

Pratt & Whitney, a Division of United Technologies Corporation and Florida Professional Association, Petitioner. Case 12–RC–8040

March 31, 1999

DECISION ON REVIEW AND DIRECTION
OF ELECTION

BY CHAIRMAN TRUESDALE AND MEMBERS
HURTGEN AND BRAME

On May 1, 1997, the Regional Director for Region 12 issued a Decision and Direction of Election in which she, among other things, found appropriate the petitioned-for unit of professional and technical employees constituting what she termed the Employer's "traditional engineering core" located in a division of the Employer's West Palm Beach, Florida facility.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, asserting, among other things, that the Regional Director erred in finding the petitioned-for unit appropriate and contending instead that the appropriate unit must include all of the Employer's professional and technical employees at its West Palm Beach facility.² The Employer also argued that the Board should reconsider its method of conducting elections involving professional and nonprofessional employees.

By Order dated May 28, 1997, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the Employer's brief on review, and concludes, as explicated below, that the appropriate unit must include all of the Employer's similarly situated professional and technical employees located at the Employer's West Palm Beach facility.³ We further conclude

¹ A list of the job classifications comprising this unit is attached to the Regional Director's Decision and Direction of Election as Appendices A, B, and C, and in her Order of May 19, 1997, amending these lists in accordance with the parties' joint stipulation of May 1, 1997, to amend appendix C of the Regional Director's Decision and Direction of Election.

² The Intervenor, Local Lodge 971, International Association of Machinists, AFL–CIO, wishes to represent only the petitioned-for technical employees. The Intervenor acknowledged at the hearing the need for it to appear on the professional ballot as well if a self-determination election is directed according to the Board's balloting procedures for 9(b)(1) elections.

³ The Regional Director also excluded specific employee categories from the unit, concluding that they were not professional employees within the meaning of the Act, and that they lacked a sufficient community of interest with the unit found appropriate to require their inclusion. The employee categories excluded by the Regional Director from the unit are: Proposal/Contract Administration Associates, Information Systems Support Analysts, Computer Systems Associates, Planning and Marketing Specialists, Product Quality Support Analysts, Procurement Associates, Writer Associates, Material Management Analysts, Administrative Services Coordinators, Program Management Special-

ist, and related titles. The Employer requested review of this exclusion and argues for the further inclusion of some 92 technicians associated with the above-contended professional employees. The Employer argues that these technicians share the same community of interest with unit employees that its contended professional employees share. The Employer identified these technicians as falling into the following job classifications: 4 Electronic Technicians in two job classifications in the 035 job code; 2 Proposal/Contract Administrative Assistants in one job classification in the 085 job code; 7 Information Systems Support Analysts in three job classifications in the 090 job code; 7 Computer Programmer Assistants in the 095 job Code; 30 Material Management Technicians in four job classifications in the 255 job code; and 42 Administrative Services Assistants in three job classifications in the 265 job code. The Board granted that request for review. After careful consideration of the entire record in this case, we affirm the Regional Director's findings that these employees are not professional employees within the meaning of Sec. (2)(12) of the Act. Contrary to his colleagues, Member Brame would vote the employees in the Computer Systems Associate classification and related titles in MIS, subject to challenge.

I. THE UNIT ISSUE

A. Background

The Petitioner seeks to represent a unit of approximately 2,150 professional engineers and technician employees, including employees from both Government Engine Business (GEB) and Space Propulsion, but limited to what it terms is the "traditional engineering core" of the Employer's West Palm Beach work force. The Petitioner asserts that these employees share a community of interest sufficiently distinct to warrant a separate unit.

The Employer contends that the employees sought by the Petitioner lack a sufficiently distinct community of interest to warrant a separate appropriate unit. The Employer maintains that any appropriate unit must include all of its professional and technical employees at its West Palm Beach campus.

