in the cafeteria; as one pilot explained, "pilots tend to congregate with the other pilots." At least one group of technical, safety and

instructor pilots even coordinates their lunch time together. They are sometimes joined by standards pilots, if they are in the building. Further, the record reveals that technical and instructor pilots meet over lunch to discuss work-related training issues and that instructor pilots eat lunch with simulator-only pilots. Instructor pilot Lisa Clark testified that she eats lunch with simulator-only pilots about two times per week; that includes an informal study group in which they challenge each other on some systems knowledge while they eat. The record also indicates that safety pilots likewise discuss work-related issues with instructor pilots at lunch.

Instructor pilots also have frequent contact with technical and safety pilots in the hallways in their shared office space, where they have informal work-related conversations. Standards pilots have less frequent informal with the other pilots in the voting group and existing unit due to their new office location. However, the standards pilots appear in the 25-01 Building when collaborating on safety or technical issues, and when there, they eat lunch in the building. Testimony about how often this occurred was somewhat inconsistent, but it appears that they do so between one to four times per week, on average.

### **(iii) Ferry Flights**

As explained above, instructor, safety and technical pilots fly "ferry flights" in order to achieve the flight time required to maintain their licenses. The record indicates that an instructor pilot and a technical pilot may act as pilot and co-pilot on the same ferry flight. Safety pilots also conduct ferry flights and serve alongside instructor pilots when they do so.

### **(b) Interchange**

#### **(i) Temporary Transfers**

The record reveals two specific instances of instructor pilots temporarily filling the role of technical pilots. For 6-7 months about 2009-2010, instructor pilot Ted Grady filled in as the technical pilot for the 787 model, after the assigned individual left the position. After that time period, he was placed in the position permanently. Instructor pilot John Sites has also substituted for a technical pilot on at least one occasion. Sites covered a customer visit, representing the 767 flight technical department, which visit was originally assigned to a technical pilot. Present on the customer visit were technical pilots for the 777 and 737, as well other Employer representatives. Instructor pilot Sites met with the customer, answered questions, and discussed issues the customer had concerning operation of the aircraft, alongside the technical pilots who performed exactly the same function.

There is also evidence of a technical pilot substituting for a safety pilot. Technical pilot Doug Allington travelled to Alaska within the past 2 years to conduct post-accident interviews and assist with the investigation of a major 747 accident when the safety pilots were understaffed for the assignment. At least one safety pilot, Wiley Moore, also functions as an instructor pilot for an out-of-production model aircraft, while devoting the rest of his time to safety pilot duties.

#### **(ii) Permanent Transfers**

Regarding permanent transfers, the Employer has hired several of its instructor

pilots as technical pilots and safety pilots. The record reveals such permanent transfers occurred seven times in the last 5 years. Technical pilot Doug Allington was formally an instructor pilot. When he transferred, there was only minimal training involved, mostly regarding new paperwork involved in the technical pilot's job. Two of the current safety pilots are former instructor pilots, and two of the standards pilots came from the simulator-only instructor group.

Katie Tarabocia began as a simulator-only instructor for the Employer. In 2005, she permanently transferred to a technical pilot position for 2½ years and later permanently transferred to a standards pilot position. Lisa Clark, who is currently an instructor pilot, transferred to that position after working as a simulator-only instructor. Clark testified that she was aware of six others who, in the last 10 years, have similarly transferred from simulator-only instructor to instructor pilot positions, as well as two individuals who have taken the reverse route, transferring from instructor pilot to simulator-only instructor positions. She also testified about two additional permanent transfers from the simulator-only instructor position: one became a standards pilot and the other a technical pilot who later was promoted to a supervisory/excluded position in standards. There is no evidence of any transfers of technical pilots or safety pilots to the instructor pilot position.<sup>15</sup>

## **6. General Working Conditions**

### **(a) Pay**

The record evidence regarding salary is not specific to each job classification. Yet the record reveals that the average salary is \$138,378 for the instructor pilots; \$131,470 for standards, safety, and technical pilots; and \$95,200 for simulator-only pilots.

### **(b) Benefits**

Voting group and existing unit pilots are eligible for the same qualified benefits, including health insurance, dental insurance, short- and long-term disability plans, and early retiree medical coverage. They all also participate in the Employer's employee incentive pay plan. All pilots, except for simulator-only pilots, are eligible for the Employer's Pilot Early Leave program.

The instructor pilots are covered by a pension plan that is similar, but not identical, to the plan covering the voting group. All of the pilots have the same vacation benefits/policy and share a common human resources personnel representative, except for the standards pilots, who report to a separate representative within their reporting structure.

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<sup>15</sup> Petitioner served the Employer with a subpoena seeking documents reflecting evidence of interchange, but the Employer did not comply with the subpoena request for these documents. Further, while the Employer argues the evidence provided by Petitioner's witnesses regarding many of the community of interest factors is "sparse" and "anecdotal" in nature and, thus, insufficient, the Employer was in the best position with access to its records to accurately quantify the nature and extent of functional integration (e.g., joint projects, training, etc.), contact (e.g., common meetings), and/or interchange (e.g., temporary and permanent transfers), but did not produce sufficient records to rebut Petitioner's evidence in this regard.

