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The Boeing Company and Society of Professional Engineering Employees in Aerospace, affiliated with International Federation of Professional and Technical Engineers, Local 2001. Case 19–CA–272489

January 27, 2025

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PROUTY AND WILCOX

On March 22, 2024, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed reply briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions only to the extent consistent with this Decision and Order.

¹ We reject the Respondent's arguments, raised for the first time in its brief in support of exceptions, that Board Members and the Board's administrative law judges are unconstitutionally insulated from removal. The Respondent did not raise these arguments, in any form, before the judge. Consequently, these arguments are untimely raised and thus deemed waived. *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989) (A contention raised for the first time in exceptions to the Board is ordinarily untimely raised and, thus, deemed waived.), enfd. 922 F.2d 832 (3d Cir. 1990).

² The Respondent has excepted to some of the judge's credibility findings. Specifically, the Respondent contends that the judge erred by finding that Craig Bomben, the Respondent's vice president of Flight Operations and Enterprise Chief Pilot, Boeing Test & Evaluation, Engineering, Operations & Technology, made several materially false statements as part of his testimony.

The judge found that (1) Bomben falsely stated "that the Respondent remained neutral with its position" prior to a Board-conducted decertification election concluded on April 14, 2020, and (2) "[a]ny claim that [the Respondent's Flight Training–Airplane pilots (FT-As)] did and could do nothing but pro forma line assist instruction was a blatant falsehood." The judge further questioned Bomben's testimony that FT-As cost twice as much as contractor pilots for the Respondent to deploy and his testimony about the time it took to train an FT-A. Finally, the judge found that Bomben unbelievably claimed that he had never learned the outcome of the April election.

For the following reasons, we find merit to the Respondent's exceptions. First, Bomben did not testify that the Respondent remained neutral with respect to the decertification election. Rather, when asked: "What was your involvement with the decertification petition filed by the FT-A instructor pilots and the tech and safety pilots in 2020?" Bomben replied, "I – none." Contrary to the judge, this testimony is not inconsistent with a February 13, 2020 email sent to unit employees on Bomben's behalf that included an attachment expressing, among other things, the Respondent's preference to work directly with em-

ployees rather than through a labor union. Next, Bomben did not testify that FT-As did and could do nothing but flight instruction; rather, he testified, consistent with other record evidence, that FT-As sometimes performed a variety of specific work outside of their core flight-instructor function. Further, we find, contrary to the judge, that Bomben's admitted lack of knowledge about very specific aspects of the Respondent's cost accounting does not undermine his claim generally to have known that FT-As cost the Respondent about twice as much to deploy as contractor pilots. In this respect, we note that the judge appears to have found, as a factual matter, that contractor pilots cost the Respondent less to deploy than FT-As, based in part on Bomben's testimony to that effect. Similarly, we do not consider the fact that the Respondent had not recently hired FT-As to warrant characterizing Bomben's testimony about how long he thought it would take to train an FT-A as materially false. Finally, Bomben did not testify that he never learned the outcome of the April election. Rather, he testified that he never learned how many of the individual unit pilots had voted in that election. Because each of the judge's specific findings about the credibility of Bomben's testimony is unsupported by the record, we reverse the judge's finding that Bomben made materially false statements that undermined his overall credibility. In light of the judge's overall credibility resolution, however, we rely on testimony from Bomben not specifically addressed in the judge's decision only to the extent it is consistent with other credited testimony or documentary evidence.

The Respondent has not excepted to the judge's determination to discredit certain testimony from Simon Kinsey, the Respondent's former chief pilot, air crew operations. We note, however, that some of the judge's discussion of Kinsey's testimony, while couched in credibility terms, goes beyond evaluating the reliability of Kinsey's testimony to opine on the validity of opinions Kinsey had or formed in late 2019 and early 2020 about FT-As' relative qualifications. We affirm the judge's findings with respect to FT-As' relative qualifications only to the extent consistent with our discussion below. Finally, the judge's decision repeatedly expresses incredulity about Kinsey's career path and refers to Kinsey using denigrating language. We disavow these aspects of the judge's decision.

The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and, with the qualifications discussed above, we find no basis for reversing the judge's credibility findings.

The Respondent has excepted to the judge's determination that the Respondent's failure to present testimony from certain witnesses supports a factual inference adverse to the Respondent's case. The parties stipulated that, prior to the hearing, three of the six individuals at issue ceased working for the Respondent and a fourth ceased being employed as a supervisor. The record establishes that the remaining two individuals had limited or no involvement in the Respondent's decisions at issue in this case. Moreover, as discussed further below, the Respondent presented extensive testimonial and documentary evidence directly supporting its position. In this context, we find that no adverse inference is warranted from the Respondent's failure to produce further evidence from managers no longer employed or only peripherally involved in the relevant decisions. See, e.g., *Natural Life, Inc. d/b/a Heart and Weight Institute*, 366 NLRB No. 53, slip op. at 1 fn. 1 (2018) (no adverse inference warranted from failure to call former employee, citing cases), enfd. on point 827 Fed. Appx. 724, 727 (9th Cir. 2020); *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (no adverse inference warranted from failure to call witness where other record evidence made witness's testimony unnecessary).

The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off seven instructor pilots and subcontracting their work after August 21, 2020, in general retaliation against a collective-bargaining unit of 27 pilots for voting not to decertify their Union on April 14, 2020. For the reasons explained below, we find, contrary to the judge, that, even assuming that the General Counsel made an initial showing under *Wright Line*³ sufficient to support the inference that employees' protected conduct was a motivating factor in the Respondent's layoff and subcontracting decisions, the Respondent has met its defense burden of demonstrating that it would have taken the same actions in the absence of the employees' protected conduct. We accordingly conclude that the layoffs and subcontracting did not violate the Act as alleged, and we shall dismiss the complaint.⁴

I. BACKGROUND

The Respondent is a multinational corporation that produces commercial and military aircraft for sale. When the Respondent's commercial customers purchase one or more airplanes of a type they have not previously operated, the purchase contract sometimes provides for customer "entitlements" to some number of days of instruction by personnel provided by the Respondent. These contractual entitlements may include, among other things, instruction to customer pilots in how to fly the airplanes. The Respondent also offers various services, including flight training both in airplanes and in simulators for direct sale, independently of a contract to buy airplanes. The seven employees at issue in this case were designated Flight Training–Airplane pilots (FT-As).⁵ Their primary job duty was in-flight training of customer-employed pilots in customer-owned airplanes produced by the Respondent. United States–based airlines did not generally contract for or purchase flight-training services. The FT-As were based in Renton, Washington, and typically delivered flight training to customers during foreign deployments lasting 1 to 2

months. The Union has represented the FT-As since 2010 or 2011 in a collective-bargaining unit that expanded in 2012 to include tech and safety pilots and simulator instructor pilots.⁶

In addition to the FT-As, the Respondent employs more than 200 other pilots with different primary job duties, including tech and safety pilots, simulator instructor pilots, test pilots, production test pilots, ground training instructor pilots, standards pilots, and executive or business jet pilots. FT-As and other pilots were sometimes assigned to perform "guest help" work that was within the primary job function of a different group or to ferry airplanes owned by the Respondent from one location to another as part of the production process or for storage.

The Respondent's organizational structure was complex and evolving at relevant times and is not fully elucidated by the record. Relevantly here, the Respondent's president and CEO in 2019 and 2020 was David Calhoun. Howard McKenzie was the Respondent's vice president for Boeing Test and Evaluation (BT&E), the highest organizational unit relevant in this case. Craig Bomben, who ultimately decided to lay off the FT-As, was generally in charge of all of the Respondent's flight operations and reported to McKenzie.⁷ Mark Locklear reported to Bomben as Bomben's chief of staff or chief of operations. Flight operations under Bomben were divided into commercial operations under Jim Webb,⁸ military operations under Jeffrey Bender,⁹ and global engagement and training under Todd White. Todd White was director and chief pilot, global engagement and training, from January 2019 through the end of December 2020.¹⁰ During 2019 and 2020, Carl Davis was di-

³ 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

⁴ Chairman Kaplan agrees with his colleagues that had the General Counsel met her initial burden under *Wright Line*, the Respondent amply showed that it would have taken the same actions even in the absence of protected activity. In his view, however, the General Counsel failed to even meet her initial burden under *Wright Line*. Although the Respondent certainly was aware of the unit employees' choice to retain union representation, the record does not support an inference that the decision to lay off the FT-As and to subcontract their work was motivated, even in part, by animus against this protected activity.

⁵ The seven FT-As are Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, David Whitacre, and James Wilkerson. FT-As are contrasted to flight training-simulator (FT-S) pilots, or simulator instructor pilots.

⁶ In 2013, the Respondent relocated its simulator instruction program from Washington to Florida and laid off approximately 12 to 25 unit simulator instructor pilots. The Union did not file unfair labor practice charges with the Board in relation to the 2013 simulator instructor pilot layoffs and work transfer. The bargaining unit has not included simulator instructor pilots since 2013.

⁷ From January 1, 2019, through December 31, 2020, Bomben's titles included vice president of flight operations and enterprise chief pilot, Boeing test & evaluation (BT&E), engineering, operations & technology. He was employed by the Respondent as a supervisor at the time of the hearing. In January 2020, unit FT-As and tech and safety pilots were organizationally reassigned from a different business unit (Boeing Global Services) to BT&E under Bomben.

⁸ Webb's title was Director, chief pilot, commercial airplanes. In May 2020, Thomas Griffin became chief pilot, production, reporting to Webb. The Respondent's commercial operations, as distinct from Global Engagement and Training, are not directly relevant to this case.

⁹ The Respondent's military operations are not directly relevant to this case.

¹⁰ Around April 2022, Thomas Griffin replaced White as chief pilot, global engagement and training, reporting to Bomben. Griffin retained that position at the time of the hearing. Griffin testified that global engagement and training was created in 2019 as part of the Respond-

rector, global air crew operations, reporting to White. During 2019 and the first half of 2020, Simon Kinsey was chief pilot, air crew operations, reporting to Davis. Throughout 2019 and 2020, Greg Bulkley supervised tech and safety pilots represented in the same bargaining unit as the FT-As as chief pilot or assistant chief pilot, flight technical & safety. Bulkley functionally reported to Davis. From 2019 through January 2020, Darren Champlin was chief pilot flight training–airplane, supervising the unit FT-As.¹¹ During the same period, Thad Shelton was assistant chief pilot, flight training–airplane, supervising the FT-As under Champlin. When Champlin and Shelton left the company in January 2020, the FT-As appear briefly to have been assigned to Kinsey before being reassigned to Bulkley.

Since at least 2016, the Respondent has provided some of its entitlement and direct-sale flight training, both in airplanes and in simulators, through contractor “purchased service pilots” (PSPs) employed directly by Cambridge Communications Limited (CCL), a corporation headquartered in the Isle of Man.¹² Unlike the Washington-based FT-As, CCL PSPs were generally based overseas, and they cost the Respondent less to deploy than FT-As.¹³

In May or June 2018, a group of the Respondent’s nonunionized production test and engineering pilots presented Bomben with a letter and supporting documentation arguing that Boeing’s failure to meet industry standards with respect to both compensation and quality of life was resulting in substantial pilot attrition that was interfering with the ability of the production test and engineering groups to perform their required work. Bomben testified that he met with managers responsible for the various pilot groups, and the Respondent conducted a

ent’s Global Aerospace Safety Initiative in response to crashes of two Boeing-produced 737 MAX airplanes in late 2018 and early 2019, discussed further below.

¹¹ Champlin appears to have been briefly subordinate to Kinsey in late 2019 and early 2020.

¹² Successive collective-bargaining agreements between the Union and the Respondent have provided that the Respondent “retains the exclusive right to reorganize, transfer, contract or subcontract out, discontinue, or relocate any or all of the operations of the business, including, but not limited to, work being or scheduled to be performed by bargaining unit employees.” No party has alleged that the Respondent’s subcontracting of instruction work prior to 2020 violated the Act, and the General Counsel does not currently allege that the Respondent’s subcontracting of instruction work in and after 2020 constituted a unilateral change or midterm modification of the parties’ collective-bargaining agreement in violation of Sec. 8(a)(5) or 8(d) of the Act.

¹³ As noted above, we disagree with the judge’s stated basis for questioning Bomben’s testimony about the Respondent’s relative costs for the deployment of FT-As and PSPs. We specifically find, as the judge appears in any case to have found as well, that PSPs cost the Respondent less to deploy than FT-As.

market analysis to determine what compensation changes might be necessary to address company-wide pilot attrition. On August 13, 2018, the Respondent implemented a 27 percent out-of-cycle pay increase for engineering and production test pilots. On September 28, 2018, it implemented a 15 percent out-of-cycle pay increase for tech and safety pilots represented by the Union in the same unit as the FT-As. FT-As in 2018 and 2019 received only much smaller increases provided for by their collective-bargaining agreement. Respondent Labor Relations Specialist Jill Antonen testified that the unit tech and safety pilots received an out-of-cycle raise in 2018 because their group was experiencing attrition that was affecting the business negatively, but that the FT-A pilot group was not experiencing the same issues.

In October or November 2018, after learning about the disparate pay increases, union representatives met with the Respondent to protest the Respondent’s failure to provide similar raises to the FT-As. The record does not indicate that the Union filed any contractual grievance or timely unfair labor practice charge relating to the 2018 raises. Beginning at least in September 2018 and continuing through November 2019, several FT-As (including Laxton, Wilkerson, and Wendt) repeatedly asked managers (including Shelton, Champlin, and Bomben) why the FT-As had not received similar increases and whether they could receive such increases. Managers consistently referred to the FT-As’ collective-bargaining agreement and refused to discuss wages directly with the FT-As.

In October 2018 and March 2019, two Boeing-produced 737 MAX airplanes crashed while being operated by commercial airlines. The U.S. Federal Aviation Administration (FAA) and other national regulatory bodies subsequently issued orders grounding Boeing 737 MAX airplanes throughout most of the world. The FAA grounding order was in effect from March 13, 2019, to November 18, 2020.¹⁴ At that time, the 737 MAX was Boeing’s best-selling airplane, accounting for the majority of its commercial airplane revenue. In addition to financial impacts on the company, discussed further below, the grounding orders resulted in delays in scheduling of some FT-A flight instruction work and in scheduled deliveries and associated entitlement flight instruction work for new 737 MAX airplanes. The grounding orders also resulted in increased pilot work across the company in ferrying idle 737 MAX planes for storage. Beginning in May 2019, the Respondent communicated to FT-A pilots that it anticipated a large volume of pilot work across the company to be associated with the 737

¹⁴ FT-A Wendt testified that the European Union and Indian orders were lifted significantly later.

MAX's return to service after the grounding orders were lifted. Most of the 737 MAX return-to-service work, however, did not involve flight instruction and could be performed by company pilots other than the FT-As. Around January 2020, the Respondent shut down its production of 737 MAX airplanes for approximately 4 or 5 months, causing further delays in scheduled deliveries of new airplanes and associated entitlement flight instruction work.

Early in 2019, shortly after the 737 MAX crashes and grounding orders, the Respondent initiated a company-wide effort to improve the safety of Boeing's products and services, which became a program called the "Global Aviation Safety Initiative" (GASI).¹⁵ One element of the GASI plan (GASI #4) was to increase Boeing's global presence through deployment of Boeing employees in a new job classification called Global Engagement Pilots (GEPs). GASI #4 represented a change in the Respondent's business model towards providing flight training as a part of a larger suite of services through GEPs modeled on the Respondent's existing program of providing other kinds of customer support through Field Service Representatives embedded with customer airlines for extended time periods.

On October 14, 2019, the Respondent's, Director of Global Air Crew Operations Davis attended a regular FT-A pilot meeting led by FT-A Chief Pilot Champlin. Davis provided "an update on current changes in Commercial Flight Training and Air Crew Operations, as well as a high-level look ahead at org structure." FT-A Laxton testified that Davis told the FT-As that the Respondent was planning to utilize the FT-As to train contractor pilots in Seattle who would then "fly with the customers or serve the customers in a position called a global engagement pilot, which was more of a longer term assignment in the customer's region." FT-A Wendt testified that Davis "unveiled . . . the unified comprehensive vision that was going to get Boeing back on track . . . to be the gold standard in training customer engagement. And it was called Global Engagement Pilot Vision." Wendt further testified that Davis told the FT-As that the Respondent was planning to utilize the FT-As as "trainers of these former Purchased Service pilots [PSPs], contractor pilots that are now going to become . . . Boeing employees."¹⁶ Champlin also announced that the Respondent was planning to hire five new FT-As.

¹⁵ The initial framework for the GASI plan was set forth in an email dated April 22, 2019.

¹⁶ The judge's decision repeatedly refers to the PSPs as providing a lower quality of training than the FT-As, based in part on FT-A testimony about Davis's comments at the October 14 meeting. Having carefully reviewed this testimony and other testimony relied upon by

FT-A Wendt testified that, at a November 2019 meeting, "there was a little bit more exposition on the Global Engagement Pilot plan." Wendt also testified that there was discussion at this meeting of hiring approximately 75 Global Engagement Pilots and of the status of the hiring requisitions for the five new FT-As. Wendt further testified that Champlin assigned Wendt to compare the current onboarding processes for FT-A pilots and CCL PSPs in order to merge the best of both processes.

On December 17, 2019, a group of 20 unit pilots (including FT-As Cotton, Laxton, Paterson, and Wendt) submitted a petition to Davis requesting that the Respondent withdraw recognition from the Union. On January 3, 2020, the same pilots submitted a second request appealing the Respondent's initial decision to deny their first request. Also on January 3, 2020, the pilots petitioned the Board for a decertification election. On January 9, 2020, the Union filed an unfair labor practice charge and simultaneous request to block the election petition, alleging that the Respondent had engaged in various misconduct dating back at least to 2016 which had tainted the petition. On January 29, 2020, the Regional Director for Board Region 19 informed the parties that the petition would be held in abeyance pending investigation of the Union's charge. The record does not reflect that the Regional Director ever made a merit determination on the charge. As discussed further below, the Union withdrew the charge shortly thereafter, and a tally of ballots indicates that 20 of 27 eligible voters voted to retain representation in a mail-ballot election concluded on April 14, 2020.

In the meantime, FT-A Wendt testified that, at a January 2020 FT-A meeting, Simon Kinsey, the Respondent's chief pilot, air crew operations, "spoke in an even more detailed fashion of what the Global Engagement Program was going to look like, and there was still discussion of the five . . . new hires." Wendt further testified that Kinsey:

the judge's decision, we find that the record does not support concluding that the Respondent generally considered the training provided by PSPs to be of a lower quality than that provided by the FT-As.

The judge's decision identifies the plan discussed by Davis at this meeting as the "Return to Boeing's Gold Standard Instructor Pilot Training Plan," and thereafter repeatedly refers to a plan by this name, including in finding that the Respondent abandoned this plan in favor of a "Global Engagement Pilot plan" only after the April 2020 decertification election. However, neither the exhibits cited in the judge's decision nor any other documentary or testimonial evidence in this case refers to a "Return to Boeing's Gold Standard Instructor Pilot Training Plan." The record evidence quoted above clearly supports finding that Davis, in the October 2019 meeting, described a "Global Engagement Pilot Vision" that called for delivery of future flight instruction by Global Engagement Pilots drawn from the existing PSP workforce and deployed for extended periods in the customers' regions.

was talking about a massive investment across the entire spectrum of training to include simulators, computer based training, and pilots providing Global Engagement Pilot training, front facing to the customer deployed around the world, and FT-A, once again, was the standards and trainings component of it that the . . . plan could not succeed without.

Wendt also testified that Kinsey authorized Wendt to attend a weeklong onboarding program for CCL PSPs pursuant to Wendt's earlier assignment to integrate the onboarding processes for PSPs and FT-As. Laxton testified that Champlin responded to an inquiry about the status of FT-A hiring that "they had five or six applicants, but they were not of the quality he was expecting." Laxton also testified that Bulkley told pilots at some time after the January meeting that FT-A hiring was still proceeding.

On February 3, 2020, Kinsey emailed a draft slide presentation entitled "Global Engagement & Training Air Crew Operations (ACO) transition from legacy Flight Training—Airplanes (FT-A) + Purchased Service Pilots (PSP) to ACO under Boeing Test & Evaluation (BT&E)," to Todd White, the Respondent's Director, Chief Pilot, Global Engagement and Training.¹⁷ The slide presentation referred to the existing parallel delivery of flight training services by a combination of FT-As and PSPs before presenting a "Proposed ACO org" based on a "[g]lobal pilot workforce, around regional bases and local hubs," "[a]ll 'blue badged,'" (i.e. Boeing employees), drawing from the existing PSP workforce, and modeled on the Respondent's "Field Services model." These key elements of the proposed ACO organization are consistent with Davis's October 14 announcement to the FT-As that the Respondent was planning to hire GEPs from the existing PSP population to deliver flight instruction to foreign customers as part of longer term foreign deployments.

A slide providing context for the proposed ACO organization in terms of "where we felt we were last year" referred to an "Initial plan for *Boeing Aviation Institute*."¹⁸ A second "context" slide referred to "Initial workshop recommendations" identifying four "streams" to support the training initiative. In Stream 1, this slide identified an objective to "Increase connection with

stakeholders," to be supported by actions including "Provide customer operational assistance and gain insights by embedded resources." This slide's reference to "embedded resources" is consistent with Davis' October 14 announcement to FT-As that the Respondent planned to provide future flight training through representatives deployed for longer terms with customer airlines.

Finally, the presentation referred to a need to "[d]etermine potential to use current FT-A pilots for integration, capturing existing policies, processes and procedures for transition." This slide is consistent with Champlin's November 2019 assignment to Wendt to integrate existing onboarding processes for FT-As and CCL PSPs.

Kinsey's February 2, 2020 cover email transmitting this presentation to White stated, "My main point is resources. I don't see much that I can do with those pilots still in the 25-01 [i.e., the FT-As]."¹⁹ On February 10, 2020, Davis sent an email to Locklear, copied to Kinsey, stating, inter alia: "BAI [Boeing Aviation Institute] is a shift in the business and old models won't work. FT-A is going away. The model of pilots with no airline experience interacting . . . closely with our customers does not work for what Stream 1 of BAI is tasked to do."

As stated above, unit employees petitioned the Board for a decertification election on January 3, 2020, and the Regional Director informed the parties on January 29, 2020, that the petition would be held in abeyance pending investigation of the Union's unfair labor practice charges. Union representative Rich Plunkett testified that, while these proceedings were pending, the Union was engaged in negotiations for contracts both for the pilots' unit and for two other Boeing units which included approximately 15,000 nonpilot engineering and technical employees. The Union represented to the Respondent that the Respondent's failure to move on wages for the pilot unit endangered all of the negotiations. The Respondent ultimately agreed to increase unit FT-A wages by 24 percent and unit tech and safety pilot wages by 10 percent in a contract effective beginning March 7, 2020.²⁰

On February 13, 2020, an email was sent to unit pilots on Bomben's behalf announcing that the Respondent and the Union had that day reached agreement on a contract and detailing the included wage increases. The text of

¹⁷ The email was copied to Kinsey's direct supervisor Davis and to Bomben's chief of staff Mark Locklear. The parties introduced the February 3 slide presentation as a joint exhibit without objection. In considering the slide presentation for what it conveys on its face, we do not rely on related testimony from Kinsey in light of the judge's determination, to which the Respondent does not except, that Kinsey was not generally a reliable witness.

¹⁸ Emphasis in original.

¹⁹ "25-01" refers to the building where the FT-As worked.

²⁰ Contrary to the judge, this contract did not include language guaranteeing that the FT-As' work tasks would remain unchanged. To the contrary, it provided, inter alia, consistent with the contract it replaced, that the Respondent "retains the exclusive right to reorganize, transfer, contract or subcontract out, discontinue, or relocate any or all of the operations of the business, including, but not limited to, work being or scheduled to be performed by bargaining unit employees."

the email also noted the existence of the decertification petition and stated that the existence of the contract did not affect the decertification election and that the employees' vote to ratify the contract did not affect their ability to vote in the election or their right to vote as they choose. Finally, the email assured employees that the Respondent would fully cooperate with Board proceedings and ensure a smooth transition in any outcome. The email also included a 2-page FAQs document and a 38-page redlined version of the collective-bargaining agreement. The FAQs document discussed the origin and impact of the decertification petition and expressed, *inter alia*, the Respondent's preference "to work directly with our employees, rather than through an intermediary such as a labor union." Neither the email nor the FAQs document asked any employee to take any specific action with respect to the decertification election.