Without any citation to or discussion of relevant Board precedent,⁴ the Regional Director found that a grouping of "traditional engineering core" employees at the Employer's West Palm Beach location constituted an appropriate unit. In finding the unit appropriate, the Regional Director stated that the professional engineers and technicians in the "traditional engineering core" categories constituted an "elite cadre" within the Employer's organization distinct enough to warrant a separate unit appropriate.⁵ As evidence of this distinctiveness, the Re-

ist, and related titles. The Employer requested review of this exclusion and argues for the further inclusion of some 92 technicians associated with the above-contended professional employees. The Employer argues that these technicians share the same community of interest with unit employees that its contended professional employees share. The Employer identified these technicians as falling into the following job classifications: 4 Electronic Technicians in two job classifications in the 035 job code; 2 Proposal/Contract Administrative Assistants in one job classification in the 085 job code; 7 Information Systems Support Analysts in three job classifications in the 090 job code; 7 Computer Programmer Assistants in the 095 job Code; 30 Material Management Technicians in four job classifications in the 255 job code; and 42 Administrative Services Assistants in three job classifications in the 265 job code. The Board granted that request for review. After careful consideration of the entire record in this case, we affirm the Regional Director's findings that these employees are not professional employees within the meaning of Sec. (2)(12) of the Act. Contrary to his colleagues, Member Brame would vote the employees in the Computer Systems Associate classification and related titles in MIS, subject to challenge.

⁴ The Regional Director discussed one case involving units in the healthcare industry.

⁵ The Regional Director found the following unit of professional employees appropriate: Engineering Associate; Engineer; Senior Engineer; Project Engineer; Materials Engineering Associate; Materials Engineer; Senior Materials Engineer; Materials Technologist; Engineering Support Administrator; Senior Engineering Support Administrator; Engineering Support Specialist; Design Support Analyst; Senior Design Support Analyst; Design Support Specialist; Job Code 225E44; Job Code 225E46; Job Code 225E48 in the following engineering units:

gional Director found that these employees possess the highest levels of engineering skills since they design and develop propulsion systems by applying advanced design methodologies and data acquisition systems. She also found their identity distinct since they have the “ultimate authority and the ultimate responsibility for the Employer’s products,” and have interests in collective-bargaining issues separate from those of other employees. For the reasons that follow, we disagree with the Regional Director.

B. The Facts

1. The Employer’s operations

The Employer is one of the nation’s largest aerospace employers and is engaged in the design, manufacture, and support of engines for military, commercial, and space propulsion systems. The Employer conducts operations throughout the United States and Canada and is broadly organized into five business units: technical, operations, commercial engines, Pratt & Whitney of Canada, and government engines and space propulsion (GESP). Segments of technical, operations, and GESP comprise the Employer’s West Palm Beach operations. Most of the petitioned-for employees are located in these business units.⁶ There are approximately 3,314 professional engineer and technical employees working in the Employer’s three main buildings at its West Palm Beach campus. GESP is comprised of approximately 2,620 employees in two subdivisions: GEB with approximately 925 employees in 45 departmental units, and Space Propulsion, which utilizes the remainder of GESP’s employees.

The Employer’s West Palm Beach operation utilizes what the Employer terms the integrated product development system (IPDS). The engineers and technicians throughout the facility are engaged in this process.⁷

113, 114, 117, 119, 179, 187, 336, 337, 338, 339, 705, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 719, 721, 722, 723, 724, 732, 733, 734, 735, 738, 739, 740, 742, 743, 744, 746, 748, 749, 750, 751, 753, 755, 756, 758, 759, 761, 763, 764, 767, 768, 770, 771, 772, 773, 774, 775, 776, 778, 779, 783, 787, 791, 792, 793, and 795. Within the same engineering job units, the Regional Director found the following technical employees constitute an appropriate unit: Engineering Computist; Instrumentation Technician; Senior Instrumentation Technician; Technical Leader, Instrumentation; Engineering Technician; Engineering Assistant; Technical Assistant; Senior Technician; Senior Technical Assistant; Senior Engineering Assistant; Senior Drafter; Layout Drafter; Senior Design Drafter; Senior Materials Technician; Lead Materials Technician; Job Code 225G37.