**(c) Hours of Work**

Voting group and existing unit pilots typically work 40 hours per week, with some limited overtime. Because of their duty to assist the Employer's aviation safety investigators, who respond to accidents, the safety pilots maintain a 24-hour on-call system. In addition, those who train in the simulators (the instructor pilots, the standards pilots and the simulator-only pilots) are expected to work flexible hours subject to change, because the simulators operate 24/7.

**(d) Work Location**

**(i) Technical Pilots**

The technical pilots work on the third floor of the 25-01 Building at the Employer's Longacres campus in Renton, Washington. The technical pilots work in offices adjoining those of the safety pilots, about 200 feet away from the instructor pilots.

**(ii) Safety Pilots**

The safety pilots work on the third floor of the 25-01 Building, in offices that adjoin those of the technical pilots and about 200 feet away from the instructor pilots.

**(iii) Standards Pilots**

Historically, the standards pilots' assigned work area was located on the same floor as the technical pilots. Yet the standards pilots' books and reference materials are still housed there on third floor of the 25-01 Building. About 6 months prior to the pre-election hearing in this case, the Employer moved the standards pilots from the 25-01 Building to Building 10-18, which is located on a different campus approximately 4 miles away from the 25-01 Building.

The record contains evidence that standards pilots do attend meetings at the 25-01 Building, including their own departmental meetings. Standards pilots also perform "check rides" in the 25-01 Building, where the simulators are located, and this may occur several times per week. Standards pilots are seen in the Longacres building on average up to 4 days a week, attending a meeting, eating lunch, working on a project, and/or performing check rides.

There is also evidence that some standards pilots work remotely from Building 10-18 using laptops and instead work in the 25-01 Building, in order to access their reference materials. One standards pilot testified that he actually spends the majority of his workday at the 25-01 Building, because of his need to access the simulators, attend staff meetings, perform check rides, and/or due to matters concerning evaluations and training related to the airplane model on which his work focuses.

**(iv) Instructor Pilots**

The instructor pilots work on the third floor of the 25-01 Building at the Employer's Longacres campus in Renton, Washington.



**(v) Simulator-Only Pilots**

The simulator-only pilots also work in the 25-01 Building at Longacres on the 3rd floor in the same general area as the instructor pilots.

**(e) Equipment**

**(i) Instructor Pilots**

The instructor pilots work in flight simulators located in the 25-01 Building.

**(ii) Safety Pilots**

The safety pilots work in full flight simulators, as well as engineering cabs, which are non-motion simulators that can be configured to simulate any model airplane, and a device called an MCAV that replicates many of the Employer's airplanes and generate accident data to allow the safety pilots to review and analyze what happened in an accident.

**(iii) Technical Pilots**

The technical pilots perform their work using a software tool called Fastdoc, which allows them access to the repository of the Employer's technical manuals. In drafting documents, they use various software programs, including Adobe Framemaker and Adobe Professional. They also use a proprietary database written in Microsoft Access in which modifications and proposed modifications to the airplane manuals are stored. They additionally use standard Microsoft Office products, as well as WebEx, which is a video teleconferencing program.

**(iv) Standards Pilots**

The standards pilots use laptops and written reference materials. They also use the simulators when they perform ride checks in the 25-01 Building.

**(v) Simulator-Only Pilots**

Simulator-only pilots use computer-based training programs, as well as flat panel trainers, fixed-base simulators, and full-flight simulators in the 25-01 Building.

**(f) Other Terms and Conditions**

All pilots wear the same uniform when they are flying or, at times, when representing the Employer before a customer. When they are not flying, they wear business casual attire, as do the simulator-only pilots. Instructor, safety, standards and technical pilots are issued the same type of laptop, office phone, and Employer-issued blackberry cell phone.

All pilots' check ride dates, flight times, copies of their licenses, medical records, passports and/or foreign licenses are maintained in a common system called the Pilot Instructor Tracking System or (PITS). Instructor pilots keep track of their work hours on a computerized tracking system. This is the same system used by the safety pilots. Instructor pilots also keep logs of their simulator and flight training that they report to the

office administrator in Flight Training Airplane.

The same scheduler schedules the instructor pilots and the simulator-only pilots for their time in the simulators.

## **7. Common Supervision**

### **(a) Technical Pilots**

The technical pilots are supervised by two assistant chief pilots, Bradley Byrd and Erich Mahr. Byrd and Mahr in turn report to Chief Pilot of Flight, Technical and Safety, Linda Orlady. Orlady reports to Chief Pilot of Training & Flight Services, Suzanna Darcy-Hennemann. Darcy-Hennemann's office is located on the third floor of the 25-01 Building.

### **(b) Safety Pilots**

The safety pilots report directly to Orlady. Safety pilot Wiley Moore, who also instructs in the simulators, is subject to the authority of the program heads under Flight Training Simulator when he performs such work.

### **(c) Standards Pilots**

Ray Roberts supervises the standards pilots. When instructing in the simulator, however, which appears to be 20-25 hours per week, the standards pilots are subject to the authority of the program heads under Flight Training Simulator. These program heads would have the authority to remove a standards pilot from the simulator if he were doing a poor job, and could recommend discipline of a standards pilot if he commits an act of misconduct in the simulator.

