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

THE BOEING COMPANY,

and

Case No. 19-CA-128941

SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES IN AEROSPACE, affiliated with INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 2001.

THE BOEING COMPANY'S POST-HEARING BRIEF

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I. INTRODUCTION

This case is nothing more than an attempt by the Society of Professional Engineering Employees in Aerospace ("SPEEA" or "the Union") to acquire what it bargained away many years and many collective bargaining agreements ago: the right to negotiate any decision by The Boeing Company ("the Company" or "Boeing") to move bargaining unit work. The undisputed record evidence establishes that not only do the parties' collective bargaining agreements give Boeing the unfettered right to move bargaining unit work, but that Boeing has unilaterally relocated bargaining unit work for the last 25 years without any challenge from the Union. Given that Boeing has no obligation to bargain over its decisions to relocate bargaining unit work, it has no duty to provide the Union with the information it requested regarding "possible" decisions to move work.

This unfair labor practice case, however, need not turn on whether the collective bargaining agreements and the parties' longstanding and unambiguous past practice constitute a waiver of the Union's right to engage in decisional bargaining. Even if there was a duty to bargain over these issues, the Complaint can and must be dismissed because:

- the Union is not entitled to information regarding possible movement of work as the duty to bargain over such decisions only arises when an employer seeks to implement the decision;
- the information requests are vague, overbroad, and extremely burdensome, especially in light of all the information Boeing already provided SPEEA regarding ongoing studies in the Joint Workforce Committee meetings months, if not years, in advance of any decision to relocate bargaining unit work; and
- despite multiple requests from Boeing, the Union never tried to clarify its request or otherwise make a good faith effort to narrow it.

Accordingly, Boeing acted in good faith and complied with its bargaining obligations under Sections 8(a)(1) and (5) of the National Labor Relations Act. Therefore, the Complaint should be dismissed.

II. FACTUAL BACKGROUND

A. Overview of Boeing and SPEEA

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

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

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

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

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

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

> **Section 8.2 Objective.** The general objective of the procedure stated in this Article is to provide for the accomplishment of workforce reductions for business reasons, to the end that, insofar as practicable the reductions will be made equitably, expeditiously and economically, and ***at the same time will result in retention on the payroll of those employees regarded by management as comprising the workforce that is best able to maintain or improve the efficiency of the Company, further its progress and success and contribute to the successful accomplishment of the Company's current and future business. The location, occurrence and existence of any condition necessitating a workforce reduction, and the number of employees involved, will be determined exclusively by the Company. Following such determination, the Company will notify the Union of the location and the estimated size and job family and skills management code(s) involved in the anticipated workforce reduction.*** Wherever practicable, affected employees will be given two (2) weeks' notice prior to layoff and will receive consideration for open positions in accordance with Section 8.7.

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

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

Not only does Boeing have the contractual right to relocate SPEEA bargaining work unilaterally, but it has regularly exercised that right since at least 1990. (Jt. Ex. 1, ¶ 1). Indeed, in the 2013 and 2014, Boeing unilaterally moved bargaining unit work outside the Puget Sound at least 16 times, including:

- Establishment of BCA engineering design centers in multiple locations outside the bargaining unit;
- 3-D Modeling work affecting approximately 7 SPEEA-represented employees in the Puget Sound;
- BCA Commercial Aviation Services ("CAS") Fleet Services modifications and freighter conversions work affecting approximately 300-400 SPEEA-represented employees in the Puget Sound;
- BCA CAS Out-of-Production Airplane Support affecting approximately 300 SPEEA represented employees in the Puget Sound;
- Product Development advanced concepts work affecting approximately 60 SPEEA-represented employees in the Puget Sound;
- 787 sustaining aft body structures and systems installation design work affecting approximately 10 SPEEA-represented employees in the Puget Sound;
- APU engineering work affecting approximately 13 SPEEA-represented employees in the Puget Sound;
- Propulsion Integration Center work affecting approximately 5-10 SPEEA-represented employees in the Puget Sound;
- 787-10 non-recurring aft body structures and systems installation work affecting approximately 20 SPEEA-represented employees in the Puget Sound;
- 787 sustaining mid body structures and systems installation work affecting approximately 5 SPEEA-represented employees in the Puget Sound;
- Concept Center Alignment for Engineering Design Centers affecting approximately 30 to 40 SPEEA-represented employees in the Puget Sound;
- Boeing Research & Technology work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;
- CAS Customer Support work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;

- CAS media services support work affecting approximately 25 SPEEA-represented employees in the Puget Sound;
- Global Services and Support work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;
- 737 MAX Fan Cowl work affecting approximately 20 SPEEA-represented employees in the Puget Sound; and
- Aircraft interior design and manufacture work to South Carolina that impacted Puget Sound employees.

(Tr. 77, 128; Jt. Ex. 1, ¶ 2). Boeing has never bargained with SPEEA, nor has SPEEA made any demand or request to bargain over these decisions to move, relocate, or realign work. (Tr. 77, 82-83, 159-60; Jt. Ex. 1, ¶ 3). Moreover, since at least 1990, SPEEA has never challenged these unilateral decisions by filing a grievance, a demand for arbitration, or an unfair labor practice charge with the National Labor Relations Board. (Jt. Ex. 1, ¶¶ 4-6).

