***The Boeing Co.*, 368 N.L.R.B. No. 67 (Sept. 9, 2019)**

The issue here is whether the petitioned-for unit limited to two classifications within the Employer's South Carolina production line of the 787 aircraft is an appropriate unit under the National Labor Relations Act. On May 21, 2018, the Regional Director issued a Decision and Direction of Election in which he found the petitioned-for unit appropriate under the National Labor Relations Board's decision in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017). The election took place on May 31, 2018, and the Petitioner prevailed. Absent any objections or determinative challenged ballots, the Regional Director issued a Certification of Representative on June 12, 2018. Thereafter, . . . the Employer timely filed a request for review asking the Board to find the petitioned-for unit inappropriate. The Petitioner filed an opposition.

Having carefully considered the record and briefs, we find, as explained in detail below, that the unit is inappropriate because the two classifications in the petitioned-for unit do not share a community of interest with each other, and even if they did, they do not share a community of interest that is sufficiently distinct from the interests of other production-and-maintenance employees excluded from the unit. Accordingly, we grant review, reverse the Regional Director's decision, vacate the Petitioner's certification, and dismiss the petition.

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In determining *whether* the petitioned-for unit is appropriate, *PCC Structurals* makes clear that the Board will consider "both the shared and the distinct interests of petitioned-for and excluded employees." *PCC Structurals,* slip op. at 11. This analysis, in turn, is firmly rooted in the Board's traditional, pre-*Specialty Healthcare* precedent. Nevertheless, we recognize that both *PCC Structurals* and the precedent on which it is based have not clearly described *how* the shared and distinct interests should be weighed. In addition, the Board in *PCC Structurals* adopted the Second Circuit's standard in *Constellation Brands, U.S. Operations, Inc. v. NLRB,* 842 F.3d 784, 794 (2d Cir. 2016), that the community-of-interest analysis must consider whether excluded employees "have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities" with the included employees, but it did not clearly articulate how that standard should be applied. In light of the contentions of the parties and amici, we believe that further guidance with respect to these matters is warranted here.

Accordingly, we clarify that *PCC Structurals* contemplates a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test. First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

(1) Step One: Shared Interests Within the Petitioned-or Unit

The first step requires "'identify[ing] shared interests among members of the petitioned-for unit.'" *PCC Structurals,* slip op. at 9. Thus, the traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit. See, e.g., *Saks & Co.*, 204 NLRB 24, 25 (1973) ("[T]he record indicates that [the petitioned-for employees] perform dissimilar functions, work throughout the entire

store and service center, and do not share any common supervision. Thus we are unable to find that the unit sought is appropriate on the basis of similarity of job function."); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004) ("In reaching the conclusion that the Regional Director's unit determinations are not appropriate, we rely on the fact that the differences *among* the fluid processing unit employees and *among* the distribution unit employees are nearly as great as the differences *between* the units"). In sum, the analysis logically begins by considering whether the petitioned-for unit has an internal community of interest using the traditional criteria discussed above. A unit without that internal, shared community of interest is inappropriate.

(2) Step Two: Shared Interests of Petitioned-For and Excluded Employees

Step Two requires a comparative analysis of excluded and included employees. In restoring the traditional community-of-interest analysis, the Board in *PCC Structurals* stressed that it is not enough to "focus[ ] on the interests shared among employees *within* the petitioned-for group." Id., slip op. at 10 (emphasis in original). Instead, the inquiry must also consider whether "'excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.'" Id., slip op. at 11 Again, this inquiry is firmly rooted in traditional community-of-interest principles. See, e.g., *Harrah's Club*, 187 NLRB 810, 812-813 (1971) (finding that "a unit limited to maintenance department employees does not comprise a homogeneous grouping of employees possessed of interests sufficiently distinct from other employees to constitute a separate unit appropriate for purposes of collective bargaining" and that all employees performing a similar primary function must be included in the unit); *Texas Color Printers, Inc.*, 210 NLRB 30, 31 (1974) ("[I]n view of the frequent work contacts and temporary interchange and overlapping supervision of employees of the shipping and receiving and bindery departments, and in the absence of any bargaining history as to any of the plant employees, we find that the shipping and receiving department employees do not enjoy a sufficiently distinct community of interest to warrant their establishment as a separate appropriate unit apart from other employees.").