### **(d) Instructor Pilots**

The instructor pilots report to deputy chief pilots, who in turn report to Chief Pilot Flight Training, Darren Champlain. Champlain reports to Chief Pilot of Training & Flight Services, Suzanna Darcy-Hennemann. The simulator training work of the instructor pilots is scheduled by the same individual who schedules the simulator training work of the simulator-only pilots.

Like the standards pilots, the instructor pilots, when instructing in the simulators, are subject to the authority of the program heads under Flight Training Simulator, who have the authority to recommend discipline of and/or remove pilots from the simulator if their performance is unacceptable.

Six instructor pilots in their capacity as a TCE, report to Ray Roberts, the standards pilots' supervisor, when performing TCE functions. Instructor pilot Ridenour testified that Roberts reviews and assesses whether Ridenour has complied with the FARs in completing his paperwork before the paperwork proceeds to the FAA. As Ridenour testified, "when I'm a TCE I'm reporting and working through Roberts. Then I have responsibility to implement his policies and procedures."

### (e) Simulator-Only Pilots

Depending on the models on which they instruct, the simulator-only pilots report through one of the fleet managers in Flight Training Simulator. These are the same managers to whom the standards and instructor pilots report when they are training in the simulators. The fleet managers in turn report to Al Thompson who heads up the Flight Training Simulator department within Training & Flight Services. Thompson reports to Chief Pilot of Training & Flight Services, Suzanna Darcy-Hennemann. When simulator-only pilots act as TCE, they report to Ray Roberts in Standards.

As noted above, the simulator-only pilots are scheduled for their simulator training work by the same individual who schedules the instructor pilots for that work.

### III. ANALYSIS

The typical question presented in a Board election is simply whether employees wish to be represented by a labor organization, with questions concerning representation resolved by the parties or determined by the Board. However, where, as here, an incumbent union seeks to add unrepresented employees to its existing unit, a self-determination election or an *Armour Globe* election may be ordered.<sup>16</sup> Such an order is appropriate if the employees sought to be included both: (a) share a community of interest with the existing unit employees; and (b) "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *St. Vincent Charity Med. Cntr.*, 357 NLRB No. 79, slip op. (Aug. 26, 2011) (citing *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990)). Thus, the self-determination election determines not only whether the employees wish to be represented, but also the unit placement issue of whether they wish to be included in the existing unit. *Warner Lambert, Co.*, 298 NLRB 993 (1990). The Board has made clear that the members of the proposed voting group "need not constitute a separate appropriate unit by themselves in order to be added to an existing unit." *Id.*

#### A. Identifiable and Distinct Segment of the Workforce

As noted above, whether a voting group is an identifiable, distinct segment is not the same question as whether the voting group constitutes an appropriate unit (the analysis applicable to cases where a petitioner seeks to represent employees in a standalone unit). *Warner Lambert*, 298 NLRB 993, 995 (1990). Instead, the identifiable and distinct analysis is merely whether the voting group sought unduly fragments the workforce. *Capitol Cities Broadcasting Corp.*, 194 NLRB 1063 (1972).

*Warner Lambert* and the cases preceding that decision are illustrative of the Board's approach to cases of this nature. In *Warner Lambert*, the petitioner represented a unit of the employer's maintenance and repair employees, but did not represent production employees. *Id.* at 993. There, petitioner sought an *Armour Globe* election to permit the packaging machine mechanics, a previously unrepresented group, to vote on inclusion with

<sup>16</sup> See *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937), and *Armour & Co.*, 40 NLRB 1333 (1942). As this case presents no issue with respect to whether any of the pilots in dispute are professionals within the meaning of § 2(12) of the Act, there is no need to undertake the analysis dictated by *Sonotone Corp.*, 90 NLRB 1236 (1950). See also *McKinley Air Transport*, 227 NLRB 267, 268 (1976), where the Board found the pilots in issue were not professionals within the meaning of § 2(12) of the Act.

the existing unit of machine and repair employees. *Id.* The Regional Director dismissed the petition on the basis the packaging machine mechanics were so integrated with production employees such that they were not a distinct and homogeneous group of employees with interests separate from those of the production employees and, as a result, would not, alone, constitute an appropriate unit. *Id.* The Board reversed, specifically stating that the "an appropriate unit" analysis was not the correct standard in the *Armour Globe* context, and the fact that the voting group sought "[did] not constitute a separate appropriate unit does not mean that they could not, in the proper circumstances, be added to the maintenance and repair unit as opposed to the unit of production employees." *Id.* at 995. The Board then applied a community of interest analysis between the voting group and the existing unit and, finding consistent with the petitioner in this regard, ordered an *Armour Globe* election. *Id.* at 996.

More recently, in *St. Vincent Charity Med. Ctr.*, the Board found a group of 15-17 phlebotomists to be a distinct and identifiable group where they performed the same distinct functions, were classified as either phlebotomists or PRN phlebotomists, were organizationally included within the same administrative division of the employer's organization, worked in the same location and had the same supervisor. 357 NLRB No. 79, slip op. at 3 and n. 11. The Board then applied the community of interest factors to the proposed voting group and the existing unit, found that a sufficient community of interest existed, and ordered that the petitioned-for unit be allowed to vote on whether to be included with the existing unit.