C. Events Relating to the Union's Request for Information

1. The Joint Workforce Committee

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

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

(Tr. 122; GC Ex. 2, p. 58; GC Ex. 3, p. 60). Although LOU 6 requires that the JWC meet only once per quarter, JWC meetings are generally held each month. (Tr. 23, 63; GC Ex. 2, p. 58; GC Ex. 3, p. 60). There are numerous representatives from SPEEA that attend, including SPEEA executive board members and officers. (Tr. 24-25). There are also multiple Boeing

representatives, such as Todd Zarfos, Vice President of Engineering for the Washington State Design Center and Senior Chief Engineer for Systems for BCA, and Yvonne Marx, a Boeing Employee Relations Specialist and SPEEA's single point of contact at Boeing for addressing any disputes, concerns, or information requests. (Tr. 24-25, 94, 97, 120).

Since about 2008, however, Boeing has also used the JWC meetings to communicate business strategies involving the relocation of bargaining unit work and their potential impact on the bargaining units "to make [SPEEA] aware whenever possible of what [Boeing is] looking at." (Tr. 122, 124). As such, even Sean Leonard, SPEEA's contract administrator and the General Counsel's only witness, acknowledged Boeing's efforts to give SPEEA "a forum to meet with the company and discuss issues relating to the workforce, like what the company has planned for upcoming layoffs [and] changes to job[s]." (Tr. 18, 23). Consequently, Boeing regularly provides information regarding movement of work that results in layoffs during the JWC meetings, and SPEEA is provided an opportunity to ask questions. (Tr. 25-26, 153).

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

As an example, at the July 2013 JWC meeting, Boeing provided an overview of its engineering workforce strategy for Propulsion, including a description of the business elements affecting and impacting Propulsion as well as the potential impact the strategy might have on

SPEEA represented employees. (Tr. 129-30; R. Ex. 2). Boeing explained that its Propulsion strategy was driven by the fact that the location of skills did not coincide with projected increases in demand, and thus the Propulsion study sought to evaluate how bargaining unit work could be moved to "[a]lign engineering to the build." (Tr. 130, 132; R. Ex. 2). However, no decisions had been made at that time regarding the Propulsion Engineering Workforce study. (Tr. 132-33). Rather, Boeing merely provided SPEEA notice of the possibility that bargaining unit work in Propulsion might be relocated so that SPEEA, consistent with the overarching purpose of the JWC, could ask questions and understand what Boeing sought to achieve. (Tr. 132-33).

However, Boeing does not and cannot inform the JWC of each and every change currently under consideration because thousands of individuals at multiple levels throughout the Company are constantly evaluating their statements of work and how to operate more efficiently. (TR. 131). Put simply, Boeing is examining how best to use its engineering employees "[e]very single day at all different levels," which can range from someone scratching an idea out on a napkin, to suggesting something during a staff meeting, to putting together a PowerPoint presentation. (Tr. 110-11, 131). Moreover, the primary focus of these studies is never whether Boeing should move bargaining unit work out of the Puget Sound, but rather what can be done to improve efficiencies and better support the business. (Tr. 176-77). Although there are currently less than two dozen studies that have progressed sufficiently far enough to warrant announcement to the JWC, the total number of studies currently underway at Boeing that could result in the potential movement of bargaining unit work is unknown by even Boeing's Vice President of Engineering because Boeing is always looking at new opportunities for improving "synergy and efficiency." (Tr. 131, 142-43). As a result, only when a study advances past

exploration and is likely to impact the bargaining unit does Zarfos typically learn about it so that he can brief the JWC. (Tr. 131).

Since Mr. Leonard's tenure began at SPEEA in June 2013, Boeing not only made numerous presentations regarding studies that could result in the movement of bargaining unit work, but it also provided regular updates on previously announced studies and decisions. (Tr. 18-19, 63, 133-34; R. Exs. 2-9). For example, at the November 14, 2013 JWC meeting, Boeing announced a Boeing Test & Evaluation (BT&E) study that could result in the movement of bargaining unit work. (Tr. 133-34; R. Ex. 3). In that presentation, Barbara Cosgrove, BT&E's Vice President – Flight Test, presented SPEEA an overview of its business strategy and discussed potential closures that might be necessary. (Tr. 135).

Similarly, in January 2014 Boeing presented a study involving the Interiors engineering statement of work performed in South Carolina and what impact it might have on SPEEA represented employees in the Puget Sound.[1] (Tr. 140). During the June 2014 JWC meeting, Boeing presented its 777X Engineering Diversity Plan describing potential relocation of bargaining unit work under consideration. (Tr. 79-82; R. Ex. 7). At the same meeting, Boeing also presented its Flight Services Management Study, which also examined the placement of work outside the Puget Sound. (Tr. 81-82; R. Ex. 8, p. 2). At the August 2014 JWC meeting, Boeing provided a Global Services and Support (GS&S) Alignment Overview relating to BDS work performed at Kent and how it might be relocated outside the Puget Sound. (Tr. 83-85; R. Ex. 9). At the time Boeing made these particular presentations, no final decision had been made as to whether the studies would be implemented. (Tr. 82, 85).

[1] Boeing initially predicted an impact of approximately 100 to 200 Interiors employees, but the impact now appears to be much less. (Tr. 141-42).

2. The Boeing Research & Technology Realignment Study

During the November 2013 JWC meeting, Boeing provided SPEEA an update on a Boeing Research & Technology (BR&T) study that was previously announced to the JWC in late summer or early fall 2012. (Tr. 27, 69-71, 136, 138; R. Ex. 4). Although there was still no final decision, Boeing updated the Union on the issues BR&T was facing given that layoffs were expected. (Tr. 71, 138-139; R. Ex. 4, p. 2). Thus, the presentation updated SPEEA on BR&T's goals for aligning its capabilities and capacities to match the needs of the business, which included the movement of bargaining unit work. (Tr. 74, 138-39). Specifically, the presentation stated that Boeing sought to establish five centers of excellence across the country to "balance locations," "align skills and infrastructure to future business requirements," "leverage our global workforce," and "optimize skills mix and management spans." (Tr. 27, 72-73; R. Ex. 4, pp. 8, 11). As the General Counsel's own witness acknowledged, "[w]hen Boeing uses that terminology, it does often relate to decisions to relocate [bargaining unit] work." (Tr. 74).