⁶ Also under GESP is the chemical systems division located in San Jose, California, and “USBI” located at the Kennedy Space Center in Florida. Technical operations also employ engineers in its Connecticut facility. These employees are not at issue here.

⁷ The Employer uses a three-digit series to designate its major organizations/departments at the facility, with the 700 series being engineering. Such other series refer to, e.g., program management, finance, management information systems (MIS), human resources, operations, customer support, and marketing. The Employer’s job codes comprise the aforementioned series together with a job function code (e.g., E for engineer, F for associate/trainee, G for technical), and a job salary

IPDS is a process by which the Employer converts United States Government propulsion system requirements into technologically state-of-the-art products and services. The process begins with the Government dictating the requirements it needs, for example, in the propulsion system of a weapons system. The Employer then formulates a “concept” of what the propulsion system will look like. It generates simulations of the system as to, *inter alia*, how big it should be, how many stages it will utilize, and whether it will employ turbojet or turbofan engine technology. Design engineers create designs based on the results of the conceptualization process. Logistics, tool design, and support equipment design and development engineers plan how the system will be built, devise what tools and equipment will be needed for the manufacture of the system, as well as design what equipment will be needed by the Government to support and maintain the system. This information is incorporated back into the design process for possible redesign of the system in light of this information. Quality engineers look at the process that will be used to inspect the system, *i.e.*, determine how many cycles to run before checking it, and design facilities needed for testing it. Methods engineers lay out how the system will be put together. All this information is fed back into the design process again to make sure the system design is feasible and meets quality standards. The Employer then converts the design into hardware and tests the materials and components to be used in manufacturing the system. It then manufactures a prototype. Actual manufacturing beyond a prototype is performed at the Employer’s Connecticut facility, and not by its employees at the West Palm Beach facility.

Connected with its IPDS process is what the Employer designates as its IPDS teams (or IPTs) and its component improvement product teams (CIPTs), which are teams composed of employees from different departments who represent those departments in meetings with “core engineers” in order to have some design influence at an early stage. Such meetings occur two to four times “just about” every day to ensure a finished product is user friendly. There are about 25 teams whose members meet every other week for approximately 1–1/2 hours. Seventy-five percent of such meetings are attended by “engineering core” employees only.

grade (42-48 for what it designates as professionals, and 38-40 for what it designates as technicals). An engineer in the engineer organization at salary level 44 would be designated, for example, as 700E44. In addition, each job code has a job title and job description and these positions are grouped together in job families of progressively skilled positions, e.g., Engineering Associate, Engineer, Senior Engineer, and Project Engineer. Most, but not all, of the petitioned-for professional engineers are in the 700 series and the Petitioner seeks to exclude such other professional engineers as Quality, Tooling, and Methods engineers not in the 700 series. The Petitioner also seeks to exclude specific information and computer systems classifications within the 700 series.

2. The employees at issue

As noted, the Regional Director found a unit of the “traditional engineering core” of the Employer’s professional employees, and the technical employees who work directly with them, constitute an appropriate unit. The professional employees include Engineering Associates, Engineers, Senior Engineers, and Project Engineers who are assigned to the “core” group. These employees design and develop the Employer’s propulsion system.

Also included are Materials Engineering Associates, Materials Engineers, Senior Materials Engineers, and Materials Engineer Technologists who are assigned to the “core” group. These employees conduct quantitative and qualitative analyses and tests to determine the chemical, physical, and metallurgical properties of materials, such as metals, ceramics, and liquids. They also establish processing procedures and controls in order to insure that the given standards and specifications for the materials and parts used in the production process are complied with.

In addition are Engineering Support Administrators, Senior Engineering Support Administrators, and Engineering Support Specialists. These employees perform a variety of administrative and analytical activities such as compile and analyze technical data to facilitate effective planning and control and assist administrators in making preliminary determinations of patentability of new processes and products.

Other included professionals are Design Support Analysts, Senior Design Support Analysts, and Design Support Specialists. These employees coordinate design and manufacturing efforts in order to facilitate the Employer’s product. They perform such tasks as documenting and following up layouts, drawings, and processes to be source approved. They also research files to determine the availability of special parts or sources with the required manufacturing capabilities.