As stated above, 20 of 27 eligible voters voted to retain representation in a mail-ballot election concluded on April 14, 2020.

In the meantime, the world-wide spread of the COVID-19 pandemic in early 2020 resulted in dramatically reduced commercial air traffic and airline demand for new planes as well as increased restrictions on air travel, including in many cases national prohibitions on the entry of foreign travelers. FT-A Wendt testified that, at the beginning of 2020, "[e]ffectively, the entitlement training and deliveries for the most part, ceased. Because our airlines were going into basically survival mode."²¹ FT-A Laxton testified "our travel was impacted for going to visit the customers face-to-face, obviously." Bomben testified "COVID was having a huge impact [on travel]. . . a lot of travel was shut down. And there was a period of time where . . . even if we wanted to . . . we couldn't reach [customers] from the United States."

On March 10, 2020, McKenzie, Bomben's immediate supervisor, forwarded to Bomben and two other managers an email chain with the subject line "Liquidity Actions." McKenzie received the chain from his boss, Gregory Hyslop, who received it from Heidi Capozzi, the Respondent's head of human resources. The chain began with an email from Greg Smith, the Respondent's chief financial officer, describing a schedule "to move out at pace" with a previously discussed 10- to 15-percent "headcount reduction" and 20-percent nonlabor reduction "[i]n light of our already constrained financial position and the additional strain we're going to face with the coronavirus situation." Smith's email included a schedule calling for delivering layoff notices to affected em-

ployees in April prior to last days on payroll in June. Capozzi's addition to the email chain imposed immediate restrictions on new and existing requisitions and hiring offers for any new employees.

On April 2, 2020, the Respondent's CEO Calhoun sent a message to all Boeing employees discussing the business impacts of the COVID-19 pandemic and announcing the initiation of a voluntary layoff plan intended to "reduce the need for other workforce actions." Bomben testified that, by the summer of 2020, the Respondent's financial position was "extremely grave," the Respondent was "borrowing money . . . to stay afloat," and "believed we had to take drastic steps to cut costs, or the company was not going to be viable in the future."

Bomben testified that after initial cost-saving initiatives at his level failed to reach the goal of a 10-percent reduction in headcount, McKenzie told Bomben and other senior leaders they "needed to go back and do more." Bomben then instructed his leadership team—Bender for military pilots, Webb for commercial pilots, and White for Global Engagement and Training pilots (including the FT-As)—to conduct "a top-down review of all their populations."

As stated above, the decertification election concluded on April 14, 2020.

On April 21, 2020, Bomben forwarded to McKenzie an email and attached PowerPoint from Locklear summarizing the overall "BT&E Flight Operations Staffing Review." Locklear's summary of the review states, "Our well-advertised plan all along was to staff well below the peak and make [up] the difference with contractors and guest help," and "We are conducting a thorough by-name review of all areas of the business: commercial, military, global engagement and training, operations, and safety to determine if any margin for reductions or trades exists."

On April 29, 2020, CEO Calhoun sent a second message to all Boeing employees. This message discussed the specific impacts of the pandemic on the Respondent's financial position and cost-savings measures implemented and planned before announcing a company-wide plan to "lower our number of employees by roughly 10% through a combination of voluntary layoffs (VLO), natural turnover and involuntary layoffs as necessary," with "even deeper reductions in areas that are most exposed to the condition of our commercial customers." On May 27, 2020, Calhoun sent a third company-wide message announcing that the Respondent had concluded its voluntary layoff program and would be notifying the "first 6,770" U.S. employees of their involuntary layoffs that week.

Bomben testified that he ultimately made the decision to lay off the FT-As over the course of approximately 2

²¹ Wendt clarified that by "ceased," he meant that scheduled work was delayed, not canceled.

months, with input from White and Davis as well as the Respondent's labor relations and human resources departments.²² Bomben identified three factors that played into his decision. First was the company's "dire financial state" in the wake of the 737 MAX groundings and production shutdown and the COVID-19 pandemic.²³ Second was the change in business model from "simply flying and training [customers] in the airplanes and in the simulators" to a broader engagement including "development of safety management systems, development of operational procedures, development of manuals, training their trainers how to deliver the material we provided to them in an appropriate manner, and really anything from an operational perspective that could ensure that they were successful and make them safer and make the industry safer." Third was the "top to bottom review that we did of our organization, looking to see what parts of the business we could cut headcount out of," after which, "the only group within flight operations that came back without a significant negative impact to the business was deemed to be the FT-A population."

On July 1 and 5, 2020, White emailed Bomben, Davis, and Locklear draft presentations making a business case for the FT-A layoffs. On July 8, 2020, White emailed Bomben a final version of the presentation. A summary slide in this presentation stated:

- The 7 FTA pilot Pro Forma/Code 1 Customer Support Pilot statement of work has been in steady decline from October 2018 – November 2019 when it reached zero (0)
- There has been zero (0) Pro Forma/Code 1 Customer Support Pilot statement of work completed from November 2019 – June 2020
- Forecasted July – December 2020 Pro Forma/Code 1 Customer Support Pilot statement of work is within a range of (0) zero to 4 FTEs which could be performed by Purchase Service Pilots, if required
- Purchase Service Pilots have been successfully engaged in the past to perform Pro Forma/Code 1 Customer Support Pilot statement of work

²² Bomben also testified that Kinsey and Bulkley were not involved in the decision and that Locklear was involved in the process by collecting data and producing PowerPoint presentations.

²³ In this respect, Bomben testified that the Global Aviation Safety Initiative, which called for providing flight training through GEPs rather than FT-As was "the one program that I know of within the Boeing Company that was fully funded while we were going through these very dramatic cost-cutting measures."

- Purchase Service Pilots have executed 200 days of Direct Sale Support statement of work year-to-date 2020
- International presence of Purchase Service Pilots is more operationally efficient
- For 2021 and beyond, the Pro Forma/Code 1 statement of work will most likely remain highly variable with low predictability and can be covered by Purchase Service Pilots

The summary slide concludes, "FTA pilots is not recommended going forward due to uncertainty of future statement of work."

Also in July 2020, the Respondent was proceeding with its plan to hire additional global engagement pilots from the existing PSP population.

On July 29, 2020, CEO Calhoun sent a fourth company-wide message announcing further production cuts and involuntary layoffs. On August 17, Calhoun announced in a fifth message a second voluntary layoff program designed to "extend our overall workforce reductions beyond the initial 10% target" and "help limit additional involuntary workforce actions."

On August 21, 2020, White announced that the Respondent was laying off the seven FT-As.²⁴ The Respondent ultimately laid off over 17,500 employees in 2020 and 2021.

II. ANALYSIS

Where, as here, an employer defends against an allegation that it has taken adverse action against employees because of their union activity by asserting that it took the challenged action for legitimate reasons, the Board applies the dual-motive analysis set forth in *Wright Line*.²⁵ Under this framework, the General Counsel must first make an initial showing sufficient to support the inference that employees' protected conduct was a motivating factor in the employer's decision.²⁶ The elements required to sustain the General Counsel's initial burden are a showing of (1) union or other protected activity by the employee(s), (2) employer knowledge of that activity, and (3) animus against union or other protected activity.

²⁴ Six of the seven FT-As ceased work between November 20, 2020, and March 25, 2021. The seventh remained employed by the Respondent while on a medical leave of absence which began before his scheduled separation date.

²⁵ 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert denied* 455 U.S. 989 (1982).

²⁶ *Id.* at 1089.

ty on the part of the employer.²⁷ Once the General Counsel has established that the employees' union activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct.²⁸ Motive is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole.²⁹

Applying *Wright Line*, the judge first found that the General Counsel sustained her initial burden of showing that unit employees' April 14, 2020 vote to retain union representation was a motivating factor in the Respondent's decisions to lay off the FT-As and subcontract their work. The judge further found that the Respondent failed to meet its defense burden because its proffered reasons for taking these actions were pretextual. The judge therefore concluded that the layoffs and subcontracting violated Section 8(a)(3) and (1).

We disagree. Specifically, we find that, even assuming that unit employees' vote in the decertification election was a motivating factor in the Respondent's decisions, the Respondent has demonstrated that it would have laid off the FT-As and subcontracted their work in the absence of the decertification vote.

The Respondent contends that, when its financial situation in 2020 required mass layoffs, it determined that the FT-As could be laid off without a major effect on company operations because (1) it was already in the process of changing its delivery model from flight training delivered by FT-As deployed from the United States for short periods to flight training delivered as part of a broader suite of services provided by GEPs embedded for longer periods with foreign airline customers; (2) FT-As were performing little or none of their core flight instruction work in early 2020; (3) the demand for flight

instruction work in the short-term future was uncertain; and (4) the Respondent could meet anticipated future flight instruction needs using PSPs or GEPs at lower cost.³⁰

The record fully supports the Respondent's explanation for its conduct. First, extensive testimonial and documentary evidence establishes that the Respondent determined early in 2020 that the combined financial impact of the 737 MAX grounding orders and the COVID-19 pandemic necessitated large-scale company-wide layoffs, and that it in fact laid off more than 17,500 employees in 2020 and 2021. We are unpersuaded by the judge's reasoning that historic attrition in the FT-A workgroup or a smaller number of FT-A layoffs should have met the Respondent's headcount reduction goals with respect to the FT-A workgroup. The Respondent set its overall reduction goals in reference to its current employee population, not to an earlier population that included more FT-As. Nor is it plausible that the Respondent would seek to implement an overall percentage workforce reduction by identical percentage reductions in every workgroup, and the record reflects that it did not do so. We are equally unpersuaded by the judge's suggestion that the Respondent should have offset the financial need for FT-A layoffs by drawing on its relatively unhampered income stream from military operations. The record reflects that the Respondent did, in fact, use military income to reduce the overall need for layoffs, but it nevertheless laid off more than 17,500 employees.

Next, contrary to the judge's factual finding that the Respondent completely changed its plans for the FT-As only after the April 14, 2020, election, the record clearly establishes that the Respondent was already in the process of replacing FT-As with GEPs as its primary providers of flight instruction well before the election. As stated above, the Respondent initiated this process as early as April 19, 2019, in response to the 2018 and 2019 737 MAX crashes. FT-A Laxton testified that Davis told the FT-As on October 14, 2019, that the Respondent was planning to utilize "global engagement pilots" drawn from the PSP population to "fly with the customers" on "longer term assignment(s) in the customer's region." FT-A Wendt testified that Davis told FT-As on the same date that the Respondent was planning to utilize the FT-As as trainers of former PSPs as part of a "Global Engagement Pilot vision." Wendt testified that the Respondent further explained the "Global Engagement Pilot

²⁷ See, e.g., *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). It is well settled, however, that "the General Counsel need not prove that each individual discriminatee was a union supporter or that the Respondent was aware of each discriminatee's union support where an employer takes adverse action against employees, regardless of their individual sentiments toward union representation, 'in order to punish the employees as a group to discourage union activity or in retaliation for the protected activity of some.'" *River City Asphalt, Inc.*, 372 NLRB No. 87, slip op. at 2 fn. 6 (2023) (quoting *Napleton Cadillac of Libertyville*, 367 NLRB No. 6, slip op. at 14 (2018) (internal quotation and citation omitted), enfd. on point sub nom. *Napleton 1050, Inc. v. NLRB*, 976 F.3d 30, 41-46 (D.C. Cir. 2020)). We accordingly reject the Respondent's contention that the General Counsel was required to establish the Respondent's knowledge of each FT-A's individual support for the Union under a general retaliation theory.

²⁸ *Wright Line*, above, 251 NLRB at 1089.

²⁹ See, e.g., *Intertape Polymer*, above, 372 NLRB No. 133, slip op. at 6; *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 229 (D.C. Cir. 1995), enfg. 312 NLRB 155 (1993).

³⁰ The Respondent has consistently proffered essentially the same justification for the FTA layoffs. We accordingly reject the suggestion in the judge's decision that the Respondent proffered shifting reasons for its decisions that were indicative of unlawful pretext. Cf., e.g., *Vesta VFO, LLC*, 373 NLRB No. 10, slip op. at 2 (2024).

plan,” and discussed hiring 75 new GEPs in November 2019. Wendt testified that, in January 2020, Kinsey further explained the “Global Engagement Program,” including the Respondent’s intention to utilize “pilots providing Global Engagement Pilot training, front facing to the customer deployed around the world.” Kinsey’s February 3, 2020, slide presentation proposed a modified Air Crew Operations organization consistent with the plan reflected in the FT-As’ testimony in providing for flight training to be delivered by a “[g]lobal pilot workforce” drawn from the existing PSP population and embedded with foreign customer airlines. Davis’s February 10, 2020, email stating that “FT-A is going away” reflected an explicit judgment that FT-As would no longer provide flight training directly to customers under the new model.

The record *does* reflect that the Respondent changed its plan to hire five new FT-As and utilize FT-As to train the new GEP workforce at some point after October 2019. But the record does not reflect that these changes were in response to the April 14, 2020 vote. As to the hiring, FT-A Laxton testified that Champlin told the FT-As in January 2020 that “they had five or six applicants, but they were not of the quality he was expecting,” and that Bulkley told pilots at some time after January that hiring for FT-A positions was still proceeding. It is not clear from the record when the Respondent decided not to hire more FT-As. However, as described above, on March 10, 2020, more than a month before the election, the Respondent’s human resources department placed restrictions on new and existing hiring requisitions and offers in response to the Respondent’s “already constrained financial position and the additional strain we’re going to face with the coronavirus situation.” As to the decision not to utilize FT-As to train GEPs, the record does not reflect when this decision was made in relation to the election. However, Kinsey’s February 2, 2020 email stating he did not see much he could do with the FT-As in the proposed new structure suggests at a minimum that the plan to use the FT-As to train GEPs was in question by that date.³¹

We further disagree with the judge’s findings that manager representations to FT-As about future instruction work or expected 737 MAX return-to-service work, made in 2019 and early 2020, undermine the Respondent’s claims that FT-As were performing little or none of

their core flight instruction work in early 2020 and that the demand for flight instruction work in the short-term future was uncertain. The developing COVID-19 pandemic in early 2020 would clearly have changed the Respondent’s prior expectations of future instruction work. The 737 MAX remained grounded through most of 2020, and, in any case, as noted above, most of the return-to-service work could be performed by company pilots other than the FT-As. The fact that there may have been other work expected which the FT-As *could* perform does not undermine the Respondent’s determination that they could be spared if there was no work that *only they* could perform.

Finally, we disagree with the judge’s assessment that the Respondent could not logically choose to save money by providing anticipated future flight instruction using PSPs or GEPs at lower cost. As noted above, the record does not support concluding that the Respondent generally considered the training provided by PSPs to be of a lower quality than that provided by the FT-As. But even if it did, the question for the judge (and the Board) is not whether the Respondent’s business judgment in this regard was well-advised, but whether the Respondent in fact made such a judgment and relied on it in making its decision.³² Here, the Respondent’s contention that it acted as it did in part to save money is clearly not so implausible as to support finding it pretextual.

In sum, we find that, even assuming that the General Counsel established that unit employees’ support for the Union in the April 14, 2020 election was a motivating factor in the Respondent’s decisions, the Respondent has carried its *Wright Line* defense burden to persuade that it would have laid off the FT-As and subcontracted their work in the absence of unit employees’ choice to retain union representation. We accordingly conclude that the Respondent has not violated the Act as alleged.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. January 27, 2025

Marvin E. Kaplan,

Chairman

David M. Prouty,

Member

³¹ As noted above, the judge’s decision in places couches discussion of Kinsey’s opinions about the FT-As’ role in the Respondent’s developing plan in credibility terms. However, Kinsey’s February 2 email establishes that Kinsey was questioning that role well before the April 14 election independently of any determination about the general credibility of Kinsey’s testimony.

³² See, e.g., *Ryder Distribution Resources*, 311 NLRB 814, 816 (1993); *Texas Instruments, Inc. v. NLRB*, 599 F.2d 1067, 1073 (1st Cir. 1979), setting aside and remanding in part 236 NLRB 68 (1978).

 Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Carolyn McConnell, Esq. and *Katherine Bond, Esq.*, for the General Counsel.

Brennan W. Bolt, Esq. and *M. Alexander Pratt, Esq.*, for the Respondent.

Eillen K. Kelman, Esq., for the Charging Party Union.

RECOMMENDED DECISION

INTRODUCTION

GERALD M. ETCHINGHAM, ADMINISTRATIVE LAW JUDGE. A hybrid hearing in Seattle, Washington, and using Zoom for Government virtual technology was held on October 18–19, 21, 24–27, 2022, over allegations that The Boeing Company (Respondent or Boeing) violated the National Labor Relations Act, as amended (Act), when on August 21, 2020,¹ it announced and between December 2020 and March 2021, it discriminatorily laid off its remaining seven (7) flight training airplane (FTA) instructor pilots who were members of a pilot unit of the Society of Professional Engineering Employees in Aerospace, affiliated with the National Federation of Professional and Technical Engineers, Local 2001 (SPEEA or the Union).

Based upon the record, the parties' arguments, and the applicable law, I find Respondent committed the alleged violations.

Boeing looks to have prioritized cutting costs and ridding itself of a group of union instructor pilots it has historically treated badly over following through to improve the quality of its contractor instructor pilots to get back to Boeing's renowned gold standard training as it was prepared to do in late 2019 and early 2020 before Boeing saw that the results of the unsuccessful 2nd decertification vote did not go as planned and decided to flip-flop its improved training plan and retaliate and layoff all of its highly qualified FTA instructor pilots.

STATEMENT OF THE CASE

On February 9, 2021, the Union filed the charge in case 19–CA–272489. The Union later amended that charge on February 23, 2021, and a second time on May 11, 2021. On June 15, 2022, the General Counsel, through the Regional Director for Region 19, issued a complaint and notice of hearing (the complaint). On June 29, 2022, Respondent filed its answer denying the material allegations in the complaint.

At the hearing, all parties were afforded the right to call and examine witnesses, present any relevant documentary evidence, and argue their respective legal positions. The General Counsel, the Union, and Respondent filed post-hearing briefs, which I have carefully considered.

On the entire record, including my observation of the witnesses, I make the following

¹ All dates are in 2020 unless otherwise indicated.

FINDINGS OF FACT²

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent admits that it is a corporation with headquarters in Chicago, Illinois,³ it has been engaged in the business of manufacturing and producing military and commercial aircraft at various facilities throughout the United States, including Renton, Washington (its Renton facility), and others in the Seattle, Washington, metropolitan area. I find that in conducting its operations during the 12-month period ending May 31, 2022, Respondent derived gross revenues in excess of \$500,000. I further find that during the 12-month period ending May 31, 2022, Respondent, in conducting its operations, purchased and received at its Renton facility, goods and services valued in excess of \$50,000 directly from points outside the State of Washington. Respondent admits, and I further find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Information

1. The unit instructor or Flight Training Airplane Pilots (FTA pilots)

This case involves the employment and layoff of 7 unionized pilots at Respondent who worked with distinction as unionized instructor pilots from May 18, 2012, through their announced layoff in August 2020 and actual layoff between December

² The Findings of Fact are a compilation of the stipulated facts, admissions, credible testimony, and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also considered the context of the testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), rev'd. on other grounds 340 U.S. 474 (1951)). Captain James Wilkerson was observed to testify in a very confident and unrehearsed manner with better-than-average recall on very complex facts over his career with Boeing particularly from years 2012–2021 which remained materially unchanged even during cross-examination. Moreover, Wilkerson's testimony is particularly reliable given that he was testifying against his respective pecuniary interests because at the time of hearing he had returned as an employee at Boeing. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Flexsteel Industries*, 316 NLRB 745 (1995).

³ The parties acknowledge that since May 2022, Boeing's headquarters has moved again to Alexandria, Virginia.

2020 through March 2021. (Tr. 15, 397.)⁴ These pilots had changing job titles over this time from entitlements instructor, line assist instructor pilot, Pop-Up pilot, Boeing instructor pilot, Boeing pilot, and sometimes just FTA for flight training airplane pilot (FTA). *Id.* Basically, these skilled pilots instructed Boeing’s customer pilot crews how to fly various airplane models.

In or around May 18, 2012, a group of pilots at Boeing changed their association to the Aircraft Manufacturing Pilots Association and later became a unit joining SPEEA and added flight tech and safety pilots and simulator instructor pilots at different classes to the unit which previously had the FTA pilots’ unit alone. (Tr. 16–17, 220–223; Jt. Exh. 26.) As of August 2020, SPEEA represented this unit of safety, tech, standards, and flight instructor/FTA pilots based in the Puget Sound area in Washington. (Stip. Fact 1, Jt. Exh. 38.)

The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

All full-time and regular part-time pilots employed by Respondent in Instructor Pilot positions with flying duties and requiring a current FAA pilot certificate who were employed at and permanently assigned to the Longacres Training Center located at 1301 SW 16th Street, Renton, Washington, prior to its being sold, and all full-time and regular part-time standards pilots, safety pilots, technical pilots, and simulator-only pilots/instructors employed by Respondent who are permanently assigned to and work at or out of its Renton facility; excluding pilots on Pilot Early Leave, BTE pilots, executive pilots, pilots located and working remotely outside the State of Washington, office clericals, all other employees, and guards and supervisors as defined in the Act.

Since at least May 18, 2012, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and has been recognized as such by Respondent. This recognition has been embodied in successive collective-bargaining agreements (CBAs), the most recent two being one effective on February 10, 2017, through February 27, 2020, and another effective from February 28, 2020, through March 4, 2024. (Jt. Exhs. 23 and 24, respectively.)

The Union and Boeing ratified their first CBA with the Unit pilots in 2013. (Tr. 222.) During bargaining, Boeing’s representative Tom Easley (Easley) informed the Union that Boeing was moving the 15–25 simulator instructor pilots’ group from Renton to Miami, Florida, which reduced the unit to 50–60 pilots at the time. (Tr. 223.)

The parties stipulate and I further find that the following individuals are or were supervisors of Respondent within the

⁴ Abbreviations used in this decision are as follows: “Jt. Exh. for joint exhibits; “R. Exh.” for Respondent’s exhibit; “R. Br. For Respondent’s brief; “GC Exh.” for General Counsel’s exhibit; “GC Br.” for the General Counsel’s brief and “CP Exh. for Charging Party Union’s exhibit; and “CP Br.” for Charging Party Union’s brief. Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

meaning of Section 2(11) of the Act during the following time periods:

a. Carl Davis (did *not* testify); Director, Global Air Crew Operations, 1/1/2019—12/31/2020; Ceased employment with Respondent 2/1/2022; b. Craig Bomben (testified); Vice president of Flight Operations; Enterprise Chief Pilot, Boeing Test & Evaluation, Engineering, Operations & Technology, 1/1/2019—12/31/2020; Currently a supervisor for Respondent; c. Greg Bulkley (did *not* testify); Chief Pilot, Flight Technical and Safety, 1/1/2019—12/31/2020; Currently a supervisor for Respondent; d. Darren Champlin (did *not* testify); Chief Pilot, Flight Training — Airplane, 1/1/2019—1/31/2020; Ceased employment with Respondent 1/31/2020; e. Simon Kinsey (testified); Chief Pilot, Air Crew Operations, 1/1/2019—6/1/2020; Ceased employment with Respondent 6/1/2020⁵; f. Jim Webb (did *not* testify); Director, Chief Pilot, Commercial Airplanes, 1/1/2019—12/31/2020; Currently a supervisor for Respondent; g. Todd White (did *not* testify); Director, Chief Pilot, Global Engagement k Training, 1/1/2019—2/31/2020; Ceased being employed by Respondent as a supervisor 3/25/2022; h. Suzanna Darcy-Henneman (did *not* testify); Director, Flight Services Chief Pilot, 9/24/2010—3/1/2017; Ceased employment with Respondent 3/1/2017; i. Steve Taylor (did *not* testify); Director, Flight Services Chief Pilot, 1/16/2015—8/1/2017; Ceased employment with Respondent 8/1/2017; j. Thad Shelton (did *not* testify); Assistant Chief Pilot, Flight Training—Airplane, 1/1/2019—1/12/2020; Ceased employment with Respondent 1/12/2020; k. Mikel Pardue (testified); Global Operations Center Manager, 1/1/2019—12/31/2020; Currently a supervisor for Respondent; l. Sherry Carbarry (did *not* testify); President Boeing China, 2/2019—2020; Vice President Flight Services, 2010—5/1/2017; Currently a supervisor for Respondent; Paul Wallis (did *not* testify); Fleet Manager Boeing 737 Simulator Flight Training, 8/12/2011—1/6/2017; Ceased being employed by Respondent as a supervisor 1/6/2017; Ceased employment with Respondent 6/29/2019; n. Tom Easley (did *not* testify); Director - Collective Bargaining, 2012—6/30/2015; Ceased employment with Respondent 6/30/2015; o. William Hartman (did *not* testify); Director, Labor Relations, 2015—6/30/2020; Ceased employment with Respondent 6/30/2020; p. Marcus Ballou (did *not* testify); Deputy Chief Pilot, Flight Training Airplane, 2017—2020; Ceased employment by Respondent 4/30/2021; q. Michael

⁵ Mr. Kinsey, despite his short but pivotal role at Boeing from November 2018 to June 1, 2020, is better known as a disgruntled purchase service independent contractor employed since July 2011 by Cambridge Communications Ltd., a corporation in the Isle of Man near England which supplied Boeing with purchase service contractor pilots on an increasing basis since at least 2015. Tr. 573. Kinsey first clashed with the Union and Unit FTA pilots in 2016 when Kinsey’s name was on a list of contractor pilots who were deployed overseas and allegations by the Union and Unit FTA pilots were that Kinsey and his contractor pilot group were “scab” pilots and because Boeing was compromising the quality of the instructor pilot position through its increasing use of contractor pilots and the Unit FTA pilots did not support Boeing’s use of contractor instruction pilots. (Tr. 101–103, 432–452, 573, 598–599, 610, 1071–1080; Jt. Exh. 14 and 15.)