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

Although a decision was made to implement the BR&T realignment, Boeing still did not know precisely what impact its decision would have on the SPEEA represented workforce. (Tr. 146). Rather, only after Boeing began to implement the decision could it determine specifics such as what skills would be needed, who will be retained, and what operations will be consolidated. (Tr. 146). Moreover, this process would necessarily involve the work of SPEEA

represented employees and thus was not immediately available at the time of the decision. (Tr. 146).

Accordingly, at the January 30, 2014 JWC meeting, Boeing updated the JWC regarding the BR&T realignment and provided an estimate of the expected reductions in bargaining unit employees in BR&T for 2014. (Tr. 35-36, 78; GC Ex. 4; R. Ex. 6, p. 2). The presentation specified that the reductions would likely be achieved by a combination of attrition, redeployment, and reductions in force. (R. Ex. 6, p. 2). It also updated SPEEA on the focus for each BR&T Research Center in the United States.[2] (R. Ex. 6, p. 7).

3. SPEEA's Information Request

At the February 27, 2014 JWC meeting, Boeing provided another update on the BR&T realignment, and also announced the potential realignment of Commercial Aviation Services (CAS) that would involve the movement of bargaining unit work from Puget Sound to Southern California.[3] (Tr. 145-48). After these discussions, a representative from SPEEA asked Zarfos whether they would continue to see these types of studies and movement of work impacting the Puget Sound workforce. (Tr. 39, 86, 148). Zarfos was already planning to announce four additional studies during the meeting. (Tr. 148-49). He told SPEEA that Boeing is always evaluating its options, that there would be additional studies involving work movement, and then proceeded to discuss the new studies. (Tr. 55, 148-49, 169).

A month later on March 27, 2014, Rich Plunkett, SPEEA's Director of Strategic Development, sent Marx an information request ghost written by Leonard. (Tr. 20, 43-44, 87;

[2] As of the hearing, Boeing has still not fully implemented the BR&T realignment. (Tr. 146).

[3] CAS is the customer support organization that performs maintenance engineering, maintenance publications, and field service engineering. (Tr. 147).

GC Ex. 6). The letter states that "SPEEA requires information about the possible movement of unit work and/or work opportunities," and directed Boeing to provide "any and all documents relating to the Company's plans to 'relocate' or 'realign' [bargaining unit] work," listing the following requests:

a. Any studies relating to the "relocation" and/or "realignment" of such work.

b. Any documents relating to specific plans for such "relocation" and/or "realignment" of such work.

c. Any documents relating to the timeline for implementation of such "relocation" and/or "realignment."

d. Any document relating to the acquisition of property, relocation of equipment, and/or any and all other actions taken by the Company to prepare for such "relocation" and/or "realignment."

e. Any documents relating to meetings that the Company has held, or plans to hold, with SPEEA-represented employees to discuss such "relocation" and/or "realignment."

f. Any documents relating to "Operation Dragonridge" and/or similar or related Operation.

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

Leonard asserts that the information request "was an attempt to get some more information in advance to plan on how to represent our members, and also to get specific information about who was going to be impacted and when." (Tr. 45). However, Leonard admits that request was anything but specific. (Tr. 46). For example, despite claiming that the request was directed, in part, to obtain additional information about the BR&T realignment, it does not specifically ask for documents related to the movement of work in BR&T. (Tr. 88, 90). Moreover, by Leonard's own admission, the information request was designed "to cast a nicely sized net" seeking any information regarding any "potential" movement of work, and he even

included a request for information regarding "Operation Dragonridge" despite having no idea as to what "Dragonridge" was or how it related to the bargaining unit. (Tr. 46, 48, 88).

4. Boeing's Response and Request for Clarification

Upon reviewing the Union's request, Boeing did not believe that SPEEA was entitled to most of the requested information because the parties' collective bargaining agreements gave Boeing the unfettered right to relocate bargaining unit work. (Tr. 99, 111). Marx also found the request very "broad in scope" as it appeared that the Union wanted "anything in regards to potential work movement that [Boeing] may be thinking about or discussing." (Tr. 97-98). Also, contrary to Leonard's interpretation, Marx did not believe that the request sought additional information regarding the BR&T realignment. (Tr. 98). SPEEA had not specifically identified it in the request and Boeing had already provided multiple updates since the decision itself. (Tr. 98, 158). Moreover, she was puzzled by the request because SPEEA was receiving information at the JWC meetings about studies that had advanced beyond mere exploration and that are likely to have an actual impact on SPEEA members. (Tr. 101). As a result, Marx did not understand what SPEEA wanted, to what degree, and for which particular statement of work, thereby making the request very unwieldy and burdensome. (Tr. 99, 110). As Marx explained:

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

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

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

(Tr. 106).

Zarfos similarly testified that the request, as drafted, was impossible to answer because BCA alone had 15,000 engineers and 1,000 managers in the Puget Sound area who were moving or evaluating whether to move unit work back-and-forth every day. (Tr. 155-56, 159). Consequently, he was not sure how Boeing could capture this "ebb and flow" of work in and out of the Puget Sound and present it to SPEEA. (Tr. 157). He also found the request vague and impossible to answer because it sought "anything you've ever thought of" and was imprecise as to what it wanted. (Tr. 157, 159). Responding to SPEEA's request was also problematic because Boeing often does not know which employees, if any, will be affected by a decision until it actually implements the study. (Tr. 151).