Also included are Configuration Analysts, Senior Configuration Analysts, and Configuration Specialists. These employees prepare, review, and release program/project documentation and data related to configuration management and control, and monitor the activities of other internal organizations and external suppliers to ensure compliance with the Employer’s configuration requirements and management.

The professional engineers⁸ whose inclusion is in dispute consists of the following: First, the Technical or Logistics Support Associate, Technical or Logistics Support Engineer, Senior Technical or Logistics Support Engineer, and Technical or Logistics Support Specialist. These employees are part of the customer service and

support organization, and primarily provide technical or logistics support to the Employer’s customers related to the introduction, maintenance, modification, operation, overhaul, repair, and inspection of their in-service engines. They act as a liaison between the customers and the engineers to resolve performance problems. They also provide technical support during the IPDP development stage.

Also in dispute are those Materials Engineering Associates, Materials Engineers, Senior Materials Engineers, and Materials Engineer Technologists who are assigned to the operations and manufacturing units (series 500) in the facilities planning or the materials control laboratory. Their duties and responsibilities are described above.

The Regional Director also excluded Facilities Engineering Associates, Facilities Engineers, Senior Facilities Engineers, and Facilities Project Engineers. These employees are part of the operations and manufacturing organization and primarily design, construct, maintain, and modify the Employer’s facilities, and modify test stands and related equipment. They oversee construction work performed by subcontractors. They also make parts, tools, and equipment for the Employer’s customers.

Additionally in dispute are those Engineering Associates, Engineers, Senior Engineers, and Project Engineers who are assigned to finance and MIS, operations and manufacturing, or customer service and support units. Their duties and responsibilities are described above.

Also at issue are the Methods Engineering Associates, Methods Engineers, Senior Methods Engineers, and Methods Engineering Specialists. These engineers are generally found in the operations and manufacturing organization, however, four Senior Methods Engineers are assigned to the jet assembly operations department in the technical organization. These engineers plan and analyze the various methods, processes, and equipment used in the manufacture of engine parts. They also calculate costs related to specific designs, which affect decisions as to whether to manufacture or subcontract out the manufacture of engine parts.

Analysis

The Board has long held that a unit of professional and/or technical employees separate from similarly situated professional and/or technical employees is not appropriate without a showing of a community of interest so distinguishable as to warrant the appropriateness of such a unit. See *Continental Can Co.*, 128 NLRB 762, 763 (1960); *General Electric Co.*, 148 NLRB 1660 (1964); *Western Electric Co.*, 268 NLRB 351, 352 (1983); and *Solar Aircraft Co.*, 116 NLRB 200 (1956). As the Board has stated:

In general, the smallest appropriate unit of technical employees working in similar jobs with similar working conditions and benefits comprises all such

⁸ The Regional Director also excluded the technical classifications related to these professional positions. Also excluded by the Regional Director are those employees found by the Regional Director to be nonmanagerial employees. Additionally, the Regional Director excluded those technical employees listed in fn. 3, above.

technical employees. Although a unit of less than all professional employees may be appropriate if that unit consists of a readily identifiable group with distinct skills and functions, the Board will not certify an arbitrarily defined segment of an employer's similarly situated professionals.

Western Electric, 268 NLRB at 352 (footnotes omitted).

In making such a determination, the Board looks to such factors as the qualifications and similarity in skills and work of the professional employees; the geographic and physical integration of the manufacturing sections; contact and interchange; supervision; similarity of terms and conditions of employment; and pay between the professional and technical employees. See generally *General Dynamics Corp.*, 213 NLRB 851 (1974). We find that, contrary to the Regional Director, the record does not establish that the employees in the petitioned-for unit have a distinct community of interest apart from other engineers and technicians excluded from the petitioned-for unit.

First, the record shows that the Employer has no separate certification or licensing requirement for the petitioned-for engineers not required of its other engineers. There is no difference in the orientation of new employees, irrespective of their professional classification or location.