Fitzsimmons (did not testify); Chief Labor Counsel, 2015—9/26/2019; Vice President Labor Relations, 9/27/2019—2021; Currently a supervisor for Respondent; r. Todd Zarfso (did not testify); BCA VP Engineering Functions/Washington Design Center, 2019—2020; Ceased employment with Respondent in December 2020; s. Robert Larson (did not testify); Regional Chief Pilot, Air Crew Operations, 5/1/2020—Present; t. James Sharpies (did not testify); Deputy Chief Pilot, Air Crew Operations, 6/1/2020—7/31/2021; Ceased employment by Respondent 7/31/2021; and u. Andrew Goodsall (did not testify); Regional Chief Pilot, Air Crew Operations, 6/01/2020—Present. (Stip. Fact 18, Jt. Exh. 38.)

The parties further stipulate and I find that the following individuals are or were agents of Respondent within the meaning of Section 2(13) of the Act during the following time periods:

a. Jill Antonen (testified); Labor Relations Specialist, 2019—2020; Currently an agent for Respondent; b. Jeffrey Janders (did not testify); Labor Relations Specialist, 2019—2020; Currently an agent for Respondent; and c. Bridget Blair (did not testify); Compensation Specialist; 2018—6/6/2020; Ceased employment with Respondent 6/6/2020. (Stip. Fact 19, Jt. Exh. 38.)

The Unit FTA pilots' CBAs contained regularly scheduled pay raises of 2–3percent annually with specific language indicating that this scheduled pay raise was only a minimum pay raise and that Respondent could pay more if conditions warranted an out-of-cycle pay increase for Unit FTA pilots. (Jt. Exh. 23 at Art. 4.)

The CBAs also contained specific language in a management rights clause that allowed Respondent to subcontract and hire contractor pilots at Respondent's discretion which Respondent did on an increasing basis from 2013–2022. (Jt. Exh. 23 at Art. 2.3; Jt. Exh. 24 at Art. 2.3.)

FTA pilots also performed many job duties separate from this entitlement/line assist work such as ferrying planes to different locations and assisting other Boeing pilots. Other work was similar in nature but tied to changes to an airplane which occurred after an initial purchase or related to new technology added to an airplane model. This changed in approximately 2020 when Respondent unlawfully created its limited statement of work job classification to justify its eventual mass layoff of 7 FTA instructor pilots which provided that the Unit FTA pilots only job function moving forward would be line assist work for airlines with new airplane purchases.

One FTA instructor pilot, Captain Diego Wendt (Captain Wendt or Wendt), explained that basically, FTA pilots instructed or taught other pilots or fleets of pilots at non-Boeing airlines how to fly Respondent's airplanes whether they be a Model 737, 747, 777, 787, or more recently, Respondent's 737 Max's.⁶ (Tr. 401–402.)

Wendt started with Boeing in 2008 and ended his employ-

ment at Boeing in January 2021 when he was terminated with the six other Unit FTA pilots.⁷ (Tr. 397.) By 2020, Wendt had over 18 years progressing in military flying initially flying co-pilot, then as aircraft captain, later fleet commander, then progressing to attend instructor school where Wendt eventually became an instructor across three different weapon systems and/or military jets and he would instruct in any range of endeavors whether it be aerial refueling or assault landings or general airport environment operations. Wendt recalled having about 1800 instructor hours when he joined Boeing in 2008 and worked continuously on commercial airplanes which he opined was significantly easier to operate than Boeing's military airplanes.⁸ (Tr. 400.)

Captain James Wilkerson (Captain Wilkerson or Wilkerson) started working at Boeing as an instructor pilot in 2001 and he had prior flying experience in the U.S. military in 1987, and flew tanker and transport turbine-powered airplanes for a number of years, and became qualified as an instructor in multiple airplane models and accumulated many qualification hours. (Tr. 299.) Wilkerson recalled that Boeing had 60–70 instructor pilots in 2001 when he started. (Tr. 299–300.) Wilkerson further opined that an instructor pilot needs to have the FAA pilot license that correlates to the type of work you are doing, and it is a size or a weight and a passenger capacity limit. Wilkerson was certified to fly Boeing's 707, the 737, the 747, 757, the 767, the 777, and the 787 model airplanes. (Tr. 300–301.)

Wilkerson would typically instruct as a Unit FTA pilot to Boeing's commercial airline customer for the most part and he also performed some military work, and some internal training work but with the majority of his instruction being Boeing commercial airline customers. (Tr. 301.) Wilkerson trained pilots for airlines that have purchased commercial aircraft from the Company and when he began at Boeing, he trained pilots in both the simulator where they conducted courses that were approved by the FAA to provide the type certification training and the Unit FTA pilots also traveled to the customer's location to fly what was called line training or revenue service training for the customers. (Tr. 301–302.)

Another instructor pilot, Gregory Laxton (Laxton), started in the Air Force and worked for active-duty Air Force as an instructor pilot, AWACS, on a couple different military airplane models for about 10 years and next went to work for United Airlines, where he was a flight officer for about 8 years until he left United for Boeing in August 2006 and, eventually graduated to become an instructor pilot. (Tr. 16.)

Qualifications necessary to become an FTA pilot were strict and included 5000 hours of multiengine jet time, at least 2500 of those hours in command as captain and at least 1000 hours of instructor pilot time providing instruction on how to properly fly the airplane. (Tr. 399.) To be hired as an FTA pilot, an applicant had to have at least 2,000 hours of multi-engine jet

⁶ Throughout this decision Boeing's model jet passenger airplane 737 is referred to interchangeably as 737, 737–8, 737–9, 737–800/900, and 737 Max and for purposes of this decision they mean the same. Since at all relevant times, the model 737 had been extended to hold more passengers, the term 737 Max is probably the most accurate term for the model 737 in 2018–2021.

⁷ Wendt took two extended military leaves of absence first from the summer of 2009 until the end of 2012 and secondly from approximately January 2015 and returned in mid–2017, late summer. (Tr. 398–399.)

⁸ Boeing has military pilots employed in St. Louis, Missouri, where its fighter-type airplanes are located and also pilots for its military helicopters in Pennsylvania and Arizona. Tr. 298.

pilot experience, an FAA Air Transport Pilot (“ATP”) certificate, and certification as a flight instructor, with at least 1,000 hours of time as a jet instructor and trans-oceanic flight experience preferred. (Tr. 25, 298–299, 399; Jt. Exhs. 1 and 2.) Becoming a production or test pilot, on the other hand, requires only an FAA ATP certificate. (Tr. 780, 915; Jt. Exhs. 2 and 3.)

Up until approximately 2013, Boeing’s FTA instructor pilots came up through Boeing with much training and multiple certifications to the point that they were known amongst Boeing’s pilot core to be a part of Boeing’s gold standard Blue University with their training and these graduate pilots from Boeing’s Blue University were viewed along with all of Boeing’s other employee and management pilots to be Boeing’s gold standard blue-badge employees.⁹ (Tr. 101–103, 432–433, 446–452; Jt. Exh. 14 and 15.)

2. FTA instructor pilots primary work duties

Until their layoffs in 2021, one of the Unit FTA pilot’s primary job tasks would be to deliver an airplane that was newly manufactured to a particular Boeing customer airline’s fleet, and then train and instruct their most experienced cadre of pilots on how to fly that airplane over the course of one to 2 months’ deployment to safely put that airplane(s) into operation into its fleet. (Tr. 404.) For example, if Southwest Airlines or Alaska Airlines purchases a fleet of new Boeing airplanes or a few new or expanded models, Unit FTA pilots train or instruct the various pilots at these Boeing customer airlines how to operate the purchased airplane correctly and safely.

Delivery of an airplane to a customer is defined to be the movement of the aircraft from wherever it is to where it is going to deploy and that is where it is owned by the customer as purchased by the customer airline. (Tr. 418.)

Typically, it was a lengthy period of time, sometimes more than a year from when an airline would purchase a particular Boeing model jet airplane and delivery and deployment to a Boeing customer’s fleet. (Tr. 405.) Once delivered, one or more Unit FTA pilots would also provide entitlements or line assist work as part of the purchase price for each airplane. (Tr. 405–406.) Often times, the purchasing airline determined that they wanted to use Boeing instructor pilots in order to train and certify their initial cadre of pilots on the airplane and that would be included as a portion of the purchase price of the sale of the airplane. This FTA pilot work is called entitlement work when Boeing pays for the training part of an airplane purchase while it is basically the same work but called line assist work when an airplane is purchased by a Boeing customer who is contractual-

⁹ Beginning in approximately 2009, and increasing over the years, Boeing would occasionally hire purchase service independent contractor pilots who were referred to as gray or brown badge contractor pilots trained and hired at a lower cost than Boeing’s blue-badge employees. Tr. 584, 693–694. In October 2019, Boeing Director Davis admitted that the quality of training for these Cambridge contractor pilots was in dire need of improvement as Boeing had gotten away from its gold standard instructor pilot training for contractor instructor pilots so a new program discussed further at Section II.F. of this decision to bring contractor pilots up to the level of Boeing’s blue badge pilots including the Unit FTA pilots who were informed they would hire five new Unit FTA pilots to help train the contractor pilots to reach blue badge level training.

ly obligated to pay Boeing to perform this instruction work with its FTA pilots. Id. Occasionally, a customer would not use up the entire amount of purchased entitlements at one continuous time so instructor pilots would return to use up the remainder of entitlements after an airline got more familiar with their purchased plane(s). (Tr. 342–346; Jt. Exhs. 1 and 2.)

Ahead of delivery, however, Unit FTA pilots would also engage with the customer airline’s senior pilots and communicate with their standards pilots and chief pilots in order to ascertain what sort of airfields they were operating into and out of, what type flight regulations their particular country or region was requiring, so the Unit FTA pilot(s) could design a gold standard quality specific training such as whether it would be going from one airport to another, which would be called a sector, and/or doing base training, which would be doing touch-and-goes.¹⁰ (Tr. 406.)

Sometimes the Unit FTA pilot would assist and witness multiple approaches with the same customer pilot at one airfield, and then cycling other pilots through that and repeat this exchange when the new Boeing airplane was delivered. Id. Prior to 2013, this training from Unit FTA’s also included simulator training using Boeing’s simulators before progressing with what sort of prerequisites the customer pilots required in order to simply just go from being trained on the ground to actually being able to operate the new airplane. Id.

When Wendt was a lead instructor pilot maybe 2–3 months before the first delivery entry into service date,¹¹ he would determine not just which airfields he was going to be using and how he would be notified of the airline’s particular operating schedule, meaning how they would call the FTA pilots and schedule them to place them on an official scheduling roster and also assess what unique elements there might be that are problematic with certain airports. (Tr. 416–417.) Wendt further recalled that sometimes the customer would want Wendt to do a simulator instruction training, basically a refresher simulator, before Wendt or other FTA pilots would go and instruct and then there would be all sorts of things that Wendt refers to as indoctrination, sometimes he would receive a laptop or a written manual from the customer ahead of time maybe 1–2 months out which in addition to his usual instruction contained questions or specific topic areas ties to the customer’s territory

¹⁰ Captain Wendt explained “touch-and-go” training as doing real-time flying maneuvers in an airplane while instructing a customer airline pilot such as, for example, the new airplane approaching an airport landing and the Unit FTA pilot flies the approach down to the runway, and then advances the throttle, rolls down the runway again, and takes off, and the Unit FTA pilots would do a series of those approaches and pull-up maneuvers with multiple pilots in the jet but never with passengers inside. Tr. 406–407.

¹¹ Wendt defined “entry into service” as being when an airline has not yet received a particular model or type of aircraft yet, say the completely new 787’s to an airline which they had never received before versus if they already had many 787s on the ramp and had pilots familiar with flying the airplane. Tr. 418. Wendt further explained that because these were Boeing’s newest airplanes, and this was the very first time an airline was deploying the 787 into their operations, they required specific or enhanced instructor training and that the same thing applied to delivery of the newest 737 MAX, the 737-9, at the time, or any of the NGs that Wendt helped deliver. Id.

or flight regulations. *Id.*

Wendt further explains that FTA pilots wanted to make sure that they were synced up to customers' pre-flight processes and pointed out, for example, in China, FTA pilots always had to do a preparatory 10-question quiz and review of the latest flights that had happened, so that the FTA pilot when instructing a customer on a new airplane does not repeat a mistake that maybe this Chinese customer had done in the past. (Tr. 417.) Therefore, knowing those processes, and by recording them, the FTA pilot would build an instructor guide or manual for all the follow-on instructors. *Id.* If an FTA pilot were a follow-on instructor, they would receive what was provided by the lead and then update the guide for subsequent follow-on instructors. *Id.*

Wendt further described the FTA qualifications to include rigorous training initially to earn a pilot rating, then there is a series of ratings and qualifications that extend beyond that to include going from a propeller airplane pilot to a multi-engine propeller to jet engine airplanes to advance through the various types of aircraft that a pilot might be rated and qualified to fly. (Tr. 400–401.)

Next, there are ratings within each aircraft—different positions that one can achieve including captain, an aircraft commander, or instructor, or examiner. (Tr. 401.) After being trained on various airplanes, next an instructor pilot or FTA would get certified at Boeing, just on Boeing aircraft but Wendt was also in the military reserves with certification on various unnamed military airplanes but he was trained and certified on the 737 and its variants, the 777 and its variants, and the 787, and also its variants. *Id.*

Wendt further explained that variants means when Boeing builds and delivers an airline—an airplane to an airline—for example, on a 737 Boeing had a 737–600 series, 737–700, 737–800, and 737–900 series. (Tr. 401.) Those all came under the umbrella of next generation 737 aircraft, and broadly speaking, each one just got longer so Boeing was able to add another 10 or 20 passengers to it. *Id.* Wendt further opined that there might be a few different performance aspects related to each new series or some new features or software on later variants and then that also included then subsequently the 737 Max jet airplane. (Tr. 401–402.) Wendt, like all of the Unit FTA pilots flew enough of Respondent's airplanes to become proficient enough to teach other pilots how to safely fly the airplane.

Wilkerson recalled that he took off and landed in airports in 40 of 50 states and in 60–70 different countries. (Tr. 1063.) Unit FTA pilots would usually fly in a wider variety of environmental conditions than production pilots. (Tr. 1064.) Wilkerson opined that all of his line asst/entitlement work with customers always had the requirement that the customer pilots speak English. (Tr. 1065.)

3. Boeing's other unionized or unit pilots in addition to its FTA instructor pilots.

The Unit also had flight tech and safety pilots as another subclass like simulator instruction pilots described below. Flight tech and safety pilots were also members in the unit and had similar duties to FTA instruction pilots but also specifically conducted investigations into airplane crashes, accidents, or

incidents involving airplane operations as well as develop and write training programs and pilot manuals, and work closely with various airlines on their flight operations. In addition, the flight tech and safety unit members also develop flight deck systems for new aircraft and support certification efforts. (Tr. 404.) Flight tech and safety pilots also engaged with customers on clarification of instructions and procedures. *Id.*

FTA pilots also worked with Boeing's Unit flight tech and safety pilots. (Tr. 411–412.) FTA pilots would regularly do manual reviews for them, meaning reviewing the flight operations manuals and the flight training manuals and the FTA pilots would help clarify language and review the manuals for consistency and procedural accuracy. *Id.*

In 2013, there were also 25–35 simulator instructor pilots in the Renton area added to the unit on the insistence of Boeing. (Tr. 220–223.) There were also ground training instructor pilots and standards pilots in the unit. (Tr. 404.)

4. Boeing's nonunion commercial airplane pilots

From 2010–2018, in addition to the approximate 50–60 Unit pilots, there were approximately 200 other nonunion pilots, excluded from the unit, who were employed by Boeing within the commercial air division including test pilots that would test new equipment and/or new technologies and/or new aircraft. (Tr. 403–404.) There were also production test pilots who would fly the newly assembled, off-the-line aircraft to make sure that it actually operated across a wide spectrum of parameters. *Id.*

There was also a very small Boeing business jet pilot group or BTE pilots. The Boeing business jet is a Boeing 737 commercial jet, but it is missing all of its seats. (Tr. 404, 411.) Instead, it's set up for private, high-end VIP use. *Id.* Boeing's business jets have lounges, bathrooms, bedrooms, and whatever the customer in particular wants—that would be a Boeing business jet—a corporate jet. *Id.* There are also nonunion executive pilots who were the pilots that would fly the VIPs within Boeing around on their proprietary jets assigned to them, usually Boeing business jets. *Id.* The executive pilots were located out of Gary, Indiana, near Boeing's former Chicago headquarters, and these executive pilots were assigned to fly Boeing's executives wherever they needed to go with their own particular fleet of jets. (Tr. 410.)

5. Unit FTA's numerous other pop-up work or job duties beyond entitlement or line assist instruction to customer airline pilots on delivery of new airplanes.

From 2010–2019, in addition to FTA work, Unit FTA pilots would be assigned other work and job responsibilities at Boeing.

a. From at least 2008 through 2012, FTA Pilots would perform work as simulator instruction pilots.

From at least 2008, FTA pilots were also all trained and qualified to be simulator instructor pilots and so they would each routinely provide simulator instruction, both short profiles, like recurring every 90-day type landing type profiles, or full qualification profiles with a Boeing customer that might last anywhere from 3 to 6 weeks. (Tr. 411.)

Wendt explained that in September–November 2020, he did

about 100 hours of simulator testing and validation, in order to get certification from the regulatory authority in India, to certify the simulator for operation in the India for a 737 Max-8 plane. (Tr. 421–423.) Wendt further opined that there is an overlap in skills using simulator validation and skills used in simulator instruction work because in order to instruct in something, one must know how it operates so there are two aspects of simulator instruction—one set of skills is the operation of the simulator, meaning that there are certain controls that one needs to know how to operate specific to the simulator as well as the second set of skills a pilot must learn for operating an aircraft. Id.

b. FTA Pilots would assist Production and Test Pilots

Occasionally, Unit FTA pilots also would be assigned other work and job responsibilities such as to assist Boeing's production pilots where there are effectively two primary roles that a Unit FTA pilot could be doing work as a production test pilot—one is in the first officer position, which would be in the right seat where the Unit FTA pilot would be flying with a production pilot, effectively assisting them through the entirety of maybe a three-and-a-half-hour test profile that would include ground preflight of testing of systems. (Tr. 407.) Wendt further opined that this is a very elaborate detailed sequential-checklist-oriented process which includes taking an airplane up into flight. Id.

Wendt further explained that a Unit FTA pilot with a production pilot would perform a couple of the more dramatic things that would be routine on the test flights such as to shut down one engine, make sure it restarted in the air, shut down the other engine, and make sure it restarted. (Tr. 408.) Unit FTA pilots would regularly assist production pilots do the basic all-around bumper-to-bumper production test to check that the major systems of the aircraft are working properly. (Tr. 407–408.)

In addition, Unit FTA's would also perform production tests on less complex airplane systems in which the Unit FTA's were qualified or certified to do individually or with another FTA pilot either on behalf of production test or they would involve testing less complicated systems where the FTA pilots would have test engineers in the back of the plane assessing whatever system needed testing by the engineers so the FTA pilots would also act as captains on certain production test flights that were of less complexity. (Tr. 408.)

Wendt also explained that Unit FTAs would occasionally work with test pilots where, for example, the test pilot needed to ascertain that the 787s' new engines were going to be able to start from a high-altitude airport so Wendt, as an FTA pilot, flew them down to La Paz, Bolivia, which has an above sea level elevation of approximately 11,500 feet and FTA pilot Wendt would be in the first officer position on that with regards to those tests. (Tr. 408–409.) Wendt described another test flight in November 2019, with a 777 he flew for a customer where it was on behalf of test, but he was a captain for that flight with another FTA pilot where they were actually testing the radios and some interference issues for the customer. (Tr. 409.)

c. FTA Pilots would assist executive pilots.

From 2010–2019, FTA pilots also regularly performed work for the executive pilot group. (Tr. 409–410.) Wendt further recalled a time when the executive pilots were short-staffed and Unit FTA pilots would augment over them in the first officer position. Id. More frequently, however, Unit FTA pilots were used as what would be called a relief flight officer so on legs of long duration, such as from Washington D.C. to Saudi Arabia, a Unit FTA pilot would act as a third pilot, meaning that when one or the other executive pilots needed in-flight rest, Captain Wendt would get in the seat to continue the safe operation of the aircraft. Id.

d. FTA Pilots would assist Boeing's business or corporate jet pilots.

Unit FTA pilots would also routinely do deliveries to the customer for the Boeing business jet. (Tr. 411.) In addition, Unit FTA pilots would also perform test flights for the business jet customer and those test flights would include, for example, testing the pressurization system, and making sure the noise levels on the aircraft meet specifications requested by the customer. Id.

e. From 2017–2018, FTA Pilots performed flight tech and safety pilots' work for the China Initiative.

Also, from approximately May 2017 to June 2018, FTA pilots were assigned to perform in the China Initiative. (Tr. 411–414.) Boeing's flight tech and safety pilots also had a subgroup of sorts that was called the China pilots. Id. Because Boeing was short-handed with its flight tech and safety pilots, FTA pilots came in to participate in the China Initiative. Id. Basically, Boeing's flight tech and safety pilot work that would normally be done by China-deployed pilots, however, was performed by China-deployed FTA pilots. (Tr. 414.) This would involve customer engagement, with basically two or three FTA pilots who would go to China with another FTA pilot and they would work in pairs, sometimes in threes, and work with the multitude of Chinese customers to engage with them on the issues of understanding the flight training manual and its processes and procedures, the flight operations manual, various technical questions about some of the components on the Boeing aircraft and occasionally the FTA pilots would have to come back and communicate with other elements within the Boeing company to get the answers that the customers were needing, if the FTA pilots present in China could not answer which arose in this process. (Tr. 414.)

f. FTA Pilots would regularly perform airplane ferry services.

From 2008–2021, FTA pilots would also regularly perform airplane ferry services such as when a plane might be finished with its production sequence, but not yet painted, FTA pilots would ferry planes from one location to another, to where the plane might be painted and there might be other places where FTA pilots would take the plane for final finishing of the interior. (Tr. 415.) Boeing customers are not in an airplane at any time when the FTA pilots ferried a plane to a different location. Id.

This ferrying work also became necessary in 2019 when

Boeing's 737 Max planes were grounded by the Federal Aviation Administration (FAA) as a result of a plane crashes in October 2018 and a second plane crash involving Ethiopia Airline Flight 302 in March 2019 - both being Boeing's 737-Max-8 model airplanes. (Jt. Exh. 53.) Ferrying work was needed to store idle 737 Max planes and FTA pilots performed it with regard to Boeing's undelivered fleet of new 737-Max-8 airplanes.