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

requests so that it could have guidance on how best to get SPEEA the information it wanted in a timely manner. (Tr. 114-15, 157).

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

> I am writing in response to your request for information dated March 7, 2014 in which you request extensive information regarding the possible future relocation of SPEEA-represented work. We are struck by the breadth and scope of the request and struggling to understand the basis upon which the Union believes it is entitled to the requested data.
>
> As a preliminary matter, we take issue with your characterization of the Company's statements. The Company did not make a blanket statement that work will continue to be moved out of the Puget Sound as your request suggests. As you know, the Company maintains the legal and contractual right to locate engineering work in any location, and is continually evaluating the most effective ways to utilize its workforce, including its options for the placement of work. Studies undertaken to evaluate the viability of a work location are highly confidential and often speculative business planning exercises, many of which never progress further than mere exploration.[4]
>
> The Union predicates its data request on nothing more than a mischaracterization of the Company's position during an unspecified Joint Workforce Committee meeting, and the bald assertion that "SPEEA requires information about the possible movement of work and/or work opportunities, in order to fully and fairly represent its members." There is nothing within existing law or the parties' contract that requires the Company to provide the union with information regarding such studies – certainly not based on such thinly supported alleged relevance.
>
> We are also at a loss for why you feel the existing process does not provide you with adequate information regarding work movement initiatives. The parties have a longstanding practice of utilizing the Joint Workforce Committee to share information regarding work movement. In those meetings, the union is provided with information relating to those studies that have advanced beyond mere exploration and that are likely to have an actual impact on SPEEA members. These studies are typically shared months in advance, giving SPEEA more than ample time and data to sufficiently represent its employees' interests. There are

[4] SPEEA never offered to sign a confidentiality agreement with respect to its information request. (Tr. 58, 89-90).

> Joint Workforce Committee meetings scheduled for both the 10th and 24th of this month, and we would be happy to discuss any specific questions you have regarding the studies that have been announced at either of those sessions. In the meantime, if there are specific provisions of the CBA that you believe the administration of which requires the requested data, please identify those provisions and we will evaluate what information could be provided to help facilitate your request.
>
> Notwithstanding the above, the Company will provide documents relating to meetings it has held with SPEEA-represented employees regarding the relocation of SPEEA-covered work. If there are specific meetings that you believe have occurred for which you would like information, please identify them specifically to help facilitate a prompt response.

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

On April 11, 2014, Mr. Plunkett responded to Marx's letter, but he failed to address any of Boeing's concerns, clarify or specify precisely what data SPEEA wanted, or otherwise narrow the request. (Tr. 52, 103-04; GC Ex. 8). Plunkett again stated that SPEEA needed the information to represent its members, but also added the information was needed to "evaluate potential decisional and effects bargaining." (GC Ex. 8).

On April 30, 2014, Marx responded that because Boeing had no decisional bargaining obligations under the contract and the requested information was not relevant to effects bargaining, it had no obligation to produce the information. (Tr. 53; GC Ex. 9). However, Marx added that while "there is no pending request for effects bargaining, … we remain more than willing to engage in such discussions and to provide information reasonably necessary to effectuate them." (GC Ex. 9). She also stated that Boeing would provide the Union with information about meetings Boeing had with employees regarding relocation and realignment if the Union would assist her by identifying the particular meetings it was interested in. (GC Ex. 9). However, Marx never received a response from Plunkett or anyone else at SPEEA to her April 30th letter. (Tr. 105).

In April and May 2014, Zarfos also asked Plunkett directly for clarification as to what information SPEEA sought in its request. (Tr. 172-75). Specifically, Zarfos asked Plunkett, "What types of information are you looking at above and beyond what we've already provided?" (Tr. 174). Plunkett, however, refused to clarify and merely responded that SPEEA's members want more details, and appeared content to agree to disagree as to how much information Boeing had already provided.[5] (Tr. 175). As such, SPEEA never provided Boeing any clarification regarding the information or documents that it sought. (Tr. 89, 101-02, 158).

Although Boeing did not provide any information directly in response to SPEEA's written request, it did and continues to provide SPEEA information related to the possible movement of work at the JWC meetings. (Tr. 54, 106). Indeed, on May 29, Boeing continued to discuss the BR&T and CAS relocations with SPEEA, and during the May 2014 JWC meeting, the agenda specifically included "what other work is being studied to move out of Puget Sound" as a topic. (Tr. 150-51; R. Ex. 11). Moreover, as Boeing got a better understanding regarding which employees would be impacted by the BR&T and CAS decisions, it shared that information with SPEEA. (Tr. 151).

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

[5] Plunkett did not testify at the hearing despite being present at the hearing prior to the entry of the sequestration order. (*See* Tr. 3). As such, Respondent requests that an adverse inference be drawn against the General Counsel that Plunkett refused Zarfos' request to clarify SPEEA's information request.