However, in *Capitol Cities Broadcasting Corp.*, 194 NLRB 1063 (1972), the Board dismissed a petition seeking a self-determination election in a voting group of artists. There, the petitioner represented a unit of employees in the employer's engineering and program departments, and sought an *Armour Globe* election to permit "all art department employees" to vote on inclusion with the existing unit. The Board found the voting group inappropriate, because: (a) there was, in fact, no "art department"; (b) the record showed only minimal work contacts and interchange between the members of the proposed voting group; (c) the members of the proposed voting group were scattered in a number of other unrepresented departments; and (d) the unrepresented employees in those various departments shared common supervision, work location and integration of functions with members of the proposed voting group. Under the circumstances, the Board concluded that the "art department employees" constituted an "arbitrary segment of the unrepresented employees."<sup>17</sup>

Here, the record supports finding that petitioned-for group (technical, safety, standards and simulator-only pilots) constitute an identifiable, distinct segment of the workforce such that their participation in an *Armour Globe* election, presuming a community of interest with the existing unit, would not cause undue fragmentation. Specifically, the record reveals that the pilots in the voting group fall under the Employer's Training & Flight Services organization and together perform a distinct function: providing operational, safety and technical support, and training to both internal and external customers of the Employer.

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<sup>17</sup> See also *The Journal Co.*, 205 NLRB 36, 37 (1973) (Board dismissed petition seeking television and/or radio newsmen, but omitting announcers, finding "newsmen and the announcers perform similar function in a similar manner and are similarly remunerated, separate representation for either of the groups would constitute an arbitrary and unwarranted fragmentation of employees and would therefore be inappropriate").

This involves: the development and modification of procedures and maneuvers that are to comply with applicable regulatory standards; training pilots in those procedures and maneuvers; evaluating pilot training performance; adherence to the relevant standards and procedures; and, in the event of an accident, assisting regulatory authorities in investigating and, if necessary, then revising relevant standards, procedures, and/or training based on lessons learned from accidents. Based on the foregoing and the record as a whole, I do not find the absence of a single department encompassing every member of the voting group, or their designation with more than a single "job code," to be fatal to their constituting a distinct, identifiable segment of the Employer's work force in the circumstances of this case.<sup>18</sup>

Moreover, I find the instant case distinguishable from *Capitol Cities Broadcasting Corp.* While the technical, safety, standards and simulator-only pilots do, in fact, work in separate departments, they experience significant work contacts and interchange, perform many overlapping job duties, and are highly functionally integrated with each other. Further, the record reveals that under varying circumstances they share common supervision, such as when their work involves the simulators, which, to a degree, lessens distinct supervision at the first level. The pilots in the voting group also effectively work in close proximity to each other and have significant casual contact largely based on that proximity, their shared pilot backgrounds, and work based largely on those backgrounds and the integrated functions they provide in the Employer's Training & Flight Services organization.

The Employer argues that its organizational chart for Training & Flight Services organization reveals the existence of unrepresented employees who are not sought by Petitioner and who might potentially share common supervision, work location and integration of functions with any member of the proposed voting group. The standards pilots report to a department within the Employer's Office of Independent Affairs within the Training & Flight Services organization, along with two or three other departments, each with separate immediate supervision. However, the record does not reveal, and the Employer does not contend, that the petitioned-for voting group and the existing unit fail to cover any other pilot employees working within the Training & Flight Services organization.<sup>19</sup> Further, the Employer failed to adduce evidence at hearing that any of these other departments include employees who are also so functionally integrated with pilots in the voting group, such that excluding these other departmental employees negates

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<sup>18</sup> Indeed, relying on the Employer's job code structure to form a basis in whole or in part for dismissing the instant petition, would elevate form over substance as the essence of the voting group's work falls along classification (pilot) and functional lines noted herein.

<sup>19</sup> The Employer relied in part on the parties' joint stipulation excluding BTE pilots, ADPX pilots working remotely, the executive pilots, and pilots on PEL (Pilot Early Leave) in objecting to a self-determination election in the circumstances of this case. However, at this juncture, the Employer cannot benefit from a stipulation it freely entered into and reaffirmed while simultaneously raising generalized objections to the same exclusions in support of its opposition to the petitioned-for voting group. Indeed, the record does not reveal that the BTE pilots, executive pilots, and/or pilots on early leave actually work within the Employer's Training & Flight Services organization and/or primarily perform functions that the voting group and existing unit pilots largely perform. As for the ADPX pilots working remotely, the record reveals that they work outside the State of Washington on existing planes no longer in production. In light of the above and the record as a whole, sufficient evidence exists to support the parties' joint stipulation or conversely, insufficient grounds exist in the record to now undermine the parties' joint stipulation at this point in the proceedings.

finding the petitioned-for pilots constitute an identifiable and distinct segment so as to constitute an appropriate voting group.

In light of the above and the record as a whole, I find that the petitioned-for pilots represent an identifiable and distinct segment so as to constitute an appropriate voting group. Accordingly, I shall turn to the issue of whether the voting group shares a sufficient community of interest with the existing unit of pilots.