Wendt and other FTA pilots would ferry new Model 737's coming off the production line in the Seattle area to park them in Moses Lake, Washington, or down in California, and other dry places that were appropriate to store a jet. (Tr. 440.) In addition, Laxton described other pop-up work to include similar ferrying of a 737 Max in Singapore where there was no room to store it while grounded and FTA pilots ferried them to Australia where it was drier to store. (Tr. 91-92; GC Exh. 2.) Laxton also described filling in to fly a larger Model 787 in place of grounded 737 Max planes on routes between Vancouver and Toronto in 2019. Id.

g. FTA Pilots' other miscellaneous Pop-Up job duties from 2013-2021.

Captain Wendt also recalled that FTA pilots would also work with another group, where the work involved cockpit dashboard design or e-cab, which is a rudimentary—it is a nonmotion simulator and the FTA pilots would help develop the procedures by testing a variety of emergency procedures to see what might be the best fit for the development and design in of a cockpit dashboard, and/or the initial writing and or rewrite of a procedure manual. (Tr. 415.) In 2018 or 2019, Wendt specifically recalled spending a substantial amount of time working on one of them that he worked a substantial amount of time working on one of them which involved the 737 Max's airspeed and reliability checklist. Id.

Laxton also described pop-up or guest work assignments as unscheduled and random work assignments which would come to FTA pilots in an unpredictable manner. (Tr. 90; GC Exh. 2.) For example, Laxton described a pop-up customer being the government of Poland who FTA pilots had previously instructed the government pilots how to fly a plane they had purchased from Boeing but where they had unused entitlement or line assist credits and requested instrument training in the airplane which means that the government needed a qualified instructor pilot from Boeing to come and fly with them. Id. Laxton further explained that this is one example of the customer not using all of its entitlement credits right after airplane delivery, but banking that entitlement for a future use, which he opined was common. Id.

B. Boeing's Antiunion Acts from 2013-2021 to Whittle Down and Eliminate the Unit FTA Pilots

1. Boeing's increased use of purchase service contractor instructor pilots

Starting in approximately 2009, and increasing over the years, there were contractor pilots also known as purchase service pilots who Respondent hired as "gray-badged" independent contractors to be overflow "backup shock absorbers" or temporary surge capacity to the Unit FTA "blue-badge" em-

ployee instructor pilots if they became short-handed.¹² (Tr. 313, 404, 424-425.) Wendt first started seeing contractor pilots in 2012-2013. (Tr. 424.)

Laxton recalled having a conversation with Boeing's chief pilot for commercial services Susan Darcy-Henneman (Henneman) in 2011-2012 after the unit changed its name to become SPEEA and Henneman told Laxton after the union's name change "that when we [Unit pilots] changed from AMPA to under SPEEA that was a very unhelpful for our group." (Tr. 19-22.)

In 2013, Respondent laid off all approximately 25-35 of the Renton simulator instructor pilots and transferred all of the related simulator skill work to Miami, Florida, because, according to Boeing management, the South American airlines preferred training in Miami over Renton. (Tr. 220-223, 263, 419-420.) In place of these skilled simulator instructor pilots, Respondent hired gray badge purchase service contractor instructor pilots to do the simulator instruction in Miami. Id. As a result, in 2013, FTA pilots stopped performing simulator instruction work as they did not re-locate to Miami to continue to provide this work task.

Wendt opines that at this time Boeing decided to let that simulator instruction skill from its Unit employees get replaced by a gray badge contractor group of simulator instructors for less money. Id. Some of the FTA instructor pilots voiced opposition to moving all of the simulator pilots to Miami but this went forward anyway and reduced the size of the unit by 25-35 pilots. (Tr. 220-223, 419-420.)

Wendt and Wilkerson first observed Respondent's gray-badge contractor pilots in connection with Respondent's simulators. (Tr. 303, 424.) At this time in 2013, Wendt was told by Respondent that the purchase service contractor pilots were merely to be viewed as "shock absorbers" or backup or overflow to FTA pilots when FTA pilots were short-handed. (Tr. 424-425.) Wendt was also told by Respondent management that Respondent did not want to delay training the customer pilots due to a shortage of FTA pilots so Respondent intended the contractor pilots to be a short-term fix to cover any shortage or unavailability of FTA pilots to train a customer's pilots. Id.

Wendt also opined that he could observe how much instructor pilot work was going to contractor pilots at any given time over the years by simply viewing Respondent's master pilot schedule in the scheduling shop in Renton, Washington, to actually see the amount of piloting work going to purchase service contractor pilots over the years. (Tr. 426.) Beginning at least in 2013, instead of hiring more FTA instructor pilots when train-

¹² More than one Unit FTA instructor pilot described how from 2009-2021, Respondent's quality control deteriorated with regard to its instructor pilots and its overall training program as Respondent got away from its historically high quality and much respected Blue University trained pilots (the "blue-badge" employees), such as all Unit pilots, in favor of cost-cutting and increased profits related to Respondent's hiring more of its purchase service contractor pilots who cost half as much as the Unit FTA pilots and had come to Boeing with a variety of less qualified training from other airlines who were known as the gray-badged contractor pilots being below Blue University gold standards. Tr. 101-103, 432-433, 446-452, 610, 693-694, 974; Jt. Exhs. 14 and 15; R. Br. at 2.

ing was needed, Respondent hired gray badge contractor pilots. (Tr. 426.) The last hiring of a Unit FTA pilot by Respondent occurred in 2013.

Wilkerson explained that he continued to perform simulator instruction work for various Boeing customers until 2018 when he was involved in developing courseware on some high precision GPS instrumental parts procedures, the program that Boeing successfully vended to customers. (Tr. 301.) Wilkerson further explains that because of his expertise in that area and that demand for customer training on the specific courseware arose, Wilkerson kept his simulator qualifications to provide training on that specific courseware to customers when it was needed. Id.

Wilkerson also explained that it takes about 1–2 months to get certified as a simulator instructor. (Tr. 303.)

Ultimately, Boeing's use of contractor pilots increased from being simply overflow or temporary emergency pilots to taking over the entire simulator instruction pilots' group in Renton in 2013 when Boeing moved all this work to Miami and later the contractor pilots began performing some of the same job duties as the Unit FTA pilots in the airplane to train customer pilots when Unit pilots had historically performed this work. (Tr. 313.) This diminished the size and work duties of the unit while also taking simulator instruction to a lesser than gold standard provided by the Unit FTA pilots.

As discussed below, the Unit FTA pilots, other Boeing pilots and Boeing management opined, as recently as late 2019, that the contractor pilots were overall less qualified and did not possess the same gold standard qualifications and training that blue badge Boeing employee pilots possessed. (Tr. 101–103, 448–452, 610; Jt. Exhs. 14 and 15.)

In 2013, Wilkerson recalled working with a Norwegian Long Haul airline pilots as a Boeing customer and one of the Norwegian pilots stopped Wilkerson on the flight deck and asked Wilkerson: “did Boeing understand the damage that was being done to its reputation by hiring low qualified contractor instruction pilots who could not get jobs at major airports in Europe?” (Tr. 1071–1074.)

Wilkerson was also aware that in 2018 with Gulf Air Airlines, the PSP contractor instruction pilots hired by Boeing through Cambridge taught foreign pilots nonstandard Boeing procedures in the simulator instruction training in Miami and Gatwick Training Center in England. (Tr. 1075.) Wilkerson recalled doing a line assist job with Gulf Air later and arriving for a landing at the home airport with a young first officer who had his head down in the flight management computer (FMC), typing a bunch of stuff below 10,000 feet as the plane was landing in a fairly congested environment trying to land at the airport and Wilkerson stopped him and asked what he was doing? (Tr. 1076.)

Wilkerson continues to say that the young pilot explained that he had been taught in the simulator training by the PSP contractor instruction pilot that he had to use part of the FMC to draw a ring around a navigation point to know when to put the landing gear down. Id. Wilkerson further explained that what the young pilot had been taught was incorrect by the simulator contractor instruction pilot as this procedure was not standard Boeing procedure. Id. Wilkerson continued to ex-

plain that they say put the gear down approximately two miles but the young pilot was taught incorrectly that he had to put a marker on the navigation system to know exactly when two miles was when there were plenty of other safer ways to figure out this same information and the young pilot got himself so tied up mentally due to the improper simulator instruction and the busy airport that he thought he would have to abandon the approach because they were unsafe so Wilkerson had to take the airplane from the young pilot until he was able to get his mind or head screwed back on straight at which time he was able to take control of the airplane and complete the approach. (Tr. 1076-1077.)

Wilkerson recalled another incident in 2019 when he did another line assist with Turkish Airline where there was again nonstandard techniques that the pilots said were being enforced as required practices in simulator training with contractor PSP pilots in Miami. (Tr. 1077.)

Another incident involving a PSP contractor pilot, Wilkerson recalled an incident in 2020 when he was doing work for Vistara Airlines in New Delhi, India with fellow FTA pilot David Whitacre and PSP contractor pilot Grant Felesky (Felesky) and during their time working for Vistara, it became apparent that Felesky had not flown an airplane since October, 2018, and the Indian FAA equivalent, the DGCA, refused to give Felesky a license to come back and do line assist work in 2021 because of Felesky's lack of recent flying experience. (Tr. 1079.)

Finally, Wilkerson knew that PSP contractor pilots occasionally fly with Boeing's Business Jet Group and they did not think that the PSP contractor pilots understood or have the appropriate level of recency or qualification in those PSP pilots and the Boeing Business Jet Group pilots would not allow the PSP contractor pilots to fly airplanes when they were being moved from Boeing facilities or to production or completion centers. (Tr. 1080.)

C. The Unit Pilots' First Unsuccessful Decertification Vote in March 2016 and Boeing's Ongoing Hiring of Contractor Pilots from Cambridge Communications, LTD.

By late 2015, the morale of Unit pilots was low after Boeing had laid off 25–35 Renton-based simulator pilots in the unit in 2013 leaving the unit comprised of approximately 50–60 FTA instructor pilots and 25–35 tech and safety pilots. (Tr. 39, 222–224.) As a result, in December 2015, the Unit pilots filed a decertification petition with Boeing representative Jill Antonen (Antonen) (the 1st decertification petition) and Boeing held information meetings in 2015 and 2016 asking its employees to vote for the 1st decertification petition and against retaining the union as representative to the Unit FTA pilots. (Tr. 275; 320–323, 752–753; Jt. Exh. 27.)

Despite Boeing's efforts to help pass the 1st decertification petition, on March 1, 2016, a vote was taken and the Unit pilots voted to retain the union as its representative and the 1st decertification petition was unsuccessful and failed to obtain a majority of votes in favor of decertification.

Wilkerson mentioned a noteworthy conversation he had with Boeing management in March 2016 which occurred a week or two after the 1st decertification vote failed when he was the

Unit FTA pilots' shop steward. (Tr. 320–321.) Wilkerson confidently recalled that the conversation was with Flight Services chief pilot Steve Taylor (Taylor) about the after-effects of the 1st decertification vote. Id.

Wilkerson recalled that what led to his conversation with Taylor was that Wilkerson was in his office at Boeing when one of the Unit flight tech and safety member pilots, Todd Abraham (Abraham), approached Wilkerson and came down the hall “very agitated” and relayed what Supervisor Taylor had just told Abraham that if the 1st decertification vote had passed and not failed, and the Unit disbanded and decertified as a result, Abrahams would be at the Boeing’s 3800 Building joining the much-desired nonunion production pilots group. (Tr. 321–322.) Wilkerson’s response to Abraham was total disbelief that Taylor as a Boeing supervisor would say this to Abraham. Id.

Wilkerson further explained that Taylor’s alleged comment in March 2016 was so out of line coming from a Boeing manager because at this time in 2016, the Unit FTA pilots were flying fairly regularly with the production and engineering test pilots yet the unit flight tech and safety pilots like Abraham were not allowed that same privilege which caused frustration at times to flight tech and safety pilots not understanding how Boeing would select an FTA pilot to fly with the production test group over a flight tech and safety pilot who felt they also needed regular flying to be able to do their jobs effectively. (Tr. 322.)

Wilkerson explained that his next step was to check the validity of Taylor’s conversation with Abraham so he next contacted Lisa Clark (Clark) who was the flight tech and safety area representative, and they scheduled a meeting with Taylor to ask Taylor about his apparent conversation with Abrahams. (Tr. 323.) The meeting between Clark, Taylor, and Wilkerson was set up and took place at Boeing’s 2501 Building where Taylor had an office. Id.

In March 2016, Wilkerson specifically told Boeing manager Taylor that flight tech and safety unit member Abraham alleged that Taylor had said. Wilkerson then asked Taylor if this is what Taylor actually said? (Tr. 323.) Taylor said “yes” that he told Abraham that he would be flying for the production test group if the 1st decertification vote had passed and not failed. Id.

Next, Boeing Manager Taylor admits to Wilkerson and Clark that Taylor “knew that the labor lawyers would be jumping up and down on his desk if—if they heard him say that [to Abraham that if the 1st decertification vote had succeeded and not failed that Abraham would be flying with the production test group pilots].” (Tr. 323–324.) Wilkerson further recalled that Taylor said to Wilkerson and Clark about Taylor’s comment to Abraham that:

I [Taylor] did tell that to Todd [Abraham], and that he [Taylor] knew that the labor lawyers would be objecting to him saying that as a manager, but he [Taylor] – that’s the way he [Taylor] saw it.”

(Tr. 324.)

On November 17, 2016, Respondent entered into a Technical Assistance Agreement for Flight and Maintenance Training Services with Cambridge Communications Limited, (Cam-

bridge), a corporation headquartered overseas, to which Cambridge provides purchase service contractor pilots to Respondent. This agreement, as amended from time to time, remains in effect today. (Jt. Exhs 21–22; Stip. Fact 8, Jt. Exh. 38; Jt. Exh 54.)

Kinsey admitted that in 2016, his name was on a list of contractor pilots who were deployed to Bogota, Columbia, and allegations by the Union and Unit FTA pilots were that Kinsey and his contractor group of gray badge pilots were “scab” pilots because Boeing was compromising the quality of the instructor pilot position and the Unit FTA pilots did not support Boeing’s use of contractor instruction pilots. (Tr. 101–103, 432–452, 598–599, 610.)

Wilkerson also described his work as a member of the union negotiating team with SPEEA staff in late 2016 and early 2017 when negotiations between the Union and Boeing management took place for a successor CBA beginning in February 2017. (Tr. 325.) Wilkerson recalled what he described as “one off-hand conversation with a [Boeing] manager” *in the lunch cafeteria one day in late 2016 or early 2017*. Id.

Wilkerson recalls being in line to return trays with Boeing 767 simulator instructor manager Paul Wallace (Manager Wallace) and Wilkerson mentions to Manager Wallace, that:

we were in [CBA] contract negotiations, and you know, things were, you know, kind of rough and tumble, up and down, and Paul [Manager Wallace] made a statement in response to the effect that your [Wilkerson’s] life would probably be better if you weren’t – if that Union didn’t exist.”

(Tr. 325–326.) Wilkerson next pressed Boeing Manager Wallace to further explain his statement that Wilkerson’s life would improve if the Unit would disband and Wallace unbelievably tried to recant his statement. Id.

D. Boeing’s Two Crashes of Its 737 Max Planes in 2018-2019 and the Related Grounding of the 737 Max

There were crashes of Boeing’s 737 Max in late October 2018 and another in March 2019. The first crash occurred on a Lion Airlines Boeing 737 Max and the second crash involved an Ethiopia Airlines Boeing 737 Max. (Tr. 439.)¹³

In 2019, Boeing launched its Global Aviation Safety Initiative (“GASI”), a coordinated company-wide effort to improve the safety of Boeing’s products and services. (Tr. 796; R Exh. 7.) Created at the highest levels of the company—its CEO Calhoun and board of directors—the initiative was given full funding, even in the midst of extreme financial pressure resulting from the crashes and the onset of the COVID-19 pandemic. (Tr. 795, 933.)

As a result, the FAA grounded the Boeing 737 Max models after the March 2019 plane crash and the planes remained grounded for about 20 months until November 18, 2020. (Jt. Exh. 53.)

E. In 2018-2019, Boeing Gives Pay Raises of 25%-27% to All

¹³ Tr. 828, line 10: “Hawaiian Air” should be “Lion Air” as the airline of the first Boeing 737 Max crash on October 29, 2018, as the FAA order rescinding the grounding order makes clear, it was Lion Air. Jt. 53.

of Its Nonunion Pilots and Managers, 15% Pay Raises to Unit Tech and Safety Pilots But only 5.9 % Pay Raises to Its Unit FTA Pilots

On August 3, 2018, all approximately 200 of Boeing's non-union pilots, including its nonunion engineering test pilots (ADPL) and its nonunion production test pilots (ADPF), received a 27 percent out-of-cycle pay increase, in addition to the annual wage increases they received in March 2018 (average of 3 percent) and in March 2019 (average of 5.9 percent). (R. Exh. 1 at 2; R. Exh. 2 at 3.) Their managers also received a 27 percent out-of-cycle pay increase the same day. (Stip. Fact 16, Jt. Exh. 38.)

The Management Rights clause of the CBA between the parties in 2018–2019 contained Article 2.1 which provides:

Section 2.1 The terms and conditions of this Agreement are minimum and the Company shall be free to grant more favorable terms and conditions to any employee at its discretion.

(Tr. 317–319; Jt. Exh 23 at Article 2.1.) (Emphasis added.)

Later in 2018, Laxton and Wendt recalled being alerted to the fact that in August 2018, non-FTA pilots and their managers, and even the Unit FTA pilots' managers, received this same large 27 percent pay raise while Wendt recalled that all Unit FTA pilots received only a 2–5 percent –3.0 percent pay raise in 2018 and a 5.9 percent raise 2019 as specifically provided for in the Unit FTA pilots' CBA. (Tr. 152, 426–428; Jt. Exh. 4; R. Exh. 1 at 2; R. Exh. 2 at 3.)

Wendt opined that this large disparity in pay raises between Unit FTA pilots and all other nonunion pilots and managers was seen by almost all FTA pilots as a “slap in the face” insult from Respondent that frustrated and angered the FTA pilots in March 2018. (Tr. 428.)

Wendt further opined that this disparate treatment by Respondent of pay raises in 2018–2019 between FTA pilots on one hand and all other nonunion pilots and managers was very detrimental to the FTA pilots morale. (Tr. 428.)

On September 28, 2018, Boeing's Unit flight tech and safety pilots received a 15 percent out-of-cycle pay increase in addition to the annual wage increases they received in March 2018 (average of 3 percent) and in March 2019 (average of 3 percent). Their managers also received a 20 percent out-of-cycle pay increase the same day. (Tr. 228–230; Stip. Fact 17, Jt. Exh. 38.) Therefore, since the CBA freely allowed Boeing to grant a more favorable pay raise than the CBA minimum to its unit pilots, which in September 2018, Boeing did for the Unit flight tech and safety pilots, Boeing surprisingly refused to treat its Unit FTA pilots the same as all of its nonunion pilots and managers and differently than it treated the Unit flight tech and safety pilots.

Bomben admits that 27 percent pay raises to pilots in 2018 was due to the fact that Boeing had not kept up with market changes with respect to pilot pay. (Tr. 961.)

The Unit FTA pilots' representative at the union, Rich Plunkett (Plunkett) set up a meeting with Boeing's labor relations specialist Antonen, Jeff Janders (Janders), and Bridget Blair (Blair) to voice the Union's shock and alarm that Boeing had created its unilateral pay raise disparity between union and nonunion pilots and managers, and between the Unit FTA pi-

lots and Unit flight tech and safety pilots who received the 15 percent out-of-sequence pay raise compared to the FTA pilots' CBA-provided 3 percent raise in 2018. (Tr. 230.)

Boeing's explanation for its large pay raises to almost all of its pilots except the Unit FTA pilots was that market conditions in August and September 2018 warranted the pay raises to all pilots except the Unit FTA pilots and a less than full pay raise to the Unit flight tech and safety pilots. Moreover, Boeing apparently had failed to make comparable pay raises to its pilots to keep pace with the market rates paid to pilots in the airline industry outside of Boeing.

By late September 2018, Wendt further recalled attending a number of Unit FTA pilots' meetings with management where this significant pay raise disparity was questioned to the chief pilot supervisor Darrin Champlin (Champlin) and each time he would take notes of the meeting and first respond telling the FTA pilots that “you have your [CBA] contract.” (Tr. 429–430.)

The FTA pilots would then respond to Champlin telling him that the CBA provides only a minimum raise that Respondent is required to meet but that the CBA also allows Respondent to give FTA pilots any “out of cycle raises” it wants to provide the Unit FTA pilots like Boeing did for the Unit flight tech and safety pilots in September 2018. (Tr. 431; Jt. 24.)

In late 2018 or early 2019, Wilkerson recalled that he had a meeting with Craig Bomben (Bomben), the VP of flight operations, because Wilkerson had been selected as a Boeing associate technical fellow in 2014 and was not really provided opportunities by the chief pilot at the time, Champlin, to continue to expand Wilkerson's technical work, and that was a frustration for Wilkerson. (Tr. 329–330.)

Wilkerson scheduled a meeting with Bomben, with Champlin's permission, and Keith Otsuka (Otsuka), the chief production engineering test pilot at the time, to explore opportunities outside the Unit FTA pilots group, as Bomben was the skill team leader for all the pilots at Boeing. (Tr. 330.) Wilkerson met Bomben and Otsuka in Bomben's office the 3rd floor of the Boeing 3800 building. Id.

At this meeting, Wilkerson specifically expressed his frustration with the lack of opportunity over at the FTA pilots' group in late 2018 or early 2019 and Wilkerson asked Bomben whether he had any ideas of opportunities for Wilkerson to hopefully continue some more technical work and advance in the technical fellowship. (Tr. 330–331.) Wilkerson also asked Bomben because the Unit FTA pilots were all frustrated about the lack of a comparable pay raise compared to the nonunion pilots could Bomben “possibly see his way towards providing that same raise to the FTA pilots group as well?” (Tr. 331.)

Bomben did not respond, but Otsuka jumped in, and Manager Otsuka got fairly agitated and said that is not something Bomben and Otsuka, as Boeing managers, can talk to you about, the only way you get raises is through the Union contract negotiation process and it is not appropriate for you to bring up that topic. (Tr. 331.) At this time, Wilkerson remained as shop council representative for the Union. Id.

The March 2019 grounding of Boeing's 737 Max airplanes effected all Boeing pilots including the FTA pilots by slowing their work substantially. Wendt was certified to give instruc-

tion on Respondent's 737 airplanes. (Tr. 439.) Wendt was on assignment with a company called Westjet in Canada when he received news of the Model 737 grounding in early 2019 and the chief pilot for Westjet asked Wendt what he could do to help Westjet at that time as Westjet had 6 grounded Model 737 Max airplanes which were not generating revenue by selling plane tickets and flying passengers where they wanted to go. (Tr. 439-440.)

Wendt also explained that soon after the grounding occurred in 2019, his work accelerated with the new Boeing 787 which he had been training on and Wendt and other FTA pilots increased their availability to fly and train and instruct other airline pilots on other Boeing airplanes. (Tr. 440.)

By late May/early June 2019, Wendt recalled attending monthly meetings where a common theme of the meeting from Champlin, the group's chief pilot supervisor, was that once the March 2019 grounding of the Model 737 was lifted, Unit FTA pilots would be very busy with regard to the return to service of the 737 Max. (Tr. 441.)

Return to service of the 737 Max meant a process involving multiple agencies so, for example, just because the FAA says the 737 Max can return to service and be put back into operations with respective carriers, it does not mean that it immediately goes into operation because these airplanes are stored, usually in dry areas and there needs to be test flights making certain the new software or whatever fixes are placed on the airplane work safely. (Tr. 443.)

Wendt further explains that at return to service, the formerly grounded plane is then tested again with a production test flight and then the plane is ferried to a new location where it is effectively returned to the customer or if ferried from one location to another, it might continue to be stored there until it can be delivered or sold and delivered. (Tr. 443.) So that adds a level of complexity too because world-wide customer airplanes are parked all over the place and so the efforts with regard to the return to service were going to be as numerous as Boeing's management frequently put forth at monthly meetings in mid-to-late 2019 and Wendt describes management insisting on an "all-hands-on-deck" urgency and effort coming from all FTA pilots when the Boeing 737 Max was returned to service. Id.