5. Leonard's Conduct at the Hearing Further Demonstrates SPEEA's Bad Faith Efforts to Obtain Information to which It is Not Entitled

The General Counsel's sole witness, Sean Leonard, incorrectly testified on direct that SPEEA was not "getting any information about Boeing's plans for relocating bargaining unit work," "not getting this kind of information until the very last minute, after the decision had been made, and only ten minutes or so before the announcement was made to employees;" and that SPEEA was "totally in the dark" about the BR&T announcements in an effort to justify SPEEA's information request. (Tr. 44-45). Leonard's testimony was, at best, the result of a misunderstanding or incorrect recollection or, at worst, an intentional misrepresentation of the facts.[6] For example, multiple times during his direct examination by Counsel for the General Counsel, Leonard testified that Boeing provided no advance notice to SPEEA regarding a potential BR&T realignment or that it might be relocating BR&T work prior to December 2013:

> Q And again, prior to them, Boeing, making this announcement, did it tell SPEEA that it was thinking about relocating these particular jobs?
>
> A I don't believe so.
>
> Q Anything about studies about relocating these particular jobs?
>
> A No, I don't think so.
>
> Q Or a decision to relocate these particular jobs?
>
> A No, not that I'm aware of.

(Tr. 29).

> Q Okay. At any time before this [December 2013] meeting, did Boeing telling [sic] SPEEA that it was thinking about relocating these jobs?
>
> A Not that I'm aware of.

[6] Leonard did state that his first few months with SPEEA was "a turbulent time" for him. (Tr. 25).

Q And what about performing any studies in regard to relocating these jobs?

A I don't believe they told us about that.

Q Okay. Did they tell SPEEA anything about relocating these particular jobs?

A Not that I'm aware of.

(Tr. 39).

However, when confronted with Boeing's November 2013 BR&T presentation on cross examination, Leonard finally admitted that Boeing had notified SPEEA that it was considering moving BR&T bargaining unit work out of the Puget Sound at least a month prior to its decision announced in December 2013:[7]

MR. CORRELL: This is a PowerPoint presentation entitled positioning BR&T for Boeing Second Century. It's captioned as a presentation to Boeing/SPEEA Joint Workforce Committee and dated November 14, 2013.

BY MR. CORRELL: Do you recognize this PowerPoint presentation, Respondent's 4, as something you've seen before?

A Yes, I do.

Q And do you recall that it was presented to the Joint Workforce Committee meeting –

A Yes.

Q -- in November – let me finish my question, please, so the record can be as clean as possible – in November 2013?

A Yes.

…

[7] Leonard was not employed by SPEEA when Boeing initially announced the BR&T realignment study. (Tr. 18-19, 138).

Q And it makes clear, does it not, that this is a study only and that no decision has been made to improve or implement the contents of the presentation, correct?

A That is what it says.

…

Q It relates to – this deck, Respondent's 4, relates to the restructuring of Boeing research and technology that was discussed – that you discussed in your testimony on direct; isn't that correct?

A Correct.

…

Q And the third bullet point on [the People Plan slide] says leverage our global workforce. Do you see that?

A I do see it.

Q Do you recall discussing that bullet point?

A Yeah, I do recall those kind of terms being used, yes.

Q And that – when Boeing talks about leveraging the workforce, they're talking about efficiently and effectively using their employees around the world, right?

A They do seem to be talking about how to – how they want to position their employees – their workforce.

Q And in your experience, when Boeing talks about effectively and efficiently using its employees in engineering type disciplines that can result in decisions to work outside the Puget Sound, right?

A When Boeing uses that kind of terminology, it does often relate to decisions to relocate work.

Q And it does in this case; doesn't it?

A Yes.

(Tr. 70-74). Leonard's admissions on cross examination both undermine his credibility and directly refute SPEEA's purported reasons for the information request: that Boeing was keeping

SPEEA "in the dark" by not telling SPEEA that it was thinking about relocating BR&T work or that there was a study about relocating BR&T jobs. (*See* Tr. 29, 39, 44-45). Moreover, Leonard's false testimony on direct examination further demonstrates a lack of good faith by SPEEA in its dealings with Boeing in connection with the March 27th information request.

III. ARGUMENT AND CITATION OF AUTHORITY

Under Section 8(a)(5) of the Act, an employer must furnish a union with requested relevant information to enable it to represent employees effectively in administering and policing an existing collective-bargaining agreement. *NLRB v Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989), enfd. *NLRB v. A-Plus Roofing, Inc.*, 39 F. 3d 1410 (9th Cir. 1994); *Disneyland Park*, 350 NLRB 1256, 1264-65 (2007). Therefore, if the requested information is not otherwise presumptively relevant, or if an employer successfully rebuts the presumption of relevance, then the information need not be furnished unless the union affirmatively demonstrates its relevance. *Emery Industries*, 268 NLRB 824 (1984); *Excel Rehabilitations & Health Center*, 336 NLRB No. 10 n. 1 (2001) (not reported in Board volumes), and cases cited therein. If an employer has been made aware of only invalid reasons for the information, it has no duty to accede to the information request even if other legitimate reasons for the information request conceivably might exist. *Emery Industries*, 268 NLRB at 825 n.4.

Accordingly, a union must explicate the relevance of requested information with some precision, and a generalized conclusionary explanation of relevance is "insufficient to trigger an obligation to supply information that is on its face not presumptively relevant." *Island Creek Coal Co.*, 292 NLRB 480, 490 fn. 19 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990) (citations omitted); *Disneyland Park*, 350 NLRB at 1265. Moreover, where the union makes vague and

overly broad requests for information, upon request by the employer the union must engage in a bargaining dialogue to clarify and narrow the requests. *United Parcel Serv.*, 2013 WL 4429506, NLRB Case No. 16-CA-028064 (Aug. 15, 2013).