Similarly, there is no difference between the petitioned-for and excluded employees in their pay or other terms and conditions of employment. Although the Regional Director found it "virtually impossible" to make any meaningful comparison of wage rates, there is no evidence to suggest that the rates of engineers and others whom the Petitioner would include in the unit differs from those of employees in other, excluded professional and technical departments. There is also no difference in how the Employer computes seniority or continuous service, or in the fringe benefits offered to the employees under consideration here.

The record also indicates comparatively little in the way of employee transfers into or out of the petitioned-for unit. During 1995 and 1996, the only years in which evidence of transfers was submitted, fewer than 30 employees transferred into or out of the petitioned-for unit from other departments within the Employer's West Palm Beach campus.⁹ Although the record indicates that there is comparably little on-the-job contact between the petitioned-for and excluded employees beyond the CIPTs, and comparably little in the way of transfers into or out of the petitioned-for unit, as the Regional Director found, employees generally have the most contact with other members of their individual departments/units.

⁹ The Employer's evidence shows 51 transfers into and out of the unit, however, 2 transfers were of managers and 20 transfers had no job title or any indication as to whether they were employees or managers. Four "transfers" were actually promotions.

Thus, there is no showing that the employees in the departments/units that constitute the "core" group have any more employee contact among their departments/units than they do with departments/units outside the "core" group.

Although there is no common immediate supervision shared by the included and excluded employees, the record also indicates that there is no common organizational or overall supervision of all the employees in the petitioned-for unit that does not also include excluded employees. Hence, the significance of the petitioned-for employees' separate supervision is thereby lessened. Cf. *Natural Gas Pipeline Co. of America*, 223 NLRB 1439, 1441 (1976).

Thus, the record clearly establishes, as the Employer contends, that the professional and technical employees in the larger proposed unit share similar qualifications, skills, pay, and benefits.

Perhaps most fundamentally, the record also shows that the employees the Petitioner seeks to represent do not enjoy a distinctiveness in work performed that warrants their representation in a separate unit. The unit found appropriate by the Regional Director includes, for example, the Materials Engineers and Materials Engineering Associates and Technologists, and related titles who are assigned to the "engineering core," but not those same classifications that are assigned to facilities planning and the materials control laboratory. As noted above, the employees in these classifications primarily test and analyze materials such as metals, ceramics, and liquids to determine their chemical, physical, and metallurgical properties. They also establish processing procedures and controls to ensure the materials conform to the standards and specifications required for the product. According to the Regional Director, the petitioned-for employees in these classifications work with materials that are used in the "most challenging environments" of gas turbine and rocket engines, while the excluded employees in these classifications located in facilities planning and the materials control laboratory work with standard construction materials.

The Regional Director also included most of the engineers, project engineers, and engineering associates, and their related titles in that she found they are tasked with the design and development of the Employer's propulsion systems through "the application of advanced design methodologies and data acquisition systems." However, she excluded those employees in these classifications who are assigned to finance and MIS, operations and manufacturing, and customer service and support units without further explanation.¹⁰

¹⁰ Classifications excluded by the Regional Director for the reasons stated herein are the Technological or Logistics Support Engineers, Facilities Engineers, Methods Engineers, and related titles and technicians.

The Regional Director's finding that the employees in the "engineering core" are distinct in that, inter alia, they use advanced methodologies, lacks specificity. Indeed, her findings echo the testimony of the Petitioner's president on this issue, which is similarly indistinct, as is the record as a whole on this issue. The lack of specificity in this matter is epitomized by a colloquy between the hearing officer and the Petitioner's president. When the Petitioner's president delineated the proposed unit as the "traditional engineering core" whose engineers possess the "ultimate authority and ultimate responsibility" for the product, the hearing officer queried the witness about what he meant by delineating the petitioned-for unit in this manner. The witness indicated that this was meant to distinguish those employees working directly on the product or service from those employees who "supported" the product or service. The witness offered no further explanation of this distinction. Moreover, the witness conceded that the excluded Quality, Tooling, and Methods engineers, among others, have the same educational background as the petitioned-for professional employees.