Laxton disputes the accuracy of Boeing's digital logbook produced to reflect his time providing instructor services in or after 2018. (Tr. 198; Jt. Exh. 36.) I observed Laxton's testimony to be quite persuasive on this point and find that Laxton provided instructor pilot instruction after April 6, 2018, and after January 23, 2019, but that his instructor pilot time was not properly transcribed in Respondent's records from the person who inputs it into the database.¹⁴ (Tr. 198; Jt. Exh. 36.)

In addition, I further find that Jt. Exh. 35 shows Unit FTA pilots performing more than a thousand days of direct sale work and this same exhibit shows line assist data from the MATT tool, a spreadsheet used by Boeing to track customer entitle-

¹⁴ Unit FTA pilots performed direct sales work and contractor pilots performed entitlement work and Boeing's billing system did not always properly reflect instruction pilots' work but no matter what the work was called, it was expected to be around especially from 2019-2024 and for as long as Boeing produced or upgraded its airplanes.

ments, but it is clear to me and I find that the data also in Jt. Exh. 35 is incomplete and unreliable. (123, 160, 574, 578, Jt. Exhs. 35 and 36 and R. Exh. 13.)

The FTA pilots were not involved with the technical fixes to grounded 737 Max. (Tr. 444.)

On May 31, 2019, Chief Flight Supervisor Champlin sent an email to FTA pilots which, among other things, provides:

The MAX Return To Service (RTS) effort will soak up all of our resources that are not already committed to our own statement of work—*for about 2 years*. The delivery goals will be aggressive once the airplane is certified to fly again, and we will be asked to help with ferries, B-flights,¹⁵ and developmental programs.¹⁶ Please remember that this will be a marathon, not a sprint.

You all lean forward to help the company, and that is greatly appreciated. Please do consider that getting that one more ferry/delivery/whatever done this week will not solve the MAX issue. Don't burn yourself out, or take a flight when you are fatigued or the guidance is questionable. There is always tomorrow. Always.

The pace is already increasing, now that every 737 off the line needs to be stored outside of the Puget Sound area. Tensions are rising in every department – not just the flying departments. Please be cognizant of your own stress level, and those of your co-workers. If you are ever in doubt, please stop, think, and rest. Your decision will be backed by management....

(Jt. Exh. 7.) (Emphasis added.)

F. The October 2019 FTA Pilots Management Meeting with Carl Davis, Darren Champlin and Thad Shelton and Boeing's Announced New Direction Plan to Hire More FTA Pilots and Return to Its Gold Standard Instructor Pilot Training

In September 2019, the Unit FTA pilots were very busy because several FTA pilots were leaving the unit and going over to the other parts of the Boeing company to become nonunion production pilots due to the uneven pay disparity situation in 2018-2019 between nonunion pilots and managers on the one hand and union pilots. (Tr. 97.) As a result, the remaining flying work for Unit FTA pilots was spread across fewer pilots. Id.

In October 2019, at the FTA pilots' monthly management meeting, Carl Davis (Davis), director of Boeing's Global Air Crew Operations, ran the meeting in place of chief pilot supervisor Champlin and assistant chief pilot Thad Shelton (Shelton). (Tr. 446-450.) What made this meeting unusual or

¹⁵ Wendt explains B-flights in 2019 to be when a new 737 Max comes off the production line in Renton, Washington, the FTA pilots would make a series of test flights with the new airplane to make sure all systems on the plane work safely and this B-flight work would typically have FTA pilots acting as first officers on a 3.5-hour long test profile. Tr. 445.

¹⁶ Wendt further explains developmental programs to involve FTA pilots testing the addition of new technology to an existing aircraft such as when a new type of weather radar or communications system is added to the aircraft. Tr. 445-446.

“unique” according to Wendt is that Davis attended the meeting and actually ran it because Davis being at the meeting was a “big deal” according to Wendt since Davis was part of Boeing’s senior management levels above chief pilot Champlin. (Tr. 446-447.)

Champlin started the meeting saying that he had good news that Boeing was going to hire five (5) new Unit FTA instructor pilots into Flight Training Airplane. (Tr. 447; Jt. Exh 14; Jt. Exh. 15 at 5.) Wendt opines that he observed the FTA pilots as a group being overjoyed with the news of Boeing hiring 5 new FTA pilots as the last new hire in the unit was approximately 2013. *Id.*

Davis immediately took over and he effectively reintroduced himself to the FTA pilots’ group even though they have worked with him extensively in the past. (Tr. 448.) Davis was observed to be very excited about Boeing’s new program that he was unveiling to the FTA pilot group because Director Davis admits that this new direction for Boeing was basically in response to something that the Unit pilots and other Boeing blue badge pilot groups had known all along - Boeing’s combined blue badge Unit FTA instructor pilots and gray badge contractor instructor pilots’ training quality had become diluted and brought down by adding more and more gray badge contractor pilots over the years. *Id.*

Davis admitted that the quality of the instructor training product had diminished over time as Boeing had moved away from hiring more blue-badged Unit FTA pilots and, instead, toward more and more gray-badged contractor pilots. (Tr. 448, 610.)

Davis continued saying that whether it was the diminished quality of the contractor simulator instructors themselves or the improved quality of teaching that Unit FTA pilots provided — Boeing was planning to hire more Unit FTA pilots to instruct. Davis unveiled Boeing’s unified comprehensive vision that was going to get Boeing back on track with improved quality instruction pilots and return to be the gold standard in training customer engagement and its plan to bring back Blue University for its blue-badged FTA instructor pilots to instill and train and convert the gray-badged contractor instructor pilots to become blue-badged Boeing employees. *Id.*

Davis said the new project was called Global Engagement Pilot Vision and he next alluded to this being his vanilla ice cream speech. (Tr. 448.) Davis next went backwards in time, and he says something to the effect that as Boeing brought more and more contractor instructor pilots on board, it got away from being Boeing vanilla—meaning that the quality of Boeing’s instructor pilots’ standards were getting degraded over time and because contractor pilots were being hired by Boeing from whatever airline they were at, they would simply implement their own quality standards that they have been taught rather than Boeing’s gold-standard higher quality Blue University training procedures. *Id.*

Davis continues saying that over time Respondent went from Boeing’s gold-standard vanilla training, in some part of Boeing they might still maintain the vanilla gold-standard for that specific part of Boeing’s business, yet there is a lesser-quality standard of chocolate for another aspect of Boeing’s business or at a commercial airline, and yet a different quality standard of

Neapolitan (less than gold) somewhere else at Boeing or at an airline, and yet another lesser quality standard than gold called strawberry somewhere else, etc. (Tr. 448-449.) Davis then told the Unit FTA pilots group that Boeing needed to get everyone back to Boeing gold-standard vanilla with its instructor pilots. *Id.*

Davis next informs the Unit FTA pilots that they are going to provide the return to gold standards and continuity and the Unit FTA pilots are going to be the trainers of these gray-badge purchase service contractor pilots and that the Unit FTA pilots will train them to become Boeing blue-badge employees. (Tr. 101-102, 449.)

Davis next tells the group that his vision was for all the Unit FTA pilots to train and standardize the product so that Boeing improves the quality of all of its instructor pilots so that Boeing gets away from all these different flavors including its lower quality instructor pilots with their associated diminished quality of instructor standards to improve to one Boeing gold-standard vanilla and Davis admits that he cannot do it without the help and training of the Unit FTA pilots. *Id.*

Davis further mentions that Boeing plans to hire seventy-five (75) of these new Global Engagement pilots to be trained by Unit FTA pilots in the Seattle area to become blue-badge pilot employees. (Tr. 449.) Wendt understood from Davis that the Unit FTA pilots would also be hiring approximately 5 more Unit FTA pilots to the unit and that the entire Unit FTA pilots would train and instruct the gray-badge contractor pilots to the Boeing gold-standard because it is the Unit FTA pilots who have “the corporate knowledge, the understanding, all the labyrinths being Boeing silos that you need to cut through in order to be able to provide a comprehensive answer to a customer... [and being that resource, we [the FTA pilots] were going to be the ones that effectively made sure the product that we provided was excellent.” (Tr. 449-450.)

Thus, to bring up all of its lower quality contractor instructor pilots to become Boeing’s gold-standard quality of Blue University graduate pilots, Davis was informing the Unit FTA pilots that their group was increasing by 5 new Unit FTA pilots and since they have always been gold standard quality instructor pilots, they would use their knowledge and excellence of being gold-standard Boeing employees to train and instruct and convert the lower quality gray-badge contractor instructor pilots to become gold-standard blue-badge Boeing employees (collectively known as the “Return to Boeing’s Gold Standard Instructor Pilot Training Plan”). (Jt. Exh 14; Jt. Exh. 15 at 5.)

Similarly, Laxton also heard Davis announce that 5 new Unit FTA instructor pilots would be hired for the first time since 2013 and that Boeing had already posted requisitions for 5 Unit FTA pilots into Laxton’s group and to onboard them as soon as possible. (Tr. 98, 101-102.) Laxton further opined that Davis’ announcement about the new hiring of 5 FTA pilots “was very encouraging news even though the [uneven pay raise disparity issue] was still a hot-button issue. *Id.*

More importantly, Laxton further recalled that the fact that Boeing was hiring new Unit FTA pilots was an indication from Boeing in October 2019, that the FTA instructor pilots’ unit was not going away. (Tr. 98, 101-102.)

Wendt explained that the current FTA pilots could provide

inhouse instruction to the gray-badge contractors immediately as would the 5 expected new FTA pilots to be hired according to Davis as Wendt recently trained FTA pilot Wilkerson as he needed to be trained on the Model 737 Max because he was a Model 747 and Model 787 pilot and Boeing was stopping the manufacturing of its Model 747 so Wilkerson needed to get qualified to fly the Model 737. (Tr. 449–450; Jt. Exh. 14; Jt. Exh. 15.)

Also, at the October 2019 meeting with Davis, he showed the group a PowerPoint slide which showed that entitlement training that was planned for the fourth quarter of 2019 and the first quarter of 2020 for one Model 787 customer, and up to five Model 737 Max customers. (Tr. 451–452; Jt. Exh. 15.)

Laxton also heard Davis describe the new hirings and planned training to include how the gray-badge contractors were going to integrate with the existing blue-badge FTA instructor pilots and Davis' vision was that the Unit FTA pilots in Seattle would be where the contractors come through Seattle to get trained to become blue-badge employees and gain as much knowledge as the FTA pilots could pass to them so they would be more effective representatives of Boeing when they go out to fly with the customers or serve the customers in a position called a global engagement pilot, which was more of a longer term assignment in the customer's region. (Tr. 102.) But the big news from that meeting was that the hiring of 5 new instructors into the FTA unit was upcoming. *Id.*

Davis further expected the new program would require Unit FTA pilots as the gold standard pilots who would improve the quality of Boeing's gray-badge contractor pilots by flying with them to do base training, touch-and-go training and each gold standard blue-badge Unit FTA pilot would pass on all their Blue University knowledge and flight experience to contractor pilots worldwide and help standardize their message and their ability to function.¹⁷ (Tr. 102–103.) Laxton concluded after hearing about the new program from Davis that the Unit FTA pilots as a group would be the core group that would provide that gold standard training to the contractor pilots. (Tr. 103.)

In addition, in October 2019, the subject of pay raise disparity was also brought up by Wendt to Champlin after Davis had finished his discussion of the Return to Boeing's Gold Standard Instructor Pilot Training Plan. (Tr. 329–330, 432–433, 450–451.)

Supervisor Champlin again in response to the FTA pilots group added that they should take their pay raise disparity questions to their union leadership and when Wendt once again broached the subject with Champlin and asked whether there had been any movement on the FTA pilots receiving parity in their pay raise amounts with all other nonunion pilots and managers, Champlin got noticeably angry and expressed his frustration with this question and told the FTA pilot group that

¹⁷ Laxton further admits that each FTA pilot has so many details about how to operate inside the Boeing corporate structure to pass on to contractor pilots including how to liaison with the customer, what is an entitlement day, and there is actually a lot of information that FTA pilots would be expected to provide to the contractor pilots to provide the gold standard training to get them to become blue-badged employee pilots. Tr. 103.

they should not continue to ask Champlin about the pay disparity issue and that it was being worked on at higher levels but that the FTA pilots were "union" and Wendt observed that Champlin's "face would get red, veins would bulge, [Champlin would] clench his fist" as he became combatant and hostile. (Tr. 432–433.)

Wendt further described Champlin's exact response as: "I'm sick of this [pay raise disparity issue] being brought up. . . We've [Boeing] already addressed this issue. Take it up with your union basically." (Tr. 433, 450–451.)

Wilkerson also recalled an encounter with Champlin in 2019 where Champlin indicated to Wilkerson that it was inappropriate for Wilkerson to schedule and conduct a Union meeting during the lunch hour break using Boeing's scheduling software and an unused Boeing conference room to conduct the Union meeting. (Tr. 333–334.)

Wilkerson further explained that in 2019 after a union conference room meeting over the lunch hour break, he returned to his cubicle to find Champlin, the chief pilot, and Marcus Ballou (Ballou), one of the other Boeing assistant chief pilot managers, waiting for Wilkerson and the two managers "fairly aggressively asked where" Wilkerson was during his lunch hour break as they were trying to find him and they did not know where he was and Wilkerson responds telling them that he had a Union meeting that he had scheduled on the Boeing's Outlook calendars. (Tr. 334.)

Champlin responds to Wilkerson telling him that he did not ask permission to conduct the union meeting during the lunch hour and that Wilkerson needed to ask permission from Champlin to schedule Union meetings during the day at Boeing. (Tr. 334.) Wilkerson responded to Champlin and Ballou:

. . . well, we [the Union] scheduled it during lunch hours. We always have. I didn't understand what the problem was. But yeah, that was the approach, that I was told that I—I needed to get his [Champlin's] approval to have Union pilot meetings on our lunch hour.

Id.

Wendt described how October 2019 was a busy time for him doing some ferry work, training Wilkerson on 737 Max, and Model 777 test flight. (Tr. 454.) Wendt also described how November 2019 was also a busy month for his work. (Tr. 455–456.)

Wendt also described how the FTA pilots' group lost 4 instructor pilots in November 2019—Mark Hargrove, Matt Coleman, Rich Denton, and James Lamir. (Tr. 458–459.) Wendt further explains that Hargrove retired and the other 3 FTA pilots left the unit to transfer to the higher paying nonunion production test pilot group.¹⁸ *Id.*

¹⁸ There is no evidence of a production or test pilot ever becoming a Unit FTA pilot. (Tr. 328, 429, 981–982, 1035; Jt. Exhs. 16–19, and 27.) With the high level of expertise required for the Unit FTA pilot position, the pool of pilots qualified to do such work, even worldwide, was small. (Tr. 611; Jt. Exh. 39 at 2895.) Respondent had difficulty finding qualified applicants when it made an abortive attempt to hire new FTAs in late 2019 and early 2020. (Tr. 612–13, 616; Jt. 39 at 2888.) In addition, Kinsey was involved in the process and he did what he could to

Wendt attended the November 2019 FTA pilots monthly meeting with Champlin and Shelton but not Davis. (Tr. 456.) Specifically, Wendt recalls that there was a little bit more exposition on the Return to Boeing's Gold Standard Instructor Pilot Training Plan.¹⁹ Id. Champlin said that the FTA pilots' group was going to need a more robust lead certification program in anticipation of bringing purchase service contractor pilots over to become Boeing blue-badge full-time employees. Id. Also, in that regard, Champlin also appointed Wendt to begin looking into the Cambridge purchase service contractor pilot onboarding process that they already had located at Boeing's Renton facility versus what the Unit FTA pilots' onboarding was, and again, Boeing had not done it in a very long time so Champlin asked Wendt to head up a project to see about merging the best of both trainings to see what the ideal onboarding footprint is. (Tr. 456-457.)

Wendt also recalled that at this meeting in November 2019, Champlin and Wendt discussed the status of the applied requirements that were out there for 5 new FTA pilots and approximately 75 new to-be-hired-and-converted to blue-badge Boeing employee Global Engagement Pilots. (Tr. 457.)

Once again, in November 2019, Wendt brought up the subject of the ongoing pay disparity between the FTA pilots and all nonunion pilots to Champlin, and Wendt said he raised the subject in the context of Champlin throwing out earning Boeing points to earn a free coffee mug where Wendt and Laxton were of a mind that said to Champlin very professionally, and pretty calmly—the best way for Boeing to appreciate the FTA pilots as a group is by increasing their pay as much as other Boeing pilots had received in the fall of 2018. (Tr. 457.) Champlin again responded in a hostile agitated manner saying that this pay raise issue is already up being discussed, it is at the Union coordinated through the union so no new information about pay raises. (Tr. 457-458.)

G. The 2020 Covid-19 Pandemic

As stated above, Kinsey had started working with Cambridge as a purchase service contractor pilot in July 2011 and worked there continuously through November 2018 when he left his independent contractor work as a line assist and simulator instructor pilot to be employed as a blue badge employee supervisor assistant chief pilot at Boeing for Pilot Services. (Tr. 573.) At this time, chief pilot Champlin was more senior in management at Boeing than Kinsey although Kinsey did not directly report to Champlin. (Tr. 651.)

Oddly, given his lengthy time as a contractor pilot and prior

prevent any hiring of Unit FTA pilots given his bias and goal to increase the use of gray badge contractor pilots.

¹⁹ Later, on or about April 14, 2020, after the April 2020 vote results of the 2nd decertification petition were known to Boeing, Boeing completely abandoned its almost half-year plan and would consistently reference this now abandoned Return to Boeing's Gold Standard Instructor Pilot Training Plan much simply as the Global Engagement Pilot plan to punish the Unit FTA pilots for not passing the 2nd decertification petition and so Boeing could materially change the plan and revert to the diminished-quality instructor training as Boeing announces in bad faith that it will eventually lay off all of the remaining 7 FTA pilots in 2020 and 2021.

animosity with the Unit FTA pilots and the Union, Kinsey was promoted again by Boeing in December 2019 when he became a chief pilot for Air Crew Operation and later took over for Unit FTA pilots' Champlin who left the group by February 2020. (Tr. 573.) So, before February 2020, Kinsey had become a manager of the FTA unit pilots, supervising Champlin and reporting to Bomben, by way of Global Engagement and Training Director Todd White ("White") (with Davis still in the mix, perhaps now demoted to working under White). (Tr. 574, Jt. 20, 38.)

In January 2020, Wendt attended monthly pilots meeting and recalled that both chief pilot Champlin and assistant chief pilot Shelton announced that they were leaving Boeing as managers of the FTA pilots' group on January 31. (Tr. 459-460.) Laxton and Wendt also recalled that when asked about the status of hiring 5 new FTA pilots in January or February 2020, Champlin responded to the Unit FTA pilots saying Boeing had 5 or 6 applicants, but they were not of the quality he was expecting. (Tr. 111-112, 462.)

Secondly, at the January FTA pilots management meeting, Wendt recalled that Kinsey spoke in an even more detailed fashion of what the Return to Boeing's Gold Standard Instructor Pilot Training Plan was going to look like which still included hiring the 5 new Unit FTA pilots hires. (Tr. 460.)

Wendt explains that Kinsey opened the meeting with a sort of a *mea culpa* on how there a negative working history between the Unit FTA pilots and the purchase service contractor pilots, including Kinsey, over time. (Tr. 460, 573, 598-599.) At hearing, Kinsey further admits that he first clashed with the Union and Unit FTA pilots in 2016 when Kinsey's name was on a list of contractor pilots who were deployed overseas and allegations by the Union and Unit FTA pilots were that Kinsey and his contractor pilot group were "scab" pilots because Boeing was compromising the quality of the instructor pilot position and the Unit FTA pilots did not support Boeing's use of gray badge contractor instruction pilots. (Tr. 573, 598-599.)

Kinsey acknowledged that friction occasionally arose between the Unit FTA pilots and the contractor pilots in the past and Wendt further described Kinsey as being really transparent as a way to try and build bridges between the 2 instructor pilot groups. (Tr. 460.) Kinsey continued and appeared very excited about Boeing emerging like a Phoenix from the 737 Max crash "to return to its roots of being a solid engineering company that had gold standard training." Id.

Kinsey went on to say that Boeing was going to turn the corner and was no longer going to be the Company of when it comes to training of yesterday's technology at tomorrow's prices. (Tr. 460.) Kinsey next mentioned Boeing's plan for "massive investment across the entire spectrum of [pilot] training to include simulators, computer-based training, and [FTA] pilots providing the [vital training for the Return to Boeing's Gold Standard Instructor Pilot Training Plan] training, front facing to the customers deployed around the world, and FTA [pilots' group], once again, was the [gold] standards and trainings component of it that the plan could not succeed without." Id.

Wendt asked Kinsey if he could attend an onboarding training class that was happening for Cambridge contractor pilots at

Boeing. (Tr. 461.) Kinsey already had three contractor pilots attending the program and it was a weeklong training and since Cambridge is a company that specializes in providing airlines and Boeing with contracted pilot services, Wendt asked to attend the onboarding training because it took place on Boeing property and Boeing management including Managers Davis, Champlin, and Shelton had assigned Wendt the task of eventually onboarding contractor pilots to become the gold standard blue-badge Boeing employees with the FTA pilots' gold standard training. *Id.*

Also, in January 2020, Kinsey responded to Wendt's offer to attend the Cambridge onboarding training at Boeing, telling Wendt that he absolutely should attend, and please collect information and the conversation continued along the same lines of Davis' October 2019 announcement of the new Return to Boeing's Gold Standard Instructor Pilot Training Plan with Wendt assisting in providing gray-badge contractor pilots with gold standard Blue University training so the estimated 75 new contractor pilots would eventually become blue-badge Boeing employees just the same as the Unit FTA pilots rather than continue as lower quality gray-badged nonunion contractors. (Tr. 461-462.) Wendt further explained that Kinsey and Wendt would work together going forward to merge a program together to improve training of instructor pilots. *Id.*

On February 3, 2020, Kinsey was the chief pilot of Echo Operations and had just started working with Todd White (White) through Davis and sent White an email with some slide exhibits which Kinsey says White asked for at a meeting the week before which Kinsey describes as "where we are and what we're aiming for with Air Crew Ops." (Tr. 593; Jt. Exh. 39 at TBC002888.) The email from Kinsey further explains that his main pain point is resources as Kinsey doesn't see much he can do with keeping the legacy Unit FTA pilots and that Kinsey needs to get the right warm bodies as quickly as possible to satisfy return to services work. *Id.* The slides specifically provide that they are for a "Management Study Only. No decision has been made to approve or implement the contents herein." (Jt. Exh. 39 at TBC00889-8897.)²⁰

By February 2020, and unknown to the Unit FTA pilots, the Union, or any of the Unit Pilots' immediate supervisors, Boeing had given Kinsey responsibility for developing another change in what had been labeled Davis's Return to Boeing's Gold Standard Instructor Pilots Training Plan which Kinsey proposed be changed to be known as the Air Crew Operations (ACO) transition from Flight Training Airplanes (FT-A) + Purchase Service Pilots (PSP) to ACO under Boeing Test & Evaluation (BT&E) Plan (the ACO Plan). (Jt. Exh. 39.)

Kinsey explained some of his basic terms being considered underlying his ACO Plan:

- The 7 FTA instructor pilots had become obsolete with no future instructor work expected at Boeing because they did

not have extensive experience as former airline captains and they were centered out of Renton.

- Given the contentious relationship that began in 2016 between the FTA pilots and the independent contractor pilots, they could not expect to co-exist peacefully at Boeing.
- Some of the independent contractor pilots preferred to pick-and-choose their work hours and did not want to be weighted down to a full-time salaried position.
- Independent contractor pilots provided better instruction training than FTA pilots.
- The new Boeing Aviation Institute would take the place of the Return to Boeing's Gold Standard Instructor Pilots Training Plan and change the focus of training away from getting Boeing's blue badge FTA pilot instructors to bring the gray badge contractor pilots up to a gold standard training to leaving the gray badge instructors in place with inferior training and allowing them to train Boeing customer's foreign air crews at a lower cost to Boeing.

(Tr. 570-625.)

At hearing, Kinsey dismissed his own January and February 2020 statements to Wendt as "lip service" to the hiring process, claiming that, despite the "all hands-on deck" mantra from the rest of Respondent's management and his own pleas for "the right warm bodies," he did not believe demand justified hiring. (Tr. 612-613, 615-616.) Kinsey testified that he gave lip service to the FTA hiring to avoid ruffling the feathers of Champlin, who had been more senior to him, but over whom he had just been promoted. (Tr. 651-652.) However, Champlin had already left the company by the date of Kinsey's February presentation. (Tr. 651-652; Jt. 38, 39 Bates 2892.)

Kinsey opined that he thought a good instructor pilot should have prior experience as a plane captain, if possible.²¹ (Tr. 588.) Kinsey also noted that Boeing had just retained the services of 3 more gray badge independent contractor pilots in February 2020 bringing Boeing's total to 28 at that time. (Tr. 595.) As of February 28, 2020, however, Kinsey was recommending hiring 10 more gray badge contractor pilots from Cambridge due to the high volume of existing or expected pro forma and 737 Max return to service (RTS) work. (Tr. 631-632; GC Exh. 11.)

Kinsey also opined that Boeing's independent contractor pilots were "heavily engaged in the [737] Max return-to-service activities in February 2020. (Tr. 596.)

Kinsey described this 737 Max RTS work as:

Specifically, they—they were working with airlines we've identified as—as potentially benefiting from having some additional insight from The Boeing Company where we felt that they had resource issues, and we had teams doing a number of different activities depending upon the airline, but essentially working with the airline, meeting with the regulator, assisting with training, with auditing procedures, and essentially trying to ensure, as far as possible, that we assisted the airlines with their readiness, that when the airplane was recertified, they

²⁰ Kinsey says the slides dated early February 2020, were from a culmination of meetings since about May 2019 which I reject as inconsistent with the October 14, 2019 Return to Boeing's Gold Standard Instructor Pilot Training Plan. (Tr. 101-103, 449-451, 594-595; Jt. Exhs 14-15 and 39.) In addition, Kinsey did not get promoted to chief pilot until December 2019.

²¹ Wendt and Wilkerson had prior experience as captains flying military airplanes and Laxton had been a captain with United Airlines before joining Boeing.

would be in a—a—they would be well-placed to be able to operate it safely.

(Tr. 596–597.) Kinsey also opined that the Unit FTA pilots did not have the right skillset to properly perform 737 Max RTS work. (Tr. 602.) I reject Kinsey’s opinion on this point due to his bias and the obvious falsity of these statements. I find that this is exactly the same work that Unit FTA instructor pilots routinely performed and their supervisor chief pilot Champlin along with Davis from at least May–October 2019 rallied them to expect.

On February 10, 2020, in an email from Davis, as Director of Commercial Flight Training and Air Crew Operations, to Kinsey, and Locklear, Chief of Operations Flight Operations Boeing Test and Evaluation provides as follows:

Mark [Locklear],

We need to chat...I don’t understand where this came from. Interesting ideas, BAI is a shift in the business and old models won’t work.

FT-A is going away. The model of pilots with no airline experience interacting with closely with our customers does not work for what Stream 1 of BAI is tasked to do.

I’ll tag up with you tomorrow.

Respectfully,

Carlton S. Davis

(R/ Exh. 3 at 1.)²²(Emphasis added.)

Kinsey also opined that he did not see any of the pilots applying for the 5 open FTA instructor pilots requisitions who Kinsey believed “would be a good fit for the global engagement pilot role” in February 2020. (Tr. 612–613.) Kinsey, of course, did not seriously want to hire new Unit FTA pilots by February 2020 nor did Kinsey see the need to hire 5 new FTA pilots in February due to the different direction that Boeing might be taking although he conceded that if a quality candidate came along, he would expect to at least interview them. (Tr. 613.)

²² Boeing argues that this February 10 email from Davis to Locklear is substantial evidence that “shows that he [Davis] knew that Boeing’s business model would eventually change and the FTA Instructor Pilot’s statement of work would eventually die off *prior* to the FTA Instructor Pilots engaging in protected activity against which Boeing allegedly retaliated— i.e., voting against [the 2nd] decertification.” R Cl. Brief 29 fn. 7. (emphasis in original.) I reject this argument as pure speculation as it is contrary to Kinsey’s January 2020 statements to the Unit FTA pilots at their January 2020 management meeting and also contrary to the Return to Boeing Gold Standard Instructor Pilot Training Plan and just as likely that Davis meant he expected that the 2nd decertification vote would pass and with this success, Boeing would finally rid itself of all its union pilots including the Unit FTA class of pilots. Boeing could then merge its nonunion FTA instructor pilots with the gray badge contractor instructor pilots after bringing them up to become gold standard blue badge employees. This did not occur as expected and Boeing retaliated against the Unit FTA pilots with its mass layoff in retaliation for the fail to pass the 2nd decertification petition on April 14, 2020. Moreover, Davis did not testify to explain the email and Kinsey further admits that he did not know what Davis’ thinking was at the time. (Tr. 624.)

Through February 2020, Kinsey also admits that he paid lip service to chief pilot Champlin who along with Davis in October was excited to be hiring 5 new Unit FTA pilots for the first time since 2013. Kinsey apparently continued to act like he was looking to hire 5 FTA pilots at this time so Kinsey who by December 2019 was now Champlin’s immediate supervisor so Kinsey could maintain Champlin’s buy-in. (Tr. 615.)

On February 21, 2020, Boeing was still planning to hire 5 new FTA pilots and the Return to Gold Standard Instructor Pilot Training Plan still in place. (R. Exh. 30.)

On March 7, 2020, the Unit FTA pilots’ successor CBA was ratified which finally provided the Unit FTA instructor pilots a one-time market adjustment of 24 percent for each instructor pilot in addition to the annual 3 percent also provided in the CBA effective March 19, 2020. (Jt. Exh. 24 at Art. 4; R. Exh. 4 at 5.)

At all relevant times from at least 2018 through October 2022, Respondent’s president and chief executive officer is David Calhoun (Calhoun), directly under Calhoun is Howard E. McKenzie (McKenzie), who is the immediate supervisor over Mark T. Locklear (Locklear), chief of operations, flight operations, Boeing test and evaluation.

The Covid-19 pandemic briefly but severely diminished demand for airline travel and passenger planes, leaving Respondent scrambling to cut costs and retrench. Effectively, Boeing’s entitlement and line assist training and deliveries, for the most part, ceased and slid to the right as delays. (Tr. 463.) Because the airlines were going into basically survival mode in 2020, they were trying to figure out what business model was going to get them through an anticipated 1-to-2-year slowdown. Id. Travel has since rebounded strongly in the following years with Boeing struggling to meet demand for planes.

By March 2020, Champlin and Shelton finally left the FTA pilot group and they were replaced temporarily by a flight tech and safety manager as the Unit FTA pilots did not have a chief pilot anymore so the group’s management structure had disappeared, and it switched over to Kinsey and then to Greg Bulkley (Bulkley), who is also from the tech and safety pilots’ group. (Tr. 111–112, 462.)

Respondent’s reaction to the pandemic grounding included more ferrying many of its grounded and unused airplanes to various dry locations in Washington, Nevada and California. Wendt described how the Covid-19 lockdown further complicated delivery schedules and made for more delays or slides to the right for work normally performed by Unit FTA pilots (Tr. 452–454.) Laxton recalled that first quarter 2020 had ongoing work for FTA pilots involving additional ferries, Vistara line assist, and line assist work on various 777’ and 787’s. (Tr. 109.)

Later, in March or April 2020, Bulkley, who had taken over for Champlin, said that the hiring of 5 new FTA pilots was still proceeding. (Tr. 112.)

H. To Boeing's Surprise, the FTA Pilots' 2nd Decertification Is Voted Down and Fails Again on April 14, 2020, Which Is the Straw that Broke Boeing's Back and Caused Boeing to Punish the Unit FTA Pilots as a Group with Mass Layoffs for Voting Down the 2nd Decertification Petition

Wendt also observed that due to the significant pay differential among union and nonunion pilots before February 2020, the unit was beginning to lose pilots by December 2019 and January 2020 as they would leave the unit pilots group to go to higher paying nonunion pilot groups such as the nonunion production pilots' group and the nonunion test pilot group and others. (Tr. 429.)

Plunkett was more concerned with how the pandemic would affect his Unit flight tech and safety pilots more than the Unit FTA pilots at this time because Plunkett knew that the return to service of the 737 Max would require a lot of Unit FTA pilot instruction to get the 737 Max planes running again. (Tr. 242–243.) Plunkett had conversations with Boeing's Hartman at this time and the thought between the two bargaining representatives was that Unit FTA pilots were going to be highly necessary depending on when return to service actually occurred and maybe more training would be required as well as the need to re-locate planes. *Id.*

Wendt, Wilkerson, and Plunkett describe the group of FTA pilots' morale to reach another low point at the end of 2019 due to unit group members leaving the unit pilots group to go to higher paying nonunion pilot positions at Respondent or taking pilot positions at other airlines. (Tr. 234, 327, 433–436; Jt. Exh. 6 at 9.) The ongoing pay raise disparity issue between the Unit FTA pilots and all other Boeing pilots effectively whittled down the number of Unit FTA pilots by 10–15 down to 7 Unit FTA pilots by first quarter 2020 with 20 remaining Unit flight tech and safety pilots. (Tr. 327–328.)

Due to low morale, at least 19 of the 27 remaining Unit pilots signed a second petition to remove the Union as representative petition as early as November 2019 but most signed in December 2019 (the 2nd decertification petition). (234; Jt. Exh. 6.) Wendt signed the 2nd decertification petition in January 2020 because at the time the petition was in response to years and years of frustration with the FTA pilots' progress at Respondent and Wendt's particular reason for signing it was expressed as:

like, shoot man, we've been wearing a [union] target on our back all this time. It made—it seems clear that union representation is the reason for the disrespect that we're given, and the—whether it is reflected in how we're treated by [Boeing] management, or reflected in the [FTA pilots' greatly lower] pay. So, kind of at this point I [Wendt] was like, well, let's try something different [and file a 2nd decertification petition].”

(Tr. 234, 433–436; Jt. Exh. 6 at 9; Jt. Exh. 28.) Other Unit pilots felt the same way and signed the 2nd decertification petition which got filed in early January 2020.

On January 3, 2020, the 2nd decertification petition was filed at the NLRB in Case 19–RD–254116 and addressed Boeing Director Carl Davis attesting that a substantial number of the Unit pilots numbering 29 at the time no longer wish to be represented by the Union. (Jt. Exh. 28.)

Wilkerson described the mood in late 2019 due to the large pay disparity between union and nonunion pilots that Unit FTA pilots felt shocked, angry, frustrated, and insulted by Boeing's treatment of creating the large pay disparity in 2018 and keeping it in place throughout the remainder of 2018, all of 2019, and January 2020. (Tr. 327–328.) I find that the Unit FTA pilots' filing of their 2nd decertification was their expression of disaffection from the Union during this time where the pay raise disparity issue continued unresolved and is presumed to be caused by Boeing's ongoing antiunion actions.

The group of pilots involved with the 2nd decertification petition asked Boeing to voluntarily withdraw recognition of the Union which Boeing denied both an initial request and a second request for reconsideration for unexplained reasons.

On January 9, 2020, SPEEA filed a charge against Boeing creating unfair labor practice Case 19–CA–254438 on the following grounds:

The employer has engaged, and continues to engage, in actions with the intent and effect of interfering with employee free choice in the selection of a bargaining representative in the SPEEA Pilots and Instructors Unit and which taint the union's apparent loss of majority support, evidenced by the decertification petition in case 19–RD–254116. The employer's actions have been cumulative, culminating in specific contract violations as set out in a grievance filed simultaneously herewith, and include rewarding BU members for leading a decertification effort in 2016 with unwarranted promotions; movement of core work out of the bargaining unit under pretense of business motivation; providing substantial salary increases to all and only pilots who are not members of the bargaining unit and refusing to provide comparable increases to bargaining unit members despite internal documentation within the company establishing that the rates being paid were not competitive and were causing significant attrition in the unit, an attrition that has accelerated in the past six months and has contributed to a reduction of the bargaining unit of approximately 70% since the unit was formed in 2012; failure and refusal to abide by its contractual obligation to provide the union with data regarding the composition of the unit, as set out in the grievance referenced above; failing to provide information necessary to the union to perform its representative functions, including information both regarding unit jurisdictional work concerning investigations on the crashes of the 737MAX and pilot training for the 737MAX, and why that work was reassigned away from the bargaining unit and economic information about pilot salaries; and (on information and belief) directly offering incentives to unit members for supporting the current decertification petition.

(Jt. Exh. 29.)

Also on January 9, 2020, SPEEA filed its request to block the 2nd decertification election. (Jt. Exh. 30.)

Ultimately, NLRB Region 19 issued a blocking charge which stalled the 2nd decertification vote to allow the investigation of the Union's ULP charge in case 19–CA–254438 mainly concerning the pay raise disparity issue. (Tr. 235; Jt. Exh 24; Jt. Exhs. 28–31.)

SPEEA representative Plunkett was the chief negotiator for 2

separate units of the SPEEA group at this same time that the Unit pilots' CBA was expiring and Plunkett's other units at Boeing involved over 10,000 Boeing engineer employees and approximately 4000–5000 Boeing technical employees whose CBAs were also expiring around this time. (Tr. 235.)

Plunkett explained that he mentioned the serious pay disparity and job security issues going on with the Unit FTA pilots and he asked his counter-part at Boeing, Bill Hartman (Hartman), on numerous occasions—“why the hell are you screwing up the relationship here, right on the precipice of a vote for the larger engineer and technical worker units and Hartman did not respond but ultimately, the Unit FTA pilots ended up finally receiving the equivalent raises adding 24 percent for Unit FTA pilots and 10 percent for tech and safety unit pilots on March 7, 2020, with the new successor CBA. (Tr. 236; R. Exh. 4 at 5.) In addition, Boeing also agreed to provide specific language in the successor CBA where “[the FTA] instructor pilots will continue to perform exactly the same tasks for the foreseeable future...” (Tr. 1094-1095; CP Exh. 2 at 1.)

What actually occurred is that without Boeing finally conceding the pay raises and job security language for the Unit FTA pilots as part of the larger picture bargaining process, Boeing would not be able to reach new contracts with the much larger engineer unit and the much larger technical workers unit. Id.

Plunkett confirms that even as late as January 31, 2020, SPEEA was prepared to end negotiations for the Unit pilots as well as the engineers and technical workers groups the following week if Boeing did not increase their “subpar pay for the SPIU pilots” because, if Boeing did not increase the pilots' pay, “[t]hat would appear to be a deathblow to this and next week's process.” (Tr. 1094-1095; CP Exh. 2 at 1.)

Plunkett also recalled that as late as January 31, 2020, SPEEA was still trying to get Boeing to increase the FTA pilots' pay from Boeing's less-than-market offer and that the two sides had agreed to language in the new CBA where “[the FTA] instructor pilots will continue to perform exactly the same tasks for the foreseeable future...” (Tr. 1094-1095; CP Exh. 2 at 1.) Plunkett explains further that job security for the Unit pilots was also an important issue in the 2020 CBA negotiations and if Boeing planned to layoff all of the FTA pilots at this time and agreed to this contract language, it would be bad faith on Boeing's part to plan to have a mass layoff of the FTA pilots soon thereafter. (Tr. 1096-1105; CP Exh. 2; R Exh. 3.)

Plunkett further explained that once Boeing agreed to end the pay disparity between the FTA pilots and all other pilots in the successor CBA, all 3 CBAs reached tentative agreement between January 31, 2020 and February 10, 2020. (Tr. 1107.)

On February 13, 2020, Bomben sends a message to all Unit pilots ahead of the 2nd decertification petition election where, among other things, Bomben informs each Unit pilot that Boeing prefers to work directly with employees on labor matters rather than through the Union as follows:

Today Boeing and SPEEA reached agreement on a new [CBA] contract for our SPIU Flight Training and Technical and Safety pilots. This new contract takes effect March 7, 2020, pending your ratification of Boeing's offer...

Was Boeing management behind the effort to decertify SPEEA representation?

No. The [2nd] decertification petition was filed with the National Labor Relations Board by a group of individual employees and was not initiated, requested or encouraged by Boeing management. This was an employee-led decision.

What is Boeing's position on the employees' petition to decertify the union?

Boeing prefers to work directly with employees on matters relating to their employment including wages, benefits and work rules, rather than through an intermediary such as a labor union. However, we respect all points of view and the legal rights of all employees, including the rights of those who choose to request a [2nd] decertification vote with the National Labor Relations Board.

What is Boeing's position on unions?

We work with unions and attempt to achieve a collaborative, problem solving relationship where we have them; but Boeing prefers to work directly with our employees, rather than through an intermediary such as a labor union.

Why did SPEEA file an unfair labor practice charge against Boeing?

SPEEA accused Boeing of impermissibly encouraging the pilots to decertify. The [2nd] decertification petition was filed with the National Labor Relations Board by a group of individual employees and was not initiated, requested or encouraged by Boeing management. This was a completely employee-led decision. SPEEA has agreed to drop its challenge and permit the election to proceed.

Why did Boeing still negotiate the upcoming SPIU contract in March?

Because the contract is set to expire in early March, Boeing was obligated to negotiate a new one while the [2nd] decertification petition and SPEEA's opposition to the petition were pending before the NLRB. A new contract does not affect the NLRB's decision whether or not to schedule a [2nd] decertification vote, or the employees' right to vote as they choose in that election.

(Tr. 710; R. Exh. 4 at 1–4) (Emphasis in original).

On February 14, 2020, NLRB Region 19 Regional Director sent Boeing and copied the Union a letter advising Boeing that the Region 19 Regional Director had approved the withdrawal of the SPEEA charge in Case 19–CA–254438 as part of the parties reaching the successor CBA. (Tr. 235; Jt. Exh. 32.)

In February 2020, Bomben pointed out to all Unit pilots in his February 13, 2020 notification referenced above that Boeing prefers to work directly with employees on matters relating to their employment including wages, benefits, and work rules and not through a union intermediary. (Tr. 277–278; R. Exh. 4 at 5.) I find that Bomben is not telling the truth when he claims that he had no involvement with the 2nd decertification petition filed by the Unit pilots and voted on in 2020. (Tr. 968; R Exh. 4.) Bomben actually sent the Unit pilots a message on February 13, 2020 informing them before their vote on the 2nd decertification petition that Boeing's position with respect to the 2nd decertification petition vote was that Boeing prefers working

directly with employees without a union intermediary. (R Exh. 4 at 1-4.)

If the 2nd decertification petition vote passed thereby ridding Boeing of the pesky Unit pilots' union representation, it would have allowed Boeing to take any material labor action against this now nonunion group of instruction pilots without the need to bargain with the Union so Boeing was greatly incentivized to see the 2nd decertification petition succeed.

On April 2, 2020, message from CEO Calhoun to all Boeing employees says that voluntary layoff plan in action. (Tr. 930; R Exh. 20.)

On April 3, 2020, email from Ponte to Bomben saying that requisitions still posted to hire 5 new FTA pilots and Return to Gold Standard Instructor Pilot Training Plan still in place. (R Exh. 31 at 3537.)

On April 13, 2020, email from Bomben to McKenzie says hiring 70 field pilots including Seattle home office 5 new FTA pilots by July 2020 and Return to Gold Standard Instructor Pilot Training Plan still in place. (R Exh. 21 at 3898 and 3900.) Moreover, the attached chart also still references in the BAI Stream 1 Hiring Initiative Summary that 30 of the 40 GEP are existing PSP and Boeing employees with 23 being current PSP contractor pilots and 7 are the current 7 Unit FTA pilots. (R Exh. 21 at 3903.) I reject Bomben's testimony that the 7 Boeing employees are all managers and not the 7 Unit FTA pilots. (Tr. 934.)

On April 14, 2020, the 2nd decertification failed to pass again as twenty-six (26) of the remaining twenty-seven (27) Unit pilots voted in the election of the 2nd decertification petition and 20, including Laxton, Wilkerson, and Wendt, voted against decertification and 6 pilots voted for decertification with one pilot refraining from the vote and, as a result, the 2nd decertification vote failed and did not pass. (Tr. 436; Jt. Exh. 33.) All parties including Boeing participated by video conference and had knowledge that the 2nd decertification petition vote had again failed and did not pass. *Id.*

Also, Bomben was quite unbelievable when he claimed that he never heard the outcome of the 2nd decertification vote. (Tr. 968-969.) The quick change from Boeing's referencing the hiring of 7 new FTA pilots with the Return to Gold Standard Instructor Pilots Training Plan before the April 14 Tally of Votes which resulted in another failed attempt to rid Boeing of the Union and Bomben's quick abandonment of all reference to the hiring of 5 new FTA pilots and the Return to Gold Standard Instructor Pilots Training Plan starting on April 17, just 3 days after the vote outcome was known to Boeing and Bomben. (Jt. Exh. 33; R Exhs 11, 16, 21, 31, and 32.)

Bomben opined that as of April 15, 2020, Boeing had made no decision with respect to any layoffs of the 7 Unit FTA pilots. (Tr. 937.)

April 17, 2020, email from Ponte to Bomben, however, with chart that shows for the first time no entry hiring 5 new FTA pilots or Return to Gold Standard Instructor Pilot Training Plan because the tallied votes on April 14 showing a failed 2nd decertification union activity. (R Exh. 32 at 3525.) This news was not shared with the Unit pilots or the Union.

April 21, 2020, email regarding BT&E Flight Operations Staffing Review from Locklear to Bomben, White and Webb

says, among other things, that Our well-advertised plan all along was to staff well below the peak and make it the difference with contractors and guest help. Surprisingly, Davis is not copied on the email. (R Exh. 11 at 3373-3374. This news was not shared with the Unit pilots or the Union.

April 22, 2020, email regarding Training Initiative Framework from Fleming to many including Webb, Davis and Bomben, makes no reference to the hiring of 5 new FTA pilots or the Return to Gold Standard Instructor Pilot Training Plan. (R Exh. 16.) This news was not shared with the Unit pilots or the Union.

April 29, 2020, message from CEO Calhoun to all Boeing employees says: "We have begun taking actions to lower our number of employees by roughly 10 percent through a combination of voluntary layoff (VLO), natural turnover, and involuntary layoffs as necessary. The CEO's message also provides that *"the ongoing stability of our defense, space and related services businesses will help us limit the overall depth of the [personnel] cut."* (R Exh. 24 at 3451.) (Emphasis added.) Bomben confirms this 10 percent reduced Boeing workforce goal as of April 2020. (Tr. 939.)

I. The April 2020 meeting between Kinsey giving notice to Unit FTA pilot Wendt that Boeing was abandoning its earlier plan to raise instructor pilot training standards and hire 5 new FTA instructor pilots due to the failure to pass the 2nd decertification petition

By April 2020, Bulkley was assigned to be the manager for the FTA pilots' group until a level one manager could get hired to replace Champlin who had left on January 31. Bulkley was already the chief pilot for the Unit flight tech and safety pilots and so Bulkley was also acting chief pilot for the Unit FTA pilots. (Tr. 464.)

In late April 2020, immediately after the 2nd decertification vote, Wendt met with Kinsey in Kinsey's office at Boeing while Kinsey continued to be the Unit FTA pilots' acting supervisor chief pilot while Boeing's search continued to find former chief pilot Champlin's replacement. (Tr. 436-437.) Surprisingly, Kinsey had been promoted to one level above Champlin's level one chief pilot position at this time despite years of experience flying as a gray-badge contractor pilot associated with Cambridge.²³ (Tr. 464, 573.)

Wendt and Kinsey spoke about the status of the Return to Boeing's Gold Standard Instructor Pilot Training Plan that Davis had excitedly announced to the Unit FTA pilots' group in October 2019 and Davis and Champlin since October had made Wendt responsible for determining how to onboard the purchase service contractor pilots to become Respondent's blue-badge employees rather than gray-badge independent contrac-

²³ From 2011—November 2018, Kinsey worked as one of the gray-badge independent contractor pilots at Cambridge, a European company. Tr. 573. In November 2018, Kinsey was hired into Boeing's management in its Pilot Services department as an assistant chief pilot where Kinsey worked until December 2019 when Kinsey was promoted to chief pilot of Boeing's Air Crew Operations where he worked until June 1, 2020, when Kinsey left Boeing's employment apparently because by June 2020, Boeing had abandoned its Return to Boeing's Gold Standard Instructor Pilot Training Plan.

tors. Wendt and other FTA pilots would also be assigned the task of helping in training and integrating these contractor pilots into Respondent's existing FTA pilots' structure to become trained by FTA pilots to become qualified and certified Boeing blue-badge employees. (Tr. 437.) Incredibly, Kinsey did not recall discussing this with Wendt. (Tr. 627.)

Wendt asked Kinsey for guidance on how the two of them would effectively proceed to enact an improved training program tied to the Return to Boeing's Gold Standard Instructor Pilot Training Plan and Kinsey responds in a startling manner saying:

... well, we got to put it [the Return to Boeing's Gold Standard Instructor Pilots Training Plan] on hold because apparently the [unsuccessful de]certification vote has thrown things in chaos so to speak [Respondent's expectation of winning the decertification vote and automatically getting rid of union representation of the FTA pilot group was not going to occur].

(Tr. 437.) I find Kinsey not believable when he denies having any discussion with Wendt regarding the unsuccessful 2nd decertification vote and the chaos it caused Boeing.

Kinsey next expressed his inability to continue to oversee both the Union represented FTA pilots' group and the nonunion contractor pilots within this new air crew operations structure that Respondent and Kinsey had been developing with Respondent expecting the decertification vote to pass so both the FTA pilots and the contractor group would both be nonunion. (Tr. 437-438.) Kinsey unbelievably added that because he was a foreign citizen, he could not oversee and manage a U.S. union group such as the Unit FTA pilots. (Tr. 438.) I observed Kinsey deny having said this and find it untrue because before April 2020, Kinsey had no objection working at Boeing as a manager in air crew operations and acting as chief pilot to Unit FTA pilots. (Tr. 437-438, 627.)

Wendt responds to Kinsey saying that Wendt was not an expert on international law, he did not completely understand what Kinsey just said about not being able to manage both groups as a foreigner because Wendt knew that Boeing already had a production test pilots group that was split between those with union representation and also nonunion representation with both subgroups managed by the same Boeing manager. (Tr. 438.) Also, Kinsey had substituted in as acting chief pilot supervisor at the March 2020 monthly FTA pilots group meeting in place of departed managers Champlin and Shelton as Kinsey was rated at Boeing as being a level manager higher than former Chief Pilot Champlin. (Tr. 112, 641.)

I also find that the Unit pilots voting down the 2nd decertification petition was the straw that broke the camel's back. As it turns out as discussed further below, the failed 2nd decertification petition vote is the union activity that did in the FTA instructor pilots as Boeing's years of antiunion animus and disrespect for the Union culminates with Bomben's decision immediately after the April 14, 2020 2nd decertification petition vote with Boeing formulating a new plan to retaliate against the Unit FTA pilots by quickly abandoning the Return to Gold Standard Instructor Pilot Training Plan and punishing the pilots' group including its plan to layoff all 7 remaining Unit FTA pilots later in 2020. Up to April 14, Boeing still planned to add 5 new Unit

FTA pilots and move forward with its Return to Gold Standard Instructor Pilot Training Plan with nonunion blue badge FTA pilots and gray badge Contractor pilots working together to improve the quality of instructor pilot training.

A little more than a month after this April 22, 2020 meeting, Kinsey suddenly left Boeing's employment as a corporate manager on June 1, 2020, apparently his work designing the combined nonunion instructor pilots having passed. (Tr. 575; Jt. Exh. 38 at Stip. Fact 18e.)²⁴

After the 737 Max crashes in 2018 and 2019, Respondent halted and then slowly resumed production of the 737 Max planes, which were allowed back in service again by November 2020. (Jt. Exh. 53.)

J. Respondent's Shocking Announcement in August 2020 that It was Laying Off the 7 Unit FTA Pilots

Also, in early June, Wendt and the FTA pilots' group started regularly attending meetings that were led by Boeing test and evaluation group because the chief pilot and assistant chief pilot positions still remained open and the FTA pilots' function had been moved up underneath the Boeing test and evaluation business unit. (Jt. Exh. 20 at 3014.) In addition to the FTA pilots' monthly meetings which were now run by Bulkley and referred to as flight tech and safety pilots' monthly meetings, the FTA pilots would also have commercial air crew meetings run by Jim Webb (Webb) that were run by the commercial air portion group of production and tests pilots and then the FTA pilots also had production test monthly meetings that were done remotely. (Tr. 465.)

Wendt recalled that Davis also conducted management meetings in late spring 2020 that were called the air crew operations Global Engagement Pilot meeting²⁵ run by Davis and it was a regular monthly meeting but only a small portion of the FTA pilots were invited to the meeting Davis would invite a representative from FTA pilots' group to the meeting, and then the FTA pilots group would share notes, brief the other FTA pilots, as to what was discussed at the meeting by Davis and the Global Engagement Pilot team. (Tr. 466.) Davis, who before the 2nd decertification vote had been fired up about his Return to Gold Standard Instructor Pilot Training Plan to unify the Unit FTA pilots and PSP contractor pilots in a grand global engagement strategy, indicated to Wendt that his excitement had gone cold and, in June 2020, Davis too told Wendt to hold off on creating the unified onboarding process. Tr. 510.

Also, at the early June meeting, Wendt further recalled that at this time Wendt asked how the hiring was going with respect

²⁴ At the time of hearing in October 2022, Kinsey said he was working as an advisor to the CEO and COO for Brussels Airlines with his home office in Vienna, Austria. Tr. 573.

²⁵ Once again, in October 2019, Boeing emphasized that an exciting new part of its Global Engagement Pilot plan was to be the Return to Boeing's Gold Standard Instructor Pilots Training Plan. After the failed 2nd decertification petition vote, however, Boeing abandoned its plan to improve the quality of its contractor instructor pilots to become blue-badged employees under a gold standard so Boeing could, instead, save money and retaliate and punish with a mass layoff all 7 Unit FTA pilots who were its few remaining gold standard blue-badged employees at this time. Tr. 584, 693--694.

to the 5 new FTA pilots first mentioned by Davis in October 2019, and Wendt was told that it was on hold because management was not happy with the quality of the applicant candidates. (Tr. 466.)

Davis added to Wendt at the meeting that “there is a silver lining in the—what the—what the lockdowns are doing to our customers, in a sense that our customers are laying off some highly qualified pilots, which means the pool to become Global Engagement Pilots is growing significantly” so Davis was enthused that some higher quality pilots had expressed interest in applying at Boeing. (Tr. 467.)

On June 16, 2020, Wendt communicated with Manager Bulkley and they were effectively discussing consolidation of the group’s administrative staff due to one layoff and a status report on how everything has yet to be integrated for the onboarding process to convert gray-badged contractor pilots to gold standard blue-badged employees. (Tr. 478; GC Exh. 8; Jt. Exhs. 14–15.) As of June 16, 2020, Wendt believed that the Return to Boeing’s Gold Standard Instructor Pilot Training Plan was still intact and going forward as planned as the plan had not yet been formally announced as abandoned by Boeing. Id.

At the June 17, 2020 management meeting which combined the flight tech & safety pilots’ group with the FTA pilots group run by Tech and Safety Manager Bulkley because Unit FTA pilots still did not have a lead pilot and Kinsey had left Boeing’s employment on June 1. (Tr. 139, 474; Jt. Exh. 38 at Stip. Fact 18e.)

In 2020, approximately 800 Boeing employees reported directly under Bomben. (Tr. 976.) Bomben decided to layoff only 47 employees out of the 800 Boeing employees he managed – 40 people in design build and all the remaining 7 FTA instructor pilots and no other pilots although 17,599 Boeing employees were laid off in total, only 2 other pilots lost their jobs in Boeing’s entire 160,000 workforce. (Tr. 719, 726, 791–792, 876, 886, 913–914; Jt. Exh. 37; Jt. Exh. 41.)

Bomben opines that in 2020, less than 10 PSP contractor instruction pilots were blue badge employees. (Tr. 1013.) Bomben opines that it takes 2 weeks—2 months to train an FTA instructor pilot. (Tr. 977.)

Bomben and Wilkerson knew that Efen Jammer left the Unit FTA pilot group to become a nonunion Boeing production pilot in November 2019. (Tr. 981, 1054–1055.) Bomben also knew that William Smith did the same thing in 2019. Id.

Bomben also knew of other Unit FTA pilots who left the group in 2020 to become a Boeing nonunion production pilot. (Tr. 981.)

Bulkley referenced meeting notes after the meeting which contained reference *for the first time* to Boeing having put on hold the hiring of 5 new Unit FTA pilots and when Bulkley was asked questions about the status of the Return to Boeing’s Gold Standard Instructor Pilots Training Plan, Bulkley refused to answer questions on when Boeing would be hiring the new 5 Unit FTA pilots or what was the status of the Unit FTA pilot applications. (Tr. 139; Jt. Exh. 20 at 7 and 9.)

Laxton knew, however, that neither Bulkley nor anyone at Boeing’s management was specifically explaining the meaning of the meeting notes or giving any of the FTA pilots direct

answers as to whether there had been a change in plans and now an intentional delay to the hiring of the new FTA pilots even though Bulkley produced Joint Exhibit 20 with its new terms that the “5 requisitions on hold” for new Unit FTA pilots. (Tr. 139; Jt. Exh. 20 at 7 and 9.)

In actuality, Boeing had already made the decision to punish all 7 Unit FTA pilots with a mass layoff and was scrambling to determine how best to break the news to the group. (Jt. Exh. 20 at TBC 3008, 3018–3019, and 3567.) As a result of the April 2020 failure to pass the 2nd decertification petition to rid Boeing of the Union as representative of the Unit FTA pilots, Bulkley, Davis, White, Mark Locklear (Locklear), and Bomben were creating a false antiunion rationale that the Unit FTA pilots’ limited statement of work meant they had no expectations of future work at Boeing and should be laid off. Id.

In reality, while the pandemic had slowed the airline business considerably in 2020, the same expectations that Champlin and Davis had voiced for the nest two-to-five years remained unchanged for RTS and line assist work for all FTA pilots from May 2019, again in October 2019 and consistently until the April 14 unsuccessful vote for the 2nd decertification petition.

On July 1, 2020, Supervisor Mikel Pardue (Pardue) sent his immediate Supervisor Locklear, and White and Davis an updated slide package with a 24 month look back of Unit FTA pilot work from 2018–2020 and the future along with contractor pilot or PSP 24-month lookback with Pardue opining that PSP future data is largely unknown due to direct sale activities and that PSP do very little pro forma work. (Tr. 667–674; G.C. Exh. 14.)

July 13, 2020, email regarding GEP Staffing Status 13 July 2020 from White to Bomben, Locklear and Davis makes note of 23 currently contracted PSP contractor pilots, 3 managers, and no reference to hiring 5 new FTA pilots or the Return to Gold Standard Instructor Pilot Training Plan but does mention a targeted goal of hiring 17 additional contractor instructor pilots to have a total of 40 contractor instruction pilots by the end of 2020. (Tr. 944; R Exh. 26 at 3840.)

In late July 2020, Wendt remembered that there was a virtual meeting with Bomben and it was specifically for the FTA pilots and the flight tech and safety pilots’ groups. (Tr. 469.) Wendt recalls that this meeting was unique because there was four managers, the groups’ chain of command, sitting in one office around a table remotely, virtually communicating to all of the unit pilots at their various homes and laptops. Id.

Wendt further mentions that the supervisors at this meeting were Bulkley, then Davis, who was above him, White, who was above Davis, and then finally Bomben, as VP of Flight Operations, who was above White. (Tr. 468–470.) Bomben led this meeting and the first portion of the meeting was a lot of enthusiasm and excitement about where the Boeing flight test and evaluation pilots’ group was going, and how great it is to have Unit flight tech and safety pilots on board, and there was a lot of rah-rah about just how awesome it is to have Unit flight tech and safety pilots back where they belong, under the Boeing test and evaluation umbrella. Id.

Next, Bomben repeated himself about being very excited about the opportunities for flight tech and safety, who had not

been flying very much in 2020. There was also discussion about how busy they were and there was discussion about how Boeing management was excited to have the Unit flight tech and safety pilots start flying on a more regular basis. (Tr. 470.)

Up to this point at this late July 2020 meeting, amongst all of Bomben's excitement and enthusiasm, there was no mention of the FTA pilots' group which surprised Wendt so he said the following:

... so, Craig [Bomben said], we're excited to be part of Boeing test and evaluation as well. We've been—in the meantime, we've been helping flight tech and safety, and ramping up for 737 MAX, because he [Bomben] also talked about how 737 MAX return to service is going to be a, you know, all hands-on deck, in fact after, we're going to be very busy. And so, I [Wendt] said, so what can we do, an area at FTA, to be ready to hit the ground running with return to service?"

And that's when he [Bomben] said, well, you know, I'm having a hard time putting my brain around how—wrapping my head around how we can have a—we've got a—I mean, with your statement of work, how we're going to have a unionized and contractor force working, you know, together. **Your statement of work is going away.**

(Tr. 116, 470–471) (Emphasis added).

Wendt describes this as being two sequential massive bombs being dropped and that this was the first time that the FTA pilots' group had heard that their statement of work was going away from any supervisor or manager at Boeing. (Tr. 116, 470–471.) Next, Bomben asks Davis whether he had anything to add and Davis replied: "nothing to add" or something minor to that effect of—"that is about right." *Id.* Boeing management did not want to any FTA pilot input to this sudden and shocking high-level decision to layoff the entire FTA instructor pilot group. In sum, the stated reason for the full FTA pilot unit layoff according to Boeing upper management by Davis was because the Unit FTA pilots' work was going away, and that there is no more line assist work, and Davis, on the same call, said that is about right. *Id.*

Boeing management's statement to the Unit FTA pilots in late July 2020 that all of the Unit FTA pilots work was going away is made in bad faith because Boeing intentionally transferred this work to 23 newly hired at Cambridge gray-badged contractor line assist/line instructor pilots in 2020 and 30 newly hired at Cambridge gray-badged contractor line assist/line instructor pilots. (Jt. Exh. 38; Stip. Facts 9 and 10.) As of August 1, 2020, Boeing was using 24 Cambridge gray-badged contractor line assist/line instructor pilots for work formerly performed by the 7 Unit FTA pilots and as of March 30, 2021, Boeing was using 53 Cambridge gray-badged contractor line assist/line instructor pilots for work formerly performed by the 7 Unit FTA pilots. (Jt. Exh. 38; Stip. Facts 14 and 15.)

This meeting in late July 2020 was the first time any of the FTA pilots had heard that their statement of work was going away. Wendt understood statement of work to be a term used by Boeing and limited to contractor pilots, with their work being limited to certain tasks or limited projects. (Tr. 472.) The FTA pilots operated as Boeing employees, on the basis of a job description and performed a variety of job tasks over many

years. (Tr. 472; Jt. Exhs. 1 and 2.)

At this time in late July 2020, Wendt knew that the FTA pilots' group had work upcoming for the last quarter of 2020, and that Champlin had mentioned 2 years of guaranteed work for the 737 Max RTS in May 2019 and Davis mentioned in October 2019 that the FTA pilots' group has work out there *for the next 5 years lined up on deliveries and entitlement type work and the Unit FTA pilots had no reason to think that that had changed.* (Tr. 472; Jt. Exh. 7.) Wendt also knew, the last he saw on the scheduling calendar, the FTA pilots had deliveries ongoing for both fourth quarter of 2020 and the first quarter of 2021. *Id.*

In late summer/early fall 2020, around August 21, or just before, Union Representative Plunkett was notified by someone at Boeing that the 7 Unit FTA pilots were being laid off and his first reaction was to immediately call Todd Zarfos (Zarfos) at Boeing who was Boeing's director or VP of engineering at the time and Plunkett asked Zarfos incredulously—how can this expected layoff of all 7 Unit FTA pilots be happening, this makes no sense whatsoever? Zarfos told Plunkett he would look into it. (Tr. 343–244.)

On August 21, 2020, Respondent by White officially announced that Respondent was laying off the 7 remaining Unit FTA flight instructor pilots: Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, James Wilkerson, and David Whitacre. (Tr. 15–16, 116; Stip. Fact 2, Jt. Exh. 38) (Emphasis added). At the time of Boeing's announcement, there were 7 remaining FTA instructor pilots in the unit and 23 flight tech and safety pilots also left in the unit. (Jt. Exh. 41.)

Bomben justifies the mass layoff as follows based on the following alleged facts:

(a) Boeing was facing unprecedented financial challenges resulting from the 737 MAX grounding and COVID-19, and thus the Company sought to reduce headcount enterprise wide by at least 10% and cut non-labor costs wherever it could (including by changing employee cell phone plans and transitioning printers to black and white printing)

In fact, the pay raise disparity between Unit FTA pilots (3–5%) and both the nonunion pilots and manager (27%) and Unit flight tech and safety pilots (15%) was enough to shake 5-10 Unit FTA pilots from the group²⁶ and cause the filing of the 2nd decertification petition in January 2020 so no more Unit FTA pilots needed to be laid off in 2020-2021. Also, Boeing's military operation comprise about 40 percent of its business and there is no evidence that the military was losing money requiring the FTA pilot layoffs. (Tr. 1009-1010.) Finally, Boeing's 10 percent cut would mean just one of its 7 Unit FTA Pilots be laid off as none of the 18 flight tech and safety pilots lost their job and only 2 of Boeing's 200 nonunion pilots lost jobs.

²⁶ Wendt described how the FTA pilots' group lost 4 instructor pilots in November 2019—Mark Hargrove, Matt Coleman, Rich Denton, and James Lamir. (Tr. 458–459.) Wendt further explains that Hargrove retired and the other 3 FTA pilots left the unit to transfer to the higher paying nonunion production test pilot group. *Id.*

(b) The parties' collective bargaining agreement gave Boeing the unfettered right to lay off bargaining unit employees and to move bargaining unit work;

In fact, Boeing cannot layoff Unit FTA pilots to punish them for their union activity in April 2020 with antiunion animus and transfer work to contractor pilots in bad faith.

(c) The seven FTA Flight Instructors combined had performed only 3 hours of proforma line assist work—i.e., their core work—in the previous eight months, confirming Captain Wendt's statement that the FTA Instructor Pilots "were begging for scraps" in an attempt to stay busy;

In fact, no instructor pilot had consistent work due to the grounded 737 Max plane and the pandemic in 2020 but lead pilot Champlin and Davis expected more volume of work for two to five years at least for the current group of 7 Unit FTA pilots and there remained a specific need for Boeing to requisition to hire 5 additional Unit FTA pilots in late 2019 and early 2020. The Unit FTA pilots were highly qualified to handle the 737 Max return to service and ferrying work as well as their usual work training airline crews on the purchase of new airplanes which was also expected to resume in 2021 or going forward. The fact that Boeing added gray badge contractor pilots in 2020 and 2021 mean that same work could have gone to Unit FTA pilots if Boeing did not intend to retaliate after the failed April 14, 2020 2nd decertification vote.

(d) The demand for future proforma line assist work was weak and uncertain, and client actions were constantly delaying it;

In fact, this was true everywhere and Boeing announced from October 2019 through March 2020 that its future plan to fulfill client requests would be best covered by an expanded Unit FTA pilot group. This materially changed once the 2nd decertification vote failed.

(e) Boeing's Global Aviation Safety Initiative ("GASI") drove the Company to change how it supported and trained its global airline customers; and

In fact, Boeing's change away from the Return to Gold Standard Instructor Pilot Training Plan was abandoned to punish the Unit FTA pilots with a mass layoff because of Boeing's antiunion animus and this less quality plan came about from Kinsey, and ardent and admitted foe to the Unit FTA pilots who has pushed an increased lesser quality gray badge contractor pilot over blue badge Unit FTA pilots for years.

(f) FTA Instructor Pilots could be laid off with little-to-no adverse impact to the business because Boeing could use less costly Purchased Service Pilots ("PSPs")—who have significant airline experience and were being used as Global Engagement Pilots under the GASI—to cover future proforma line assist work as they have done since at least 2013. (R Br. at 2.)

In fact, Boeing from March 2019 through March 2020, realized that its contractor instructor pilot work needed to improve its quality and Davis and Champlin set out to improve

the quality of Boeing's gray badge contractor instructor pilots with The Return to Boeing's Gold Standard Instructor Pilot Training Plan. The complete flip-flop in plans from 2019 to 2020 is not backed up by legitimate business justification and is due to Boeing's intention to punish Unit FTA pilots for voting to retain the Union as representative in April 2020. Boeing's antiunion animus as evidenced by its flimsy plan to bring in Kinsey to jump to upper management to create a new less-quality instructor pilot plan that conveniently lays off all 7 of Kinsey's gold standard competition yet Kinsey lasts barely a month after he confesses to Wendt that the failed 2nd decertification vote has caused chaos at Boeing and forced a new instructor pilot training plan going forward that involved the mass layoff of Unit FTA pilots.

Laxton's immediately wanted to challenge these stated reasons for the announced full layoff as Laxton and other Unit FTA pilots were under the impression that this line-assist work was not permanently going away and even if it is temporarily suspended, the entitlement work still exists and all the other groups that are delivering entitlement are not being laid off, cabin safety and maintenance training was still necessary and these stated reasons by Bomben, White and Davis were false. Laxton, however, opined that Bomben, White and Davis did not allow there to be a two-way conversation for the Unit FTA pilots to dispute the group layoffs at this meeting. (Tr. 116–117.) Boeing management did not want to any FTA pilot input to this sudden and shocking high-level mass layoff decision. White next abruptly ended the call, and that was that. (Tr. 117.)

Before the last day of work for each Unit FTA pilot soon-to-be-laid off, Boeing gave all of its employees except the 7 Unit FTA pilots stock compensation. (Tr. 726–733, 800; GC Exh. 17.)

At this same time, 18 Unit tech and safety pilots were not laid off by Respondent who continued to hire purchase service contractor pilots as instructor pilots in 2021 and 2022 despite the full layoff of all 7 Unit FTA pilots at the same time. Boeing has argued that its layoff of all remaining FTA pilots came about as Boeing was trying to lay off ten percent of its commercial workforce at this time. Ten percent of 70 pilots would be 7 but ten percent of 7 FTA pilots is less than 1 FTA pilot and 4-9 Unit FTA pilots already left the unit in 2019 and 2020 bringing the total number of Unit FTA pilots down to 7. Boeing's refusal to grant the same pay raise to FTA pilots than nonunion pilots and managers whittled down the unit significantly so no further layoffs were deserved and Boeing should have hired at least 5 new FTA pilots in 2020 rather than the mass layoff. Also, only 2 of Boeing's 200 nonunion pilots lost their jobs from the pandemic.

Article 2.3 of the current CBA between the parties is a Management Rights clause which reads:

Section 2.3 The Company retains the exclusive right to reorganize, transfer, contract or subcontract out, discontinue, or relocate any or all of the operations of the business, including, but not limited to, work being or scheduled to be performed by bargaining unit employees, which right shall not be subject to the grievance and arbitration procedure of this Agreement.

(Tr. 276; Jt. Exh. 24 at Art. 2, p. 3.)

Wilkerson applied for and was selected for a different, non-bargaining unit position with Respondent prior to his layoff date. Wilkerson's last date of employment in the Unit FTA flight instructor pilot position was March 25, 2021. On March 26, 2021, Wilkerson started as a nonunion GGES Customer Training Specialist at Respondent. James Wilkerson is still employed by Respondent. (Stip. Fact 3, Jt. Exh. 38.)

Prior to his scheduled separation date, David Whitacre went on a medical leave of absence. David Whitacre remains employed by Respondent while he is on a leave of absence. (Stip. Fact 4, Jt. Exh. 38.)

The other laid off Unit flight instructor pilots' employment with Boeing ended on the following dates:

- a. Jeffrey Cotton, on or about 1/18/21
- b. Brian Lavelle, on or about 11/20/20
- c. Gregory Laxton, on or about 2/22/21
- d. Timothy Patterson, on or about 11/20/20
- e. Diego Wendt, on or about 1/18/21. (Stip. Fact 5, Jt. Exh. 38.)

After February 22, 2021, with the exception of David Whitacre, who is currently on a medical leave of absence, Respondent ceased employing any Unit FTA flight instructor pilots. (Stip. Fact 6, Jt. Exh. 38.)

After being laid off, Timothy Patterson applied for and was rehired by Respondent into a different, nonbargaining unit position on March 26, 2021. Timothy Patterson then applied for and was hired for a different Unit position (ADPX), in which he started on August 12, 2022. Timothy Patterson is still employed by the Respondent. (Stip. Fact 7, Jt. Exh. 38.)

The line assist/line gray-badged contractor instructor pilot jobs described above in Stipulation Facts Nos. 9 and 10 were advertised on Cambridge's website cclaviation.com, as shown in Joint Exhibit 21. (Stip. Fact 12, Jt. Exh. 38.) The job description and minimum requirements for the line assist/line instructor pilot positions described in Stipulation Fact No. 12 are set forth in Joint Exhibit 22. (Stip. Fact 13, Jt. Exh. 38.)

By 2021, when the last remaining Unit FTA pilots were laid off, there were 392 charged entitlement days and 426 charged direct sale days for all pilots. Of those, PSP contractor pilots performed 240 of the entitlement days and 303 of the direct sale days, while Unit FTA pilots performed only 68 of the charged entitlement days and 46 of the direct sale days. Stated differently, the Unit FTA pilots performed only 17 percent of the entitlement work and 11 percent of the direct sale work, while PSP contractor pilots performed 61 percent of the entitlement work and 71 percent of the direct sale work. (Jt. Exh. 35.)

Boeing did not provide the Unit FTA pilots with any assistance in finding other jobs at the company, even though it was obligated by the CBA to do so. (Tr. 135, 365, 498; Jt. Exh. 24 at LOU 5.)

Wendt applied for and went through 3 rounds of interviews for a contractor pilot position at Cambridge but was not hired most likely due to further retaliation from Boeing as the Cambridge interviewers in the first 2 interviews were highly complimentary of Wendt's qualifications as an instructor pilot.

K. The Parties' Arguments of the Case

Counsel for the General Counsel and the Union generally put forth that on or about August 21, 2020, Boeing announced the laying off of 7 FTA instructor pilots who were unionized and whose core work was to train Respondent's customers how to safely fly the planes they purchased from Respondent. Boeing is a very large employer with union representation of large sectors of its employees dating back many years with the Unit FTA instructor pilots being one of its smaller groups.

For years, Boeing has expressed its animus towards the FTA instructor pilots. It has chipped away at this bargaining unit, moving and denying its work, engaging in blatant pay discrimination, denigrating the Union's role, and informing union members in unambiguous and explicit terms that their managers and supervisors did not like having to deal with the Union or Union CBA. This 2020 layoff turned out to be the culmination of the decade-long effort by Respondent to rid itself of this group of highly skilled workers because they were unionized.

In the midst of a company-wide crisis around the Boeing 737 Max crashes, Respondent decided to lay off the pilots trained and certified for mission critical work. Respondent told its pilots it wanted all hands-on deck to deal with the hundreds of planes stacked up around its Renton facility and the world after the Boeing Model 737 Max groundings in March 2019.

Respondent argues that these pilots did only a very narrow type of work, that simply went out of existence in 2020 after Covid-19 travel stoppages and Boeing's complex global business plan. But in reality, until Boeing ran out of customers, there would be a need for instructor pilots to train customers how to fly Boeing planes. Boeing never ran out of customers.

The year of 2020, of course, was a difficult year, including for those in the air travel industry. The Covid-19 pandemic and associated lockdowns and restrictions temporarily shut down air travel. The air travel industry does not operate in a short time frame; however, planes take years to design and build, and airlines make agreements to take delivery of planes over the course of many years. It was predictable that the industry would bounce back. It was also predictable that the FAA would finish its investigation, rescind its grounding order of the 737 Max model airplanes in November 2020, and Respondent would begin delivering planes again to its many customer airlines.

That is exactly what happened, and when it did, Boeing needed more instructor pilots. Boeing announced that it would hire 5 additional new FTA instructor pilots than it had for many years and that this remaining group of blue-badge FTA pilots would train the new unit FTA pilots and the group of gray-badge contractor pilots under Boeing's Blue University standards and convert these gray-badge pilots to Boeing's gold standard blue-badge employees. In sum, Boeing would hire new Unit FTA pilots, for the first time in years, into the FTA pilot position, and its remaining FTA pilots plus the hiring of 5 new FTA pilots to the group would play a central role in training the current and increased group of contractor pilots to Boeing's gold standard process in Renton and these contractor pilots would be converted to blue-badge Boeing employees who will be needed to assist the Unit FTA pilots once the grounded Boeing 737 Max was returned to service.

When news came to Boeing in mid-April 2020 that the Unit's 2nd decertification vote failed in Boeing's eyes, however, Boeing did an about-face in bad faith and quickly scuttled this conversion project of hiring more FTA unit pilots and converting the gray-badge contractor pilots to become Boeing's gold standard blue-badge employees.

Once the 2nd decertification vote failed, the FTA instructor pilots paid the price. No new FTA instructor pilots were hired into the unit, the Unit FTA pilots were no longer a centerpiece for Blue University teaching these gray-badge contractor pilots how to become Boeing blue-badge pilots. The Return to Boeing's Gold Standard Instructor Pilot Training Plan was fully abandoned by Boeing to punish the Unit FTA pilots who voted to keep the Union sacrificing better quality training for lower cost contractor pilots.

Unit instructor pilots would no longer play a role in the return to service of the Boeing 737 Max, even though that return began before the ink was dry on their actual layoffs. Boeing issued a new limited job description for FTA pilots, and years of experience and expertise notwithstanding, they were declared to have only a single limited, "statement of work," instructing customer pilots on aircraft models new to customers and even that work was going to be assigned to gray-badged contractor instructor pilots at a lower cost to Boeing. Sometime in 2020–2021, after firing all 7 FTA instructor pilots, Boeing contracted with Cambridge and by August 1, 2020, retained the services of 24 gray-badged line assist contractor instructor pilots and 53 were the new total by March 30, 2021, to take the place of the 7 FTA pilots. Thus, at the very moment it walked its union instructor pilots out the door, it also diverted their work to less experienced nonunion contractor pilots, to punish the Unit FTA pilots for their April 2020 votes to keep the Union in place at Boeing in flagrant violation of Section 8(a)(3) of the Act.

To the contrary, Boeing argues that: (1) there is no evidence of union animus or even Boeing's knowledge of union activity by the FTA pilots, let alone union activity separating them from the rest of the bargaining unit; (2) Boeing acted for legitimate reasons in its layoff of 7 FTA pilots due to its Model 737 Max crashes in 2018 and 2019 and the related grounding of these airplanes in combination with the Covid-19 pandemic which forced Respondent to lay off ten percent of its commercial workforce by 2020;²⁷ and (3) Boeing have been using purchase service pilots (contractors) to perform entitlement flight instructor work since 2013 before the decision to layoff the 7 FTA pilots in 2020.

Specifically, in 2020, Boeing argues that it was facing an unprecedented crisis, and the continued viability of the company hung in the balance. The two accidents involving the Boeing 737 Max rocked the company and; consequently, Boeing

became even more hyper-focused on promoting the safety of its products.

Those accidents also set off a series of events that would severely challenge the company financially. The first domino to fall was the grounding of Boeing's 737 Max—its most popular and fastest selling airplane in March 2019. If the airplane cannot fly, the airplane cannot be delivered. If Boeing does not deliver, Boeing does not get paid.

And then came the second and third domino to fall. After 9 months of producing 737 Max airplanes without payment, Boeing shut down its 737 Max production for over 4 months starting in January 2020. Moreover, the Covid-19 global pandemic began in March 2020, sending the aviation industry into a spiral as the demand for air travel all but disappeared. As Capt. Wendt testified, the airlines went into survival mode. With no demand for air travel, there was no demand for Boeing's airplanes.

Things were bad, and no one knew when things would improve. For months, everyone thought that the 737 Max return to service was right around the corner, and many thought Covid-19 would last only a few weeks but both the grounding of the Model 737 and the Covid-19 pandemic dragged on.

Facing these drastic and uncertain times, Respondent took drastic measures to survive and it sought to reduce headcount enterprise-wide by at least ten percent and cut nonlabor cost wherever it could. All areas of the company were impacted and were expected to contribute, with one exception: those directly supporting the company's global aviation safety initiative (GASI), an initiative created directly in response to the 737 Max accidents to promote the safe operation of Boeing's airplanes.

Under these circumstances, VP of Flight Operations Bomben had to make several tough decisions, including the decision as to whether to keep or lay off the instructor pilots. Boeing further argues that the evidence has shown and will continue to show that Bomben really had no choice in the matter. The demand for flight instruction work had all but gone away in 2020, and the instructor pilots, as Capt. Wendt testified, were begging for scraps as they sought to keep themselves busy with other nondestructive pilot work. (Tr. 693.) Unlike with production test pilots, Boeing cannot continue to deliver airplanes without instructor pilots.

Finally, Boeing further argues that since at least 2013, flight instructor work was not exclusively FTA instructor pilot work. Boeing has been using gray-badge contractor pilots to perform entitlement flight instructor work for at least 7 years before the 2020 decision to layoff the 7 FTA pilots. Relatedly, Boeing was fully funding the sourcing of global engagement pilots as part of GASI, and those global engagement pilots are contractor pilots who previously served as line instructor pilots fully capable of performing flight instruction for customers.

Under Boeing's new global engagement and training business model, those global contractor engagement pilots were planned to be embedded with various customers to understand the country and company culture, or customer culture, conduct flight safety, training, and operations assessments, provide flight data analytics, maintain partnerships with customers and regulatory agencies, provide onsite technical advice, and perform standard and line check airmen duties—the same as FTA

²⁷ In addition to its commercial aircraft operations, Boeing has a sizeable military aircraft/weapons budget consisting of what Bomben estimates to be approximately 40 percent of overall operations that Boeing ignores in this case which I find is unrelated to Boeing's financial difficulties at its commercial aircraft operations from late 2018–2020 but could provide profit and cashflow to its commercial workforce's financial difficulties on a temporary basis to avoid the mass layoff of Unit FTA pilots. See Tr. 1009-1010; Jt. Exh. 43.

pilots formerly performed frequently with foreign and domestic airlines.

Like covering any future line-assist work that arose with global engagement pilots, not only would those global engagement pilots have more opportunities to engage the customer, but they could do it at a lower contractor cost than the FTA instructor pilots. (Tr. 694.) Thus, it was readily apparent to Bomben that the FTA instructor pilots could be laid off with little to no adverse impact on the business.

In response to the company's decision, the Union never filed a grievance because Boeing's actions were clearly within Boeing's management right to do exactly what it did with these layoffs. Boeing had negotiated for the right to lay off these flight instructors and had the exclusive right to use contract labor to perform their statement of work. (Tr. 694.)

III. ANALYSIS

A. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622.

I observed General Counsel's witnesses, Wendt, Wilkerson, and Laxton, as three laid off former Unit FTA instructor pilots, to be very believable as each had years of experience at Boeing and elsewhere as gold standard blue badge instructor pilots who were extraordinarily believable as they confidently presented their work histories over the years and presented solid and consistent snapshots of what it was like to be a Unit FTA pilot at Boeing from 2013—2021. They maintained their steady testimony even on cross-examination and each maintained high recall for detailed events while employed at Boeing. In addition to the laid off pilots, Union Representative Plunkett also testified in a strong and unwavering manner throughout his testimony which recapped his union work as a representative for SPEEA and its various unit members at Boeing mostly from 2013—2020. Finally, Respondent supervisor Pardue also testified directly in a natural manner and was not pre-scripted and his testimony was without controversy or question.

Here, Respondent did not call its Managers/Supervisors Davis, Champlin, Bulkley, White, Locklear, or Shelton as key Boeing managers who had the most immediate contact and supervision over the Unit FTA pilots from 2013—2021. None of these managers/supervisors were shown to be unavailable and were not called to dispute any of the testimony by witnesses for the General Counsel. Respondent's failure to call as a witness and question Davis, Champlin, Bulkley, White, Locklear, or Shelton as key Boeing managers about Boeing's actions, especially in 2019—2020, supports an inference that the General Counsel's witness' testimony is undisputed. See *Farm*

Fresh Co., Target One, LLC, 361 NLRB 848, 860 (2014) (noting an administrative law judge may draw an adverse inference from a party's failure to call or question a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent); *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d 720 (6th Cir. 1988) (same). Boeing relies heavily on its former contractor pilot Kinsey who is biased in this case against the Unit FTA pilots and has been for many years going back as far as 2016 when he was a known "scab."

I also find HR Specialist Antonen credible most of the time especially when her testimony was consistent with other witnesses. She seemed unrehearsed and consistent both during direct testimony and on cross. However, according to Bomben, Antonen was involved in the decision to lay off the pilots only late in the game and was not involved in the planning that allegedly led to the new instructor pilot business model. She provided misinformation in 2019 and 2020 when she informed the Union that there was no record of any recent hiring requisition for 5 Unit FTA pilots despite the undisputed fact that there was in 2019 and 2020 as reviewed by Champlin and Kinsey.

On the other hand, I found Kinsey and Griffin to be incredible as they appeared to be conflicted against the Unit FTA pilots. Kinsey, for example, admitted that there were hard feelings or friction between the purchase service contractor pilots where he worked from 2011—2018 and again after he left Boeing in June 2020, and the Unit FTA pilots who called him and his other contractor pilots "scabs." That discomfort and resentment persisted, as it was not easy for Kinsey to supervise Unit FTA pilots or to supervise Chief Pilot Champlin for a brief period of time from December 2019 until Champlin left Boeing by February 2020. In addition, I observed Kinsey to be biased against Unit FTA pilots and his view that they had somehow become obsolete by February 2020 and later going forward is simply false and ignores the reality that having a small group of FTA instructor pilots based out of Renton or Seattle as gatekeepers to Blue University so that the Return to Boeing Gold Standard Instructor Pilot Training Plan can be enacted. I reject Kinsey's testimony as being inconsistent with Davis' late 2019 plan and due to the fact that Kinsey heavily favored gray badge contractor pilots over Boeing's unit FTA instructor pilots for no legitimate reason other than cost over quality. Kinsey's bizarre career path as a gray badge contractor pilot scab for most of his career until suddenly in November 2018 being hired by Boeing and promoted high up the pilot ranks to become the author of the mass layoff plan of Unit FTA pilots, is unbelievable except for Kinsey's brutal honesty on April 22, 2020, when he confesses to Unit FTA pilot Wendt that because the 2nd decertification failed, Boeing management was in chaos and had put the Return to Boeing's Gold Standard Instructor Pilot Training Plan on hold with Kinsey saying that, as a result, he could no longer work with Wendt on implementing the plan.

Also, VP of flight operations, Bomben, was three or four levels above the Unit FTA pilots for Boeing for the entire relevant period of 2018—2021. He made several materially false statements as part of his testimony as pointed out above not the

least of which is that Boeing stayed neutral with its position before the 2nd decertification petition vote when, in fact, Bomben sent the February 13, 2020 email to the Unit member voters reminding them that Boeing prefers to work directly with its employees rather than through the Union. (R. Exh. 4 at 1–4.) Any claim that Unit FTA pilots did and could do nothing but pro forma line assist instruction was a blatant falsehood. Although Bomben testified confidently at length that the Unit FTA pilots were the only employees who could be laid off in 2020 and 2021 without negative impact on Boeing’s business and that the Unit FTAs were twice as expensive as gray badge contractor pilots, Bomben also admitted that he did not understand how Boeing calculated relative labor costs. Bomben testified confidently that it took only weeks to train a Unit FTA pilot. Yet, Bomben must have made this up since no Unit FTA pilot had been hired since 2013. Further, Bomben claimed he was not responsible for the new limited FTA pilot statement of work, and he admitted he had done no analysis of the time or cost of training FTAs. No evidence was produced showing any assessment of the relative costs of using Unit FTA pilots versus contractor pilots or of any financial benefit of reducing Boeing’s reliance on contractor pilots. Finally, his lack of understanding of these details may be attributable to the three to six levels of supervision between him and any FTA. All of this undercuts the credibility of his testimony.

I also reject current chief pilot Griffin’s testimony as irrelevant and misleading as he was an FTA instructor pilot before 2011, a time too far back to be relevant and Griffin transferred to and had become a technical and safety pilot until 2015 when he moved again to become a production test pilot and later became assistant chief pilot in production before becoming chief pilot in production May 2020 and then in April of 2022 Griffin became chief pilot of global engagement and training and unqualified to testify about the Unit FTA pilot position for 2019–2020. Griffin, however, claimed to have no job duties and just laid around at work with nothing to do except for approximately 60 days of line assist work each year. I reject this testimony as Griffin, despite claiming to be a deadwood employee at Boeing before 2015, was promoted to management and Boeing moved him to unrelated work away from the Unit FTA pilots’ group, serving in production from 2011–2015 until April 2022. In addition, he had no involvement in the mass layoff decision in this case and no involvement in the alleged new training business model until his promotion to chief pilot of global engagement and training in May 2022. That was *after* the mass layoff decision had been made and implemented. It is undisputed that all instructor pilots’ work slowed down in 2020 but it is also undisputed that this line assist work along with return to service work was not going away and the fact that Boeing has hired 20–30 purchase service contractor pilots in 2020 and 2021 who perform the exact same work as the laid off Unit FTA pilots is strong evidence that the Unit FTA pilots work remains strong. As such, the undisputed record evidence establishes that all flight instruction work would have stayed in Renton as previously planned and that the Unit FTA instructor work was thriving by the end of 2020 going forward.

B. Boeing violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off all 7 FTA pilots because of their pro-

tected union activities.

The complaint in this case alleges that Respondent unlawfully conducted a mass layoff of all 7 of its Unit FTA instructor pilots in late 2020 and early 2021 after announcing the layoff on August 21, 2020, and also that Boeing unlawfully subcontracted out this same work after August 21, 2020, because the Unit employees engaged in union activities and to discourage employees from engaging in these activities. The complaint further alleges that Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Sections 8(a)(3) and (1) of the Act.

1. Boeing’s Mass Layoff Announcement in August 2020 was in Retaliation and Punishment for the Unit Pilots’ April 14, 2020 Union Activity Voting Down the 2nd Decertification Petition Which Did Not Rid Boeing of the Union for Unit Pilots as Boeing Expected

a. Boeing’s Unlawful Layoffs Without Relation to the Individual Unit Member’s Union Activity or Boeing’s Knowledge of It.

General Counsel alleges that Boeing unlawfully took out its antiunion animus on its entire 7 Unit FTA pilots’ group through its mass layoff announced in August 2020 and carried out later in 2020 and 2021. Boeing acted this way with mass layoff in order to punish the 7 FTA pilots as a group in direct response to the employees’ union activity when they voted down the 2nd decertification petition, thereby failing to rid Boeing of the Union on April 14, 2020, and therefore each of these 7 layoffs violates the Act without relation to the individual employee’s union activity and Boeing’s knowledge of it. See *Napleton 1050, Inc.*, 367 NLRB Number 6 (2018), review dismissed, enforcement granted sub nom. *Napleton 1050, Inc. v. NLRB*, 976 F.3d 30 (D.C. Cir. 2020) (Board affirms ALJ determination that employer violated Sec. 8(a)(3) by terminating one employee and laying off another because of their and their coworkers’ union activity.); see also *River City Asphalt, Inc.*, 372 NLRB No. 87, slip. op at 2 fn. 6 (2023)(same.)

As the Board stated in *Guille Steel Products Co.*, 303 NLRB 537 fn. 1 (1991): “the focus of this alternative Sec. 8(a)(3) theory is upon an employer’s motive in discharging its employees rather than upon the antiunion or pro union status of particular employees.” In *ACTIV Industries*, 277 NLRB 356 fn. 3 (1985), the Board stated:

Accordingly, the General Counsel was not required to show a correlation between each employee’s union activity and his or her discharge. . . . Instead, the General Counsel’s burden was to establish that the mass discharge was ordered to discourage union activity or in retaliation for the protected activity of some.

In *Birch Run Welding & Fabricating v. NLRB*, 761 F.2d 1175, 1180 (6th Cir. 1985), the court stated:

The focus of the theory is upon the employer’s motive in ordering extensive lay-offs rather than upon the antiunion or pro-union status of particular employees. The rationale underlying this theory is that general retaliation by an employer

against the workforce can discourage the exercise of section 7 rights just as effectively as adverse action taken against only known union supporters. Finally, the Board, in *Pyro Mining Co.*, 230 NLRB 782 fn. 2 (1977), in affirming the judge's finding of 8(a)(3) violations, stated: "The layoff itself, not the selection of employees, was unlawful."

General Counsel's case herein rests principally upon the uncharacteristically large number of sudden Unit pilot layoffs in one class of union pilots just as the Return to Boeing's Gold Standard Instructor Pilot Plan was coming into play with much enthusiasm from October 2019—March 2020. Also, Boeing argues that the General Counsel has not established a prima facie case because she has not proven that each laid off individual discriminatee was a union supporter or that Boeing and Bomben, the decisionmaker, were aware of each individual's union support.²⁸ (R. Br. at 22–27.)

There is no merit for this contention. I find that Boeing's mass layoff of all 7 Unit FTA pilots was made to punish these employees as a group to discourage union activity in retaliation for the April 14 vote of a majority of the Unit members to defeat the 2nd decertification petition. The General Counsel need not establish that Boeing had knowledge of each discriminatee's particular union activity. It is well settled that unlawful motivation may be established when, as here, an employer takes an adverse action against a group of employees, regardless of their individual sentiments toward union representation, in order to punish the employees as a group "to discourage union activity or in retaliation for the protected activity of some." *ACTIV Industries*, 277 NLRB 356 fn. 3 (1985); *Davis Supermarkets*, 306 NLRB 426 (1992), enfd. 2 F3d 1162 (D.C. Cir. 1993); *Rainbow News 12*, 316 NLRB 52, 67 (1995).

b. Boeing's Antiunion Animus

The General Counsel also argues that Respondent's choice of individuals to layoff, as well as the timing and the large number of such layoffs, establishes that the mass layoff of all Unit FTA instructor pilots was unlawfully motivated. Based on the totality of circumstances in this case, I agree.

The General Counsel's case would be stronger had it fully litigated to favorable decisions some of its earlier claims of unlawful conduct by Boeing such as the mass layoff of Renton simulator instructors after their work was transferred to Miami in 2013 or the disparate pay raise issues. See i.e., *New York Paving, Inc.*, 371 NLRB No. 139 slip. op (2022) (Board affirms

²⁸ Boeing management, including Bomben, Antonen, and Davis, were also served throughout the 2nd decertification process so Bomben certainly knew of the timing of the 2nd decertification petition vote. Bomben himself sent out the February 13, 2020 pre-2nd decertification vote message to all Unit pilots mentioning Boeing's preference for dealing directly with employees and not the Union thereby inferring that it would be best for the Unit pilots to vote for and pass the 2nd decertification petition vote so Boeing could continue with its unannounced plan to change the Unit FTA pilots to nonunion pilots just like the other 200 nonunion pilots at Boeing. Unfortunately for Boeing, the 2nd decertification vote failed on April 14 and the Union stayed in place at Boeing resulting in Boeing's retaliatory punishment of the 7 FTA pilots by mass layoff announcement just 4 months later. See R. Exh. 4 at 1–4.

8(a)(3) violation against employer for laying off 35 of 50 bargaining unit employees in retaliation for the union's filing of a contractual grievance where the record showed that the ALJ properly relied on the employer's unlawful conduct in two prior cases involving identical actors and similar allegation dating back to 2017–2019 as evidence of employer animus.)

There are a number of events from 2011–2019 that show antiunion animus on the part of Boeing against the Unit FTA pilots. These events include the following:

1. Laxton recalled having a conversation with Boeing's chief pilot for commercial services Susan Darcy-Henneman (Henneman) in 2011–2012 after the unit changed its name to become SPEEA and Henneman told Laxton after the union's name change "that when we [Unit pilots] changed from AMPA to under SPEEA that was a very unhelpful for our group." (Tr. 19–22.) Henneman's statement is deemed as antiunion animus.
2. In 2013, there were also 25–35 simulator instructor pilots in the Renton area added to the unit on the insistence of Boeing. (Tr. 220–223.) Wendt opines that at this time Boeing decided to let that simulator instruction skill from its Unit employees get replaced by a contractor group of simulator instructors for less money. *Id.* Some of the FTA instructor pilots voiced opposition to moving all of the simulator pilots to Miami but this went forward anyway and in 2013, Boeing laid off 25–35 Unit simulator instructor pilots in Renton and reduced the size of the unit at that time. (Tr. 220–223, 419–420.) Boeing's insistence of including 25-35 Renton simulator pilots in the unit just before transferring this work to a nonunion contractor in Miami is deemed as antiunion animus.
3. March 2016, Wilkerson recalled that a Boeing manager Taylor told Abraham that if the 1st decertification vote had passed and not failed, and the Unit disbanded and decertified as a result, Abrahams would be at the Boeing's 3800 Building joining the much-desired production pilots' group. (Tr. 321–322.) Wilkerson's