#### **B. Community of Interest Factors**

In determining whether a proposed unit is appropriate for collective bargaining, consistent with § 9(a) of the Act, the Board's "focus is on whether the employees share a 'community of interest.'" *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 9 (2011), quoting *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). In determining whether a group of employees possesses a community of interest, the Board examines such factors as:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and 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.

*Specialty Healthcare*, slip op. at 9 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). "Bargaining history" is often not enumerated as a traditional community of interest factor, unlike the other factors it does not exist in every case, but where bargaining history does exist the Board has been clear that bargaining history is a relevant and substantial factor in the community of interest analysis. *Canal Carting, Inc.*, 339 NLRB 969 (2003); *Ready Mix USA, Inc.*, 340 NLRB No. 107 (2003).

The Board has long held in representation cases that a petitioned-for unit need only be an appropriate unit for purposes of collective-bargaining within the meaning of the Act; the unit need not be the only appropriate unit or the most appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Where a party objects to the petitioned-for unit on the basis it is too small, that the smallest appropriate unit must contain additional employees, it is insufficient for the objecting party to merely show the employees share a community of interest with other employees, or even that there is a more appropriate unit, instead the objecting party must show the petitioned-for unit is "clearly inappropriate." *Specialty Healthcare*, slip op. at 10. Demonstrating that a petitioned-for unit is clearly inappropriate requires demonstrating included and excluded employees share an overwhelming community of interest. *Specialty Healthcare*, slip op. at 11-13, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008) (on a Venn diagram an overwhelming community of interest exists when the community of interest factors "overlap almost completely"). An overwhelming community of interest cannot exist where the unit sought "fractures" an appropriate unit, seeking only an "arbitrary segment" of that unit where there is no rational basis for including some, but excluding others. *Specialty Healthcare*, slip op. at 13. See also *Odwalla Inc.*, 357 NLRB No. 132, slip op. at 5 (2011).

## 1. Separate Department

The Employer argues that, based on the structure of Employer's organization, the proposed voting group cannot be combined with the existing unit without yielding a "fractured unit." The Employer's argument is that the instructor, simulator-only, technical, safety and standards pilots do not "conform to the Company's administrative or organizational structure and [do] not track any organization lines drawn by the [E]mployer." In this regard, the Employer relies on the Board's recent decision in *Odwalla*, 357 NLRB No. 132 (Dec. 9, 2011).

The *Odwalla* case dealt not with a proposed *Armour Globe* election, but rather with a scenario outlined in *Specialty Healthcare*. In *Odwalla*, the employer argued that the unit sought by the petitioner was too small because it improperly excluded employees who have an "overwhelming" community of interest with employees sought to be included in the unit. Specifically, the petitioner in *Odwalla* sought a unit of delivery drivers, relief drivers, warehouse associates, and cooler technicians, but excluded the job classification of "merchandisers." 357 NLRB No. 132, slip op. at 1. However, the Board found that, when it came to community of interest factors such as classification, department and function, the merchandisers shared as much in common with the employees of the petitioned-for unit as the different classifications shared with each other in the petitioned-for unit. The Board further found that certain included positions' job functions were more like the excluded merchandisers' job functions than they were like those of other included positions. *Id.* Thus, after determining that the petitioned-for unit did not conform to classification or departmental lines, the Board found that it was "not drawn along functional lines," and a fractured unit would result where, as it warned in *Specialty Healthcare*, the petitioner was seeking only an "arbitrary segment" of a unit where there is no rational basis for including some, but excluding others. *Id.*, slip op. at 6. See *Specialty Healthcare* at 13.

I recognize that the various pilot classifications in the voting group and existing unit work in various groups specific to their classification (*i.e.*, technical, safety, standards, instructor, and simulator-only). However, all these pilots work within the Training & Flight Services organization. Moreover, the Employer has not identified any excluded employees akin to the "merchandisers" in *Odwalla*. Instead, relying on an organizational chart, the Employer asserts that the proposed voting group would "fracture" a larger appropriate unit, because in addition to the standards pilots, the Employer's Office of Independent Affairs appears to employ additional (unidentified) employees not sought by the petition. However, as noted above, the Employer failed at hearing to adduce evidence regarding the nature and extent of community of interest that these additional employees share or, conversely, do not share with the existing unit and/or the proposed voting group. Where, as here, Petitioner seeks all employees within an organization who, among other interests, share the same classification (pilot), perform distinct pilot related functions, and largely work in the same location, the Employer cannot prevail on an argument that the combined unit is a "fractured unit." See, *e.g.*, *St. Vincent Charity Med. Ctr.*, 357 NLRB No. 79, slip op. at 3. In sum, the Employer's argument that a larger unit is appropriate in the circumstances of this case, cannot stand in light of its failure to produce evidence of an overwhelming community of interest between the excluded employees, whom the Employer has not clearly and thoroughly identified, and the employees in the combined unit composed of the voting group and existing unit.