The record, furthermore, fails to indicate in what way or if the skills possessed by the "support" engineers and technicians are different from those possessed by the "core" group. Indeed, the Petitioner's president acknowledged that he could not attest to the technical nature of the work that the excluded engineers perform.¹¹

In these circumstances, the unit found appropriate by the Regional Director is an arbitrary segment of the professional employees. See *General Electric Co.*, 120 NLRB 199 (1958) (unit of methods, planning, and time-study employees excluding engineers found to be an arbitrary segment of the professional employees).

Under these circumstances, and in light of the record as a whole, we conclude, contrary to the Regional Director, that the interests of the professional and technical employees in the "traditional engineering core" are not so distinguishable from those similarly situated employees at the Employer's West Palm Beach campus as to warrant finding that they comprise a separate appropriate unit.

The logistics support engineers, facilities engineers, methods engineers, and related titles, as well as the petitioned-for professionals and related titles, all require similar qualifications and skills and all enjoy the same benefits and pay structure. The inclusion of these profes-

sional engineers and related titles in the unit as sought by the Employer constitutes what amounts to an overall unit of professional and technical employees located at the Employer's West Palm Beach facility.

Thus, we find the appropriate unit must include all the Employer's similarly situated professional employees, as indicated in the voting groups below, located at its West Palm Beach operations, and pursuant to an affirmative vote in a 9(b)(1) election in favor of a combined professional and technical unit, the unit must also include any technical employees with the requisite community of interest with the professional employees.

II. ELECTION PROCEDURES

Finally, the Employer contends that the Board should modify its balloting procedures in elections involving professional and nonprofessional employees. For the reasons that follow, we find no merit in the Employer's contentions.

In enacting Sections 2(12) and 9(b)(1) of the Act, Congress set forth specific elements defining professional employees, and a clear mandate on how to protect such employees' rights in an election. As enacted by Congress, the Act specifically precludes the Board from finding appropriate a unit that joins professional employees with nonprofessional employees unless a majority of the professional employees vote to be so included. Section 9(b)(1) codified the Board's general practice of seldom including professional employees in the same unit with other employees. In enacting this legislation, Congress recognized professional employees' special problems and their community of interest in maintaining certain professional standards.¹² See generally *Leedom v. Kyne*, 358 U.S. 1184 (1958).

In *Sonotone*, 90 NLRB 1236 (1950), the Board gave effect to this statutory mandate in cases where a combined unit of professional and nonprofessional employees may constitute an appropriate unit for collective-bargaining purposes. In that case, the Board developed the voting procedure by which professional employees' rights to determine whether they desired to be included with nonprofessional employees would be protected. The Board adopted a two-step voting procedure for professional employees. The ballot for professionals includes, therefore, two questions to be answered. The first question asks the professional employees if they want to be included in a unit of professional and nonprofessional employees. The second question asks the professional employees if they wish to be represented by the union or unions involved. If a majority of the professionals vote "yes" on the first question, their ballots are pooled with those of the nonprofessional employees voting in the election, and ballots from both groups are

¹¹ The Regional Director also found that the "traditional engineering core" engineers and technical employees have special interests separate from other employees because, as she states, they had borne the burden of securing the Employer's major productivity gains made during the 1990s by enduring, e.g., layoffs and denied overtime. To the extent that this consideration is relevant, the record reveals that today, it is uncontested that overtime has been restored to all engineers on an equal basis. Moreover, there is no indication in the record of any imminent layoffs or that such layoffs would be implemented differently for the petitioned-for engineers.

¹² See S. Rep. No. 105 on S. 1126 at 11, 1 Leg. Hist. 417 (LMRA 1947).

counted together to determine whether they wish to be represented by a labor organization. If a majority of professional employees vote “no” on the first question, i.e., if they vote against inclusion with nonprofessional employees, then the Board will not include them in the same unit with such employees. Their votes then will be counted separately to determine whether they wish to be represented by a labor organization. Consistent with the statutory scheme enacted by Congress, the ballots for nonprofessional employees in such elections ask but one question: whether such employee wish to be represented by a participating labor organization.