Counsel for the General Counsel asserted multiple times at the hearing that this is not a "bargaining case" and thus claimed that the issue of whether SPEEA waived its right to bargain over the relocation of bargaining unit work is irrelevant. (Tr. 104, 106). While Counsel for the General Counsel's assertions are clearly erroneous, the fact of the matter is that the Complaint can be dismissed without deciding the waiver issue because 1) SPEEA was not entitled to information regarding any "possible" movement of work, 2) SPEEA's request for information was vague, overly broad, and unduly burdensome, and 3) SPEEA refused to clarify or narrow its request despite repeated requests by Boeing to do so. However, even if SPEEA's request properly sought relevant information for decisional bargaining, Boeing had no duty to provide the requested information because the parties' collective bargaining agreement gives Boeing the unfettered right to relocate bargaining unit work. Therefore, the Complaint must be dismissed.

A. Boeing Had No Statutory Duty to Provide the Requested Information

1. SPEEA is not entitled to information regarding every "possible" movement of work Boeing considers.

Regardless of whether or not Boeing has an obligation to engage in decisional bargaining, Boeing has no duty to provide information to SPEEA regarding any "possible" movement of work for which it has made no decision. The duty to furnish information stems from the underlying statutory duty to bargain with respect to mandatory subjects of bargaining. *Cowles Communications*, 172 NLRB 1909 (1968). In other words, if there is no duty to bargain regarding a particular subject, then the union cannot demonstrate relevance of the requested information related to that subject, and is thus not entitled to the information. *Ingham Regional*

Medical Center, 342 NLRB 1259, 1262 (2004); *BC Industries, Inc.*, 307 NLRB 1275 n.2 (1992) (holding that "[b]ecause Respondent BCI had no statutory obligation to bargain about the partial closure decision,…it had no duty to furnish information for that purpose").

Here, SPEEA requested information regarding every "possible movement of work" that Boeing was actively considering so that it could "evaluate potential decisional and effects bargaining." (GC Ex. 6). Specifically, SPEEA sought anything that Boeing "may be thinking about or discussing" as it relates to the movement of unit work, including any ideas written on napkins or comments made during staff meetings. (Tr. 97-98, 110-11, 131, 157, 159; GC Ex. 6). However, the Board recognizes that employers have no obligation to disclose to a union "every thought or possibility" discussed by management concerning potential decisions that might impact the terms and conditions of the bargaining unit. *See Valley Mould and Iron Co.*, 226 NLRB 1211, 1213 (1976).

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

> Would it be salutary or inimical, to the bargaining process, for decisional precedent to require employers officiously to convey, during contract negotiations, every thought or possibility mentioned in management discussions concerning cost-cutting efforts to meet an economic downturn, regardless of how speculative the matters under consideration might be, or whether they would even be implemented? In my opinion, to impose such a duty would be counterproductive to the policies of the Act. It would encourage the injection of emotion-laden issues, at times when they are highly conjectural and would only

> serve to prolong negotiations, possibly engendering ill will needlessly, and all for reasons that may never come to pass.

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

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

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

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

> As a practical matter, the parties cannot realistically be expected to be able to bargain intelligently in May about the effects of a decision that was not reached until June….It is premature for a union to seek to bargain over such matters at a time when the employer is stressing that it has not yet made a decision to terminate the employees the union represents. See *Show Industries*,

> 312 NLRB 447, 453-54 (1993) ("Until Respondent notified the Union that effects of some kind would likely befall the employees, a specific request to meet could hardly be expected or, for that matter, agreed to.")

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

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

Here, SPEEA's request clearly seeks information about potential movement of work decisions for which Boeing has not yet made a decision. (Tr. 45-46; GC Ex. 6). As such, the "possible" decisions for which SPEEA seeks information are anything but "concrete." Indeed,

the record evidence establishes that only a very small percentage of Boeing's studies ever advance past the exploratory stage, and for even those that have, the timing of any final decision and its potential impact are uncertain. (Tr. 131, 142-43, 178-79). Consequently, neither Boeing nor SPEEA could be expected to bargain about such speculative matters. Therefore, Boeing clearly had no obligation to bargain over such "possible" decisions under *Valley Mould* and *Oklahoma Fixture*, and thus no duty to furnish information about those "possible" decisions to the Union. Accordingly, the Complaint must be dismissed.

2. SPEEA waived any right to the information by refusing to provide clarifications or to narrow the scope of its vague, overbroad, and burdensome request.

As Administrative Law Judge Keltner W. Locke noted in *United Parcel Service*:

> Congress enacted the National Labor Relations Act to reduce industrial strife which resulted in labor disputes disrupting commerce. 29 U.S.C. Section 151. Long-term collective-bargaining relationships, in which the parties respect each other and work out their differences in good faith, foster industrial stability and peace. In such a partnership the parties find ways to compromise.
>
> ***The Board contemplates that when an information request would impose a great burden, the parties, if possible, will try to negotiate an arrangement satisfying both sides.*** Thus, it places a duty on a party burdened by an information request to inform the requesting party and seek an accommodation. *Mission Foods*, 345 NLRB 788 (2005).

2013 WL 4429506, NLRB Case No. 16-CA-028064 (Aug. 15, 2013) (emphasis added). Boeing did precisely that here, and SPEEA's failure to explain what it really wanted and its refusal to compromise on its request evidences bad faith bargaining on its part. SPEEA admits that it intentionally casted a "nicely sized net" to make its request as broad as possible, and Boeing repeatedly requested that the Union explain the relevance of its request, narrow the request, and clarify what information it needed. However, each time SPEEA refused. As such, Boeing

complied with its obligations under the Act, and SPEEA waived any right to the requested information by its failure to engage in a good faith discussion regarding its information request.