Citing *Specialty Healthcare*, the Employer further similarly argues that record evidence of common skills and training among the combined unit of pilots Petitioner seeks to represent, does not support a finding of community of interest because other excluded pilots throughout the Employer's organization may also be FAA licensed and maintain currency on their type-ratings. Positing the existence of excluded employees who may share a limited characteristic with the included employees is a far cry from demonstrating, as did the employer in *Odwalla*, that included and excluded employees share an "overwhelming" community of interest. *Specialty Healthcare*, slip op. at 11-13, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008). Moreover, these other excluded pilots do not work within the Training & Flight organization and/or were the subject of a stipulation, which the Employer freely entered into and later affirmed, to exclude.

Based on the above and the record as a whole, I find that the Employer has failed to establish that the combined unit of pilots (voting group and existing unit) is fractured and/or that Petitioner has failed to include in the voting group other pilot employees working within the Training & Flight Services organization or in the larger BCA unit for that matter. I further find that the voting group and existing unit, combined, consists of pilots working in the same organization, which weighs in favor of Petitioner's position.

## **2. Bargaining History**

The record reveals no bargaining history covering the voting group and no other labor organization seeks to represent them and/or a combined unit of the voting group and existing unit of pilots. While I find that this factor does not give particular weight to either side in their arguments regarding a community of interest between the voting group and existing unit, it does present an impediment to proceeding to an *Armour-Globe* election in the circumstances of this case.

## **3. Skills, Training and Job Functions**

The represented pilots and voting group pilots demonstrate a high degree of homogeneity in their skills and training. The pilots are all required to be certified by the FAA and to maintain currency in at least one of the Employer's aircraft models. They are all required to perform check rides on a standard schedule in order to remain current. While simulator-only pilots are not required to maintain a current medical clearance, this is purely a function of the fact that the training they deliver is performed on the ground in the simulators. Many of the pilots, including standards, simulator-only and the represented instructor pilots, are certified by the FAA as TCEs. Likewise, instructor pilots, simulator-only pilots and standards pilots may all be designated by the Employer as PITs.

With respect to job functions, the record evidence clearly demonstrates that the represented instructor pilots and the simulator-only pilots share similar and overlapping job functions. Indeed, the Employer largely admits this; as such there is no dispute on this issue. As a combined unit, the pilots' job functions, while not identical, share many common features. Unrepresented standards and simulator-only pilots each deliver training in the simulators, as do the represented instructor pilots. Standards pilots and instructor pilots perform LOFT training in the simulators. Fifteen simulator-only pilots, six of the instructor pilots and all the standards pilots serve as TCEs. Technical pilots, safety pilots and, to a



lesser extent, instructor pilots, participate in FOSP visits. Further, instructor, technical and safety pilots all perform "ferry flights."

Accordingly, I find that the evidence of common skills, training and job functions weighs heavily in favor of Petitioner's position. See *Petroleum Helicopters, Inc.*, 184 NLRB 60, 60 (1970) (finding that the pilots as a group had specialized skills and an identifiable community of interests significantly different from those of other employees).

#### 4. Functional Integration

It is undisputed that the instructor pilots and simulator-only pilots share a high degree of functional integration in providing simulator instruction. While conceding this point, the Employer asserts that neither of these two groups of pilots is functionally integrated in any "meaningful or distinctive way" with the remaining pilots in the proposed voting group, and that the only evidence of integration is that the represented pilots rely on technical, safety and standards pilots to answer questions in their respective areas of expertise.

However, the record reveals a high level of functional integration beyond the instructor pilots simply asking questions of the technical, safety and standards pilots. Indeed, the information flows the other direction as instructor pilots make recommendations regarding procedure. Further, the instructor and simulator-only pilots deliver their training literally from the manuals and procedures developed by the technical pilots, who certainly collaborate with the other pilots (including safety and standards pilots) when developing those manuals and procedures. Safety pilots also contribute to the manuals by proposing procedural revisions based on the results of their accident investigations. Similarly, instructor pilots and simulator-only pilots work with standards pilots to validate the procedures set forth in the manuals.

The record further reveals that the pilots in the combined unit sought by Petitioner, engage in "special projects," such as the iPad pilot program, in which simulator, technical and instructor pilots are working together. In all these undertakings, the various pilot classifications are both mutually supportive and dependent. Indeed, the record contains ample evidence for what is, on its face, a relatively straight-forward concept: in order to provide its customers (both internal and external) with the highest-quality operational, safety and technical training and support, the Employer relies on the collaborative effort of pilots with talents lying in the various subfields of instruction, safety, technical operations and compliance (in the industry parlance, "standards"). Thus, contrary to the Employer's contention concerning Petitioner's "anecdotal" evidence in this regard, the pilots in the voting group and existing unit clearly do not work in isolation of each other. Rather, the record clearly reveals these pilots work with each other in order to provide better training and flight services to the Employer customers.

The Employer further contends that, other (unidentified) excluded pilots within the Employer's organization, also "ask questions" of the technical, safety and standards pilots. The Employer misreads *Specialty Healthcare* in this regard. Petitioner seeks all pilots within a specific administrative subdivision of the Employer's commercial aviation services division who are involved in providing operational, safety and technical support to the Employer's customers. To rebut this community of interest showing, the Employer must demonstrate an "overwhelming community of interest" exists between these employees and

employees not sought by the petition and who work in other organizations within the Employer's expansive operations. Even assuming that the Employer adduced limited evidence of other unidentified employees asking questions of the technical, safety and standards pilots, such would fall far short of the "overwhelming" hurdle the Employer must clear, as set forth in *Specialty Healthcare*.