The Employer now argues, however, that this voting procedure is flawed. The Employer contends that neither the professional nor the nonprofessional employees know in what unit they are voting, and, therefore, that they do not cast informed votes. The Employer further argues that nonprofessional employees are particularly impacted in this voting procedure, as they, unlike the professional employees, are not even permitted a separate vote to determine if they wish to be represented with the professional employees. We find no merit in any of the Employer’s contentions.

The Board’s *Sonotone* procedures, which have existed for 50 years, clearly conforms to the statutory purpose of giving professional employees a separate vote on representation. The statutory language, as discussed above, is clear, as is Congress’ intent in enacting Section 9(b)(1). The Board’s voting procedure in this regard, then, simply provides the method by which to effectuate the purposes and policies of the Act. If Congress had intended that nonprofessional employees have the same choice as it granted professional employees, it clearly could have provided for it. Congress chose not to do so, however, and we perceive no basis in the Act for doing otherwise here.

The Employer’s contention that the Board’s voting procedure for professional/nonprofessional employee elections runs afoul of *Hamilton Test Systems v. NLRB*, 743 F.2d 136 (2d Cir. 1984), is also misplaced. *Hamilton Test* and its progeny¹³ hold that if an election has been held in a designated unit, and the Board substantially alters the unit after the election, employee rights to vote have been hampered such that a new election is required. The courts have reasoned that the employees may have voted differently had they known the unit would be so markedly altered from the one in which they originally voted.

Under the Board’s *Sonotone* voting procedures, however, the Board does not alter the unit after the election has taken place. To the contrary, the unit is determined by employee votes. The questions on the ballot clearly delineate the alternatives from which the voting employ-

ees may choose. Both the professional and nonprofessional employees know the options available to them as they vote. The only open question is whether the professional employees will choose to be represented with, or without, the nonprofessional employees. Such a procedure comports with the statute, as described above, and also presents the employees with an informed choice. See *Sears, Roebuck & Co. v. NLRB*, 957 F.2d 52 (2d Cir. 1992). In these circumstances, the Board is not changing the unit postelection. Rather, the professional employees determine the scope of the unit, consistent with the statutory requirements, during the election, and all participants are aware of this practice.

Finally, we note that the Employer’s alternative proposals to the *Sonotone* procedures are unduly burdensome, would unreasonably delay voting, and would introduce complexity into what has been long-accepted Board practice. The Employer’s first suggestion—that the professional employees initially vote, in a separate election, on the question of whether they wish to be represented with nonprofessional employees, and that the Board then conduct a second election depending on the outcome of the vote in the first—obviously adds delay, cost, and complexity to the current straightforward, simple system.

Similarly, permitting nonprofessional employees the same option as professional employees as to whether to be represented in the same unit comports neither with the statute nor with common sense. Congress has prescribed the statutory scheme by which voting takes place in an election involving professional and nonprofessional employees. That is a judgment Congress has made, and we are not free to ignore it.

Finally, we note that if the professional and nonprofessional employees do not want to be represented together, they simply do not have to support or vote for the union. It is clear here, for example, that the Petitioner intended to represent professional and nonprofessional employees in the same unit, if the professional employees so voted. These two groups of employees were free to reject the Petitioner if they did not desire such representation.¹⁴

Accordingly, we affirm the Regional Director’s use of the *Sonotone* procedure.

III. CONCLUSION

Accordingly, and inasmuch as the Petitioner expressed a willingness to proceed to an election in any unit found

¹³ *NLRB v. Lorimar Productions*, 771 F.2d 1294 (9th Cir. 1985); *NLRB v. Parsons School of Design*, 793 F.2d 503 (2d Cir. 1986).

¹⁴ The Employer expressed a concern that, unlike the usual situation, the professional employees greatly outnumber the nonprofessional employees, and these circumstances warranted more protection of the nonprofessional employees. By our decision here, however, we note that the number of nonprofessional and professional employees in the unit is much closer than argued by the Employer.