In *United Parcel Services*, the union made a number of information requests, several of which the judge found "broad and burdensome." The employer wrote multiple letters to the union steward saying that they needed "to find some middle ground so that we don't have to respond to unreasonable requests that costs thousands of dollars and hours and hours and hours." *Id*. The employer also asked the union steward "what [he] was really looking for," but the union steward refused to give an inch, and merely stated that the burdensomeness of the union's information request "was not [his] problem." *Id*. Based on the union's failure to discuss the information requests and the employer's good faith attempt to comply by asking for an accommodation, the administrative law judge found that the employer did not violate the Act when it provided no information in response to those broad and burdensome requests:

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

Id. (emphasis added).

Here, Mr. Leonard admits that the information request was written as broad as possible, (Tr. 46), which is evident from the request itself as SPEEA sought ***any*** studies that might result in the relocation or realignment of bargaining unit work, ***any document related to*** any plans for a possible movement of work, ***any document relating to*** any timeline for implementing a relocation or realignment, ***any document related to*** the acquisition of property or equipment to

prepare for a relocation of work, and ***any document relating to*** any employee meetings to discuss relocation or realignment of bargaining unit work. (GC Ex. 6). Further complicating matters was the fact that the request was not limited to any specific statements of work (e.g., BR&T, CAS, Interiors, etc.) or to studies that had progressed past mere exploration. (GC Ex. 6). The request also included no time limitation and thus was unlimited in duration, both past and future. (GC Ex. 6).

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

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

4. identify and obtain all information that the manager or executive provided or will provide to the employees in those meetings.

(Tr. 102-03, 106, 114, 155-56, 159). As such, Boeing could not proceed without clarification. (Tr. 114-15).

The burden of SPEEA's request and its bad faith bargaining are further demonstrated by the fact that the Union clearly sought information different from what was already being provided during JWC meetings, especially where a representative of SPEEA falsely testified that the Union was not receiving any prior notice of studies and decisions to relocate bargaining unit work. (TR. 18-19, 26, 29, 39, 44-45, 70-74; GC Ex. 4; R. Ex. 4). It is undisputed that not only did Boeing use the JWC meetings to notify SPEEA of studies months, if not years, in advance of any decision to implement, but Boeing also provided regular updates and final decisions regarding those studies at JWC meetings:

JWC Meeting	**Topic**	**Study or Decision**
July 2013	Propulsion Engineering Workforce	Study
November 2013	BT&E Overview	Study
November 2013	Positioning BR&T for Boeing's Second Century	Update on previously announced study
December 2013	BR&T Realignment	Decision
January 2014	BSC Interiors Statement of Work	Study
January 2014	Positioning BR&T for Boeing's Second Century	Update on previously announced decision
February 2014	BR&T Realignment	Update on previously announced decision
February 2014	CAS	Update on previously announced study
April 2014	CAS	Decision
June 2014	777X Engineering Diversity Plan	Study
June 2014	Flight Services / TSGS Services Management Study	Study
August 2014	Global Services & Support Alignment Overview	Study

(Tr. 147-48; GC Ex. 4; R. Exs. 2-9).

Given these updates and announcements, Boeing was at a loss as to what other information SPEEA reasonably wanted Boeing to produce regarding pending studies.

As a result, Marx twice asked Plunkett why SPEEA needed the information and for him to clarify the requests so that Boeing could provide the information SPEEA needed. (GC Ex. 7; GC Ex. 9). Marx also invited SPEEA to ask questions and offered to provide any information it might need for effects bargaining related to any decision to relocate bargaining unit work. (*Id.*). However, Plunkett's response to Marx provided no accommodations or clarifications, and merely asserted that the information was necessary to represent SPEEA's members and to evaluate decisional and effects bargaining. (GC Ex. 8). Zarfos also sought clarification from Plunkett by asking him, "What types of information are you looking at above and beyond what we've already provided?" (Tr. 174-75). Instead of assisting Boeing, Plunkett dodged the question and refused to provide any clarification. (*Id.*). Accordingly, SPEEA refused to engage in any good faith discussion regarding its information request thereby excusing Boeing from any purported duty to respond.

As Boeing promptly and repeatedly asked SPEEA to clarify its information requests, Boeing complied with its obligations under the Act;[8] and SPEEA's failure to provide clarifications or otherwise engage in good faith discussions with Boeing regarding any of its overbroad and burdensome requests obviated the need for Boeing to provide any information in

[8] *See Superior Protection, Inc.*, 341 NLRB 267, 269 (2004), enfd. 401 F.3d 282 (5th Cir. 2005), cert denied 546 U.S. 874 (2005) (if employer believes request is ambiguous or overbroad, it must seek clarification or comply with request to the extent it encompasses relevant information); *DaimlerChrysler Corp.*, 331 NLRB 1324, 1329 (2000), enfd. 288 F.3d 434 (D.C. Cir. 2002) (although employer may have had legitimate objections to providing requested information, it was obliged to make those objections known to the union in a timely fashion).

response. *See United Parcel Serv.*, supra. Accordingly, the Complaint must be dismissed because Boeing did not violate Sections 8(a)(1) and (5) of the Act.

B. SPEEA Is Not to Entitled to Information for Decisional Bargaining Because It Waived Its Right to Bargain Over the Relocation of Bargaining Unit Work

Even if SPEEA's request sought relevant information and was not overbroad and unduly burdensome, Boeing had no obligation to provide any information for decisional bargaining because the parties' collective bargaining agreement gives Boeing the unfettered right to relocate work and to decide the occurrence and existence of any conditions necessitating a workforce reduction. The duty to furnish information stems from the underlying statutory duty to bargain with respect to mandatory subjects of bargaining. *Cowles Communications*, 172 NLRB 1909 (1968). Accordingly, where an employer has no obligation to bargain a decision with the union by virtue of the Act or by contract, it has no duty to furnish information regarding that decision. *See BC Industries, Inc.*, 307 NLRB at 1275; *California Pacific Medical Center*, 337 NLRB 910 (2002); *Ingham Regional Medical Center*, 342 NLRB at 1259; *Chemical Solvents, Inc.*, NLRB Case No. 8-CA-39218 (May 15, 2012).

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

employer had no duty to furnish information related to the decision because it had no duty to bargain over the decision to subcontract by virtue of the parties' collective bargaining agreement.

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

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

Id.[9]

Just as in those cases, the parties' collective bargaining agreements give Boeing the unfettered right to relocate bargaining unit work outside the Puget Sound and to determine the occurrence and existence of any condition necessitating a layoff. (GC Ex. 2; GC Ex. 3). Article 2 of the parties' collective bargaining agreements give Boeing the exclusive right to manage and direct the workforce, and expressly reserves to the Company "all matters not specifically and expressly covered or treated by the language of this Agreement." (GC Ex. 2, GC Ex. 3). Nothing in the contract places any limitations on Boeing's ability to relocate bargaining unit work.

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[9] *See also Rai Radio Televisione Italiana SpA*, NLRB Case No. 02-CA-079087 n.18 (Div. Advice Nov. 16, 2012): "Because the Union's information request relates to Rai SpA's decision to contract unit work, and because we have concluded that the Employer did not have an obligation to bargain over that decision, the information sought is not relevant and the Union is not entitled to it. See *Ingham Regional Medical Center*, 342 NLRB 1259, 1262 (2004)."

(GC Ex. 2; GC Ex. 3). Rather, Boeing's ability to unilaterally relocate work is confirmed by Article 8.2, which expressly permits it even when the movement of work results in layoffs of SPEEA-represented employees:

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

(GC Ex. 2, GC Ex. 3) (emphasis added). As such, Boeing's collective bargaining agreements with SPEEA clearly and unmistakably grant Boeing the right to relocate bargaining unit work, especially to the extent such decisions can or might result in layoffs, without first bargaining with the Union.

Even if Articles 2 and 8 were ambiguous as they relate to the movement of work, which Boeing denies, the parties' past practice and bargaining history confirm that Boeing has the contractual right to move bargaining unit work unilaterally. "Where past practice has established a meaning for language that is used by the parties [in their agreement], the language will be presumed to have the meaning given it by past practice." *Pan-Adobe, Inc.*, 222 NLRB 313, 325 (1976) (quoting *Pekar v. Local 181, Brewery Workers*, 311 F.2d 628, 636 (6th Cir. 1962), cert. denied 373 U.S. 912 (1963)). Here, Boeing has at least a 25 year history of openly moving bargaining unit work outside the Puget Sound without first bargaining with the union, and not once has the union challenged Boeing's asserted contractual right with a grievance or unfair labor practice charge. (Jt. Ex. 1). Indeed, in 2013 and 2014 alone, Boeing made at least 16

unilateral decisions to relocate bargaining unit work outside the Puget Sound, and conspicuously absent from the Complaint is any allegation that Boeing's unilateral decisions to relocate work violated Section 8(a)(5). (Jt. Ex. 1, ¶ 2).

In addition, SPEEA has acknowledged this contractual right, as it proposed changes to Article 8 during every collective bargaining negotiations since at least 2002. (Tr. 124, 161, 165; R. Ex. 12). For example, during the 2002 negotiations, SPEEA sought to require a "joint review of the business case" for any layoffs due to the movement of work. (Tr. 165; R. Ex. 12). However, the proposal was never accepted. (Tr. 165; GC Ex. 2, GC Ex. 3).

In addition, Marx conspicuously asserted in her April 2nd letter that Boeing "maintains the legal and contractual right to locate engineering work in any location…", (GC Ex. 7), a fact that SPEEA did not contest or dispute in its April 11th letter. Marx's April 30th letter similarly states that Boeing had no bargaining obligation based on the language in Section 8.2 of the collective bargaining agreements, which was never disputed or contested by the Union. (Tr. 105; GC Ex. 9). As such, SPEEA's April 11th letter and SPEEA's failure to refute Marx's statement in her April 30th letter are further acknowledgement of Boeing's right to unilaterally move bargaining unit work. *See Speidel Corp.*, 120 NLRB 733, 741 (1958) ("In the face of the Respondent's bargaining position, the Union's complete silence, and its failure at any time thereafter to contradict the Respondent's interpretation of the clause, must be taken to mean that the Union acquiesced in the Respondent's understanding"). Consequently, the issue of whether the collective bargaining agreements give Boeing the unilateral right to relocate bargaining unit work outside the Puget Sound has been fully discussed and consciously explored by Boeing and SPEEA on multiple occasions, and each time the union consciously yielded its interest in the matter. *See Rockwell Int'l Corp.*, 260 NLRB 1346 (1982); *Speidel Corp.*, 120 NLRB at 741.

Accordingly, SPEEA has clearly and unmistakably waived its right to bargain any decision to relocate bargaining unit work.

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

IV. CONCLUSION

Because SPEEA's request was overbroad and unduly burdensome, SPEEA refused to clarify the request or narrow its scope, and Boeing has the contractual right to relocate bargaining unit work unilaterally, Boeing did not violate Sections 8(a)(1) and (5) of the Act by purportedly failing to provide information in response to SPEEA's March 27, 2014 information request.

Respectfully submitted this 3rd day of March, 2015.

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CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the **THE BOEING COMPANY'S POST HEARING BRIEF** was served via electronic mail upon the following individuals:

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