On the basis of the foregoing and the record as a whole, I find that the voting group's functional integration with existing unit pilots weighs in favor of Petitioner.

## **5. Contact and Interchange**

The Employer acknowledges in its brief, that work-related contact between the instructor pilots and the simulator-only pilots comprises a routine portion of these employees' work-day. However, the Employer asserts that the record does not disclose significant contact between the existing unit and the safety, technical and standards pilots within the proposed voting group. Such is not the case.

Rather, the record reveals that the technical, safety and instructor pilots, as well as the simulator-only pilots, work in the same general location and see each other regularly at work both during work-time and the work-day, such as during lunch breaks. Specifically, the instructor, technical and safety pilots, as well as the simulator-only pilots, each regularly deliver training and/or administer check rides in the flight simulators in the 25-01 Building. Pilots in the petitioned-for voting group are also themselves regularly trained in the simulators; their trainer may be either a represented instructor pilot or an unrepresented simulator-only pilot and their fellow trainees may be represented instructor pilots. While the standards pilots' office is officially located a few miles away from the 25-01 Building, standards pilots perform check rides in the simulator several times per week, attend meetings in the 25-01 Building, and occasionally use their old workspace and materials located there.

Technical pilots, safety pilots and instructor pilots also have a significant amount of casual and work-related contact outside the simulators. They frequently eat lunch together and discuss work-related topics. Finally, these pilots all fly ferry flights and there was testimony that, in doing so, they may serve alongside each other in those flights. The standards pilots' casual work contact with the remaining pilots is not as significant, yet they still eat lunch with the other pilots when they are at the 25-01 Building collaborating on safety or technical issues; this contact occurs at least weekly if not more.

Moreover, the record reveals that the very nature of the pilots' shared mission (providing operational, safety, and technical support to the Employer's customers) demands that the voting group and existing unit pilots engage in significant work-related contact with each other. For example, technical, safety and standards pilots (with input by instructor pilots) develop training materials in a collaborative process. Instructor pilots consult with technical and safety pilots on complex training subjects and also brief them on what is working and not working in training. Safety pilots initiate changes in procedures based on the results of accident investigations, and standards pilots review technical pilots' recommended procedures and manuals to ensure continuity in compliance with all applicable regulations. Although the standards pilots' office is located a few miles away from all the other pilots' work area in the 25-01 Building, the standards pilots regularly work

in the 25-01 Building one to four times a week during which time they often are collaborating with other pilots on projects for the Employer.

With respect to interchange, the Board has traditionally given permanent transfers less weight than temporary transfers in assessing a community of interest. *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1021, n.4 (1994). Here, the record contains significant evidence of permanent transfers. Specifically, there is evidence of numerous transfers between the instructor pilot and simulator-only instructor position. There is also evidence of a significant number of transfers from those positions to technical and safety pilot positions, demonstrating a high degree of interchange, albeit one-sided, as there is no evidence of transfers from technical, safety or standards positions to instructor or simulator-only pilot positions.

The record also discloses temporary interchange, including two specific instances of instructor pilots temporarily filling the role of technical pilots (in one case for 6-7 months) and a third instance of a technical pilot substituting for a safety pilot. The Employer argues that this evidence is limited, anecdotal and, therefore, unpersuasive. In fact, the full nature and extent of temporary interchange is unknown, as neither party offered any documentary evidence regarding temporary interchange. Petitioner, both at hearing and in its post-hearing brief, argues that it is entitled to rely on this limited evidence, because the Employer failed to comply with a subpoena served on the Employer by Petitioner seeking such documentary evidence. While Petitioner did not seek to enforce the subpoena, the Employer was well aware that it would be challenging community of interest between the voting group and the existing unit and would appear to have been in the best position to provide documents detailing the nature and extent of temporary transfers, or lack thereof, but did not do so. Regardless, I find, based on the record as a whole, that the factor of contact and interchange weighs in favor of Petitioner's position in this matter.

## **6. Terms and Conditions of Employment**

The record reveals a significant difference in the average salary between simulator-only pilots and other pilots – approximately 45%. However, the average salary of the other petitioned-for pilots (technical, standards, safety) relative to the existing unit of instructor pilots is relatively close – approximately 5%. The other notable distinction is that the standards pilots' work location is a few miles away from that of the other pilots but such is mitigated by the standards pilots' work, which takes them to the same work location as the other pilots on a regular and frequent basis.

In many other respects, the voting group and existing unit pilots' terms and conditions of employment are substantially similar. The combined unit of pilots is largely eligible for the same Employer-wide benefits programs. The voting group and existing unit pilots work similar 40 hour weeks<sup>20</sup> and all largely work at the same location. With differing frequency, all pilots use simulators in their work. They also use laptops, Blackberries and various computer programs. All pilots wear a common uniform when flying or representing the Employer before a customer. When they are not flying, they wear business casual attire, as do the simulator-only pilots. Pilots' licensing information, flight and simulator

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<sup>20</sup> The work-day similarly could vary for the safety, instructor and simulator-only pilots due to the 24/7 nature of safety investigations and the simulator operations.

training records and/or work hours are maintained in a common system. All pilots share a common human resources personnel representative, except for the standards pilots.