We also note that under our voting procedure, neither the professional nor nonprofessional employees are favored in terms of knowledge of the outcome of the unit determination—neither knows until the votes are tallied what the unit will be.

appropriate, we shall amend the voting groups designated by the Regional Director to consist of the following voting groups:¹⁵

(a) All salaried, full-time engineers employed by the Employer at its West Palm Beach, Florida facility in the following job classifications, but excluding all other employees, managerial employees, confidential employees, guards and supervisors as defined in the Act: Engineering Associate, Engineer, Senior Engineer, Project Engineer, Materials Engineering Associate, Materials Engineer, Senior Materials Engineer, Materials Technologist, Engineering Support Administrator, Senior Engineering Support Administrator, Engineering Support Specialist, Design Support Analyst, Senior Design Support Analyst, Design Support Specialist, Job Codes 225E44, 335E46 and 225E48; Technical of Logistics Support Associate, Technical or Logistics Support Engineer, Senior Technical or Logistics Support Engineer, Technical or Logistics Support Specialist, Facilities Engineering Associate, Facilities Engineer, Senior Facilities Engineer, Facilities Project Engineer, Methods Engineering Associate, Methods Engineer, Senior Methods Engineer and Methods Engineering Specialist.

(b) All salaried, full-time technical employees employed by the Employer at its West Palm Beach, Florida facility in the following job classifications, but excluding all other employees, managerial employees, confidential employees, guards and supervisors as defined in the Act: Engineering Computist; Instrumentation Technician; Senior Instrumentation Technician; Technical Leader, Instrumentation; Engineering Technician; Engineering Assistant; Technical Assistant; Senior Technician; Senior Technical Assistant; Senior Engineering Assistant; Senior Drafter; Layout Drafter; Senior Design Drafter; Senior Materials Technician; Lead Materials Technician; Job Code 225G37; Proposal/Contract Administrative Assistant; Proposal/Contract Administration Associate; Proposal/Contract Administration Analyst; Senior Proposal/Contract Administration Ana-

lyst; Proposal/Contract Administration Specialist; Information Systems Support Analyst, Senior Information Systems Support Analyst, Information Systems Support Specialist; Computer Systems Associate, Computer Programmer Assistants; Computer Systems Programmer Analyst, Senior Computer Systems Programmer Analyst; Computer Systems Specialist; Planning Specialist; Marketing Specialist; Customer Support Representative; Senior Customer Support Representative; Customer Support Specialist; Product Quality Support Analyst; Senior Product Quality Support Analyst; Product Quality Support Specialist; Procurement Associate; Procurement Analyst; Senior Procurement Analyst; Procurement Specialist; Procurement Analyst/Planner; Senior Procurement Analyst/Planner; Writer Associate; Writer; Senior Writer; Writing Specialist; Material Management Technician; Material Management Analyst; Senior Material Management Analyst; Material Management Specialist; Administrative Services Assistant; Administrative Services Coordinator; Administrative Services Analyst; Senior Administrative Services Analyst; Staff Assistant; Program Management Specialist; and Electronic Technicians.

The employees in the professional voting group (a) will be asked two questions on their ballots:

(1) Do you desire to be included in the same unit as technical employees of Pratt and Whitney for the purpose of collective bargaining?

(2) Do you desire to be represented for the purpose of collective bargaining by the Florida Professional Association or Local Lodge 971, International Association of Machinists, AFL-CIO?

If a majority of the employees in voting group (a) vote "yes" to the first question, indicating a choice to be included in a unit with the technical employees, the group will be so included. The votes on the second question will then be counted with the votes of the technical voting group (b) to decide the representative for the entire unit. If, on the other hand, a majority of the professional employees in voting group (a) do not vote for inclusion, these employees will not be included with the technical employees, and their votes on the second question will be separately counted to decide whether they want to be represented in a separate professional unit.

[Direction of Election omitted from publication.]

¹⁵ Because the inclusion of the additional technical and professional employees changes the composition of the unit specifically sought, the Petitioner may have an inadequate showing of interest. In these circumstances, we direct the Petitioner to submit to the Regional Director within 30 days of this decision any additional showing of interest that may be required to support its petition.