Of course, the fact that excluded employees have *some* community-of-interest factors in common with included employees does not end the inquiry. Consistent with *PCC Structurals,* the Board must determine whether the employees excluded from the unit "'have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.'" Id., slip op. at 11. If those distinct interests do not outweigh the similarities, then the unit is inappropriate.

This inquiry does not require that distinct interests must outweigh similarities by any particular margin, nor does it contemplate that a unit would be found inappropriate merely because a different unit might be more appropriate. Instead, as the court's opinion in *Constellation Brands* makes clear, what is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit. "Merely recording similarities or differences between employees does not substitute for an explanation of how and why these collective-bargaining interests are relevant and support the conclusion. Explaining why the excluded employees have distinct interests in the context of collective bargaining is necessary to avoid arbitrary lines of demarcation." *Constellation Brands,* at 794-795.

(3) Step Three: Special Considerations of Facility, Industry, or Employer Precedent

As the Board explained in *PCC Structurals,* slip op. at 11, the traditional community-of-interest standard includes, where applicable, consideration of guidelines that the Board has established for

specific industries with regard to appropriate unit configurations. These guidelines are appropriately considered at the third and final step of the community-of-interest analysis.

MEMBER MCFERRAN, dissenting.

In *PCC Structurals*, a Board majority purported to "return[] to the traditional community-of-interest standard that the Board has applied throughout most of its history." Taking *PCC Structurals* at its word, the Regional Director faithfully applied traditional community-of-interest principles here and determined that the petitioned-for unit of 178 Flight Readiness Technicians (FRTs) and Flight Readiness Technician Inspectors (FRTIs) is *an* appropriate unit. That is manifestly the correct result here.

Yet now, the majority reverses the Regional Director and declares, after professing to "clarify" *PCC Structurals*, that the petitioned-for unit is inappropriate because the FRTs and FRTIs are not "sufficiently distinct" from ""other" production and maintenance employees that were excluded from the unit. The majority makes no effort to explain precisely which of these "other" production and maintenance employees have notable similarities with the petitioned-for employees, or to suggest which of these "other" classifications should be included to render the petitioned-for unit appropriate; indeed, my colleagues neglect to mention any specific non-FRT or FRTI classifications at all. Rather, they find the unit inappropriate based on factors which apply to every single production and maintenance employee at the plant, leading to the inescapable conclusion that the *only* appropriate bargaining unit here, at least under the majority's analysis, is one that combines every production and maintenance employee at the Employer's North Charleston plant--a unit that would include approximately 2,700 employees. This conclusion cannot be reconciled with the "traditional community-of-interest standard" that *PCC Structurals* claimed to reinstate.

Not surprisingly then, the majority's "clarification" of *PCC Structurals* is actually much more than that. The majority has fashioned a new standard--embedded in a "three-step process"--that departs from the traditional community-of-interest test and the unit determination principles that have guided the Board for almost 70 years. Step One of the majority's process is uncontroversial in principle--the Board must determine whether the petitioned-for employees share a community of interest among themselves--but as explained below the majority's application here is clearly erroneous. Step Three is also unremarkable--the Board must consider long-established unit-determination guidelines for specific industries.

But Step Two of the majority's new test is a significant (and statutorily impermissible) departure from traditional community-of-interest principles. Under that step, the majority says "the Board must determine whether the employees excluded from the unit have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members. If those distinct interests do not outweigh the similarities, then the unit is inappropriate." (internal quotations omitted). This "weighing" of excluded employees' interests is not a mere clarification of *PCC Structurals*, but an upending of well-settled unit determination principles that *PCC Structurals* purported to reinstate. For the majority to pretend otherwise, and not acknowledge or explain the dramatic change it makes, constitutes a failure to engage in the reasoned decision-making required of administrative agencies.

Even accepting the majority's new test, however, there is no basis for finding this petitioned-for unit inappropriate. As demonstrated below, the FRTs and FRTIs share a strong internal

community of interests, and there is no industry-specific standard mandating a broader unit. The Employer's more than 2500 other production employees certainly share some terms and conditions of employment with the FRTs and FRTIs (many of those being general Employer-wide policies), but those commonalities are far outweighed by key terms and conditions that plainly distinguish those 2500 employees from the FRTs and FRTIs. In finding otherwise, the majority erroneously downplays fundamental subjects of collective bargaining that matter most to workers, impermissibly prioritizes employer preference over employees' organizational desires, and ultimately robs employees of their fullest freedom to organize in an appropriate unit of their choosing. Such an outcome cannot be squared with the mandates of the National Labor Relations Act.