While there are some differences in terms and conditions of employment between some in the voting group and the existing unit (e.g., salary – limited to the simulator-only pilots; work location – limited to the standards pilots; human resources personnel coverage – limited to the standards pilots), the balance of the voting group and existing unit share many other terms and conditions employment. In light of the above and the record as a whole, I find that the factor of shared terms and conditions of employment slightly favors Petitioner's position.

## **7. Supervision**

The record reveals a very low degree of common supervision of the pilots at issue, and no common day-to-day supervision. As the Employer correctly argues, the first level of common supervision is the Chief Operating Officer of Training & Flight Services, who does not have any involvement in the organization's pilots' day-to-day supervision. It is true that pilots, when performing work as TCEs, are supervised by Roberts from the standards group. Likewise, pilots performing their work in the simulators are subject, to a significant degree, to the authority of the various program heads under Flight Training Simulator. Finally, the same scheduler schedules the instructor pilots and the simulator-only pilots for their time in the simulators. However, these facts do not detract from the fact that little or no actual common, day-to-day supervision is present among the various pilots groups. Thus, I find that this factor weighs in favor of the Employer's position in this case.

## **8. Conclusion Regarding Community of Interest**

Above, I have analyzed the community of interest factors relating to whether the disputed classification of pilots are organized into a separate departments; have distinct skills and training; have distinct job functions and 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. In light of that analysis and the record as a whole, I find, with the exception of the factor of supervision, that the balance of the factors establishes that the voting group of pilots shares a sufficient community of interest with the existing unit of pilots.

I now turn to the Employer's argument regarding the size of the voting group relative to the existing unit.

### **C. "Numerical" Appropriateness of an *Armour Globe* Election**

The Employer argues that "policy considerations" dictate that application of the *Armour Globe* election mechanism is inappropriate where, as here, Petitioner seeks an election among approximately 62 unrepresented pilots to determine whether they wish to be included and represented in an existing unit composed of approximately 38 instructor pilots. In this regard, the Employer argues that the traditional use of *Armour Globe* elections has been to add "residual" employees to existing units, a purpose that is defeated when the residual employees outnumber the existing unit by almost 2 to 1.

The Employer cites no authority in support of its contentions in this regard and misconstrues the purpose of a self-determination election, which is to ensure that an appropriate voting group of employees sharing a community of interest with an existing unit has the opportunity to seek representation in a single unit. See *St. Vincent Charity Med. Ctr.*, slip op. at 2. Further, I am mindful that "[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of the collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . . ." § 9(b) of the Act.

In sum, the Employer's arguments in this regard are not supported by the record, Board law, and/or by the Act. Accordingly, I find in favor Petitioner's request for a self-determination election among the voting group of pilots.

#### IV. CONCLUSION

Based on the foregoing, the entire record, and having carefully considered the parties' arguments, I find that a self-determination election is the proper method by which Petitioner may add the petitioned-for employees to its existing unit, as the petitioned-for employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB at 995.

Accordingly, I shall direct an election in the following appropriate voting group:

All full time and regular-part time standards pilots, safety pilots, technical pilots, and simulator-only pilots/instructors employed by the Employer at or out of its Renton, Washington facilities; excluding pilots on Pilot Early Leave, BTE pilots, executive pilots, pilots located and working remotely outside the State of Washington, office clericals, guards and supervisors as defined in the Act.

There are approximately 62 employees in the voting group found appropriate.

#### V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the

commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Airplane Manufacturing Pilots Association. If a majority of the valid ballots in the election are cast for the Airplane Manufacturing Pilots Association, the employees will be taken to have indicated their desire to be included in the existing, recognized unit currently represented by the Airplane Manufacturing Pilots Association, which may bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the voting group of employees will be deemed to have indicated their desire to remain unrepresented.

#### **A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174 on or before **March 29, 2012**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

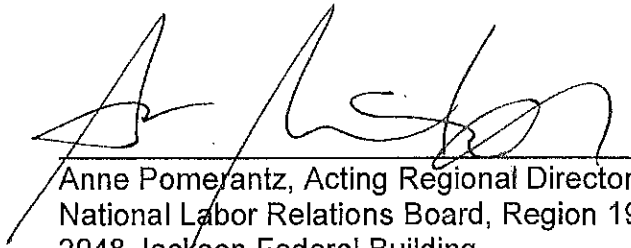
#### **B. Notice Posting Obligations**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **April 5, 2012**. The request may be filed through E-Gov on the Board's web site, [www.nlrb.gov](http://www.nlrb.gov), but may not be filed by facsimile.<sup>21</sup>

DATED at Seattle, Washington on the 22<sup>nd</sup> day of March, 2012.

  
Anne Pomerantz, Acting Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

RECEIVED

MAR 26 2012

Brauer, Buescher, Goldhammer,  
Kelman & Dodge, P.C.

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Brauer, Buescher, Goldhammer,  
Kelman & Dodge, P.C.

<sup>21</sup> To file a request for review electronically, go to [www.nlrb.gov](http://www.nlrb.gov) and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available at [www.nlrb.gov](http://www.nlrb.gov) under the E-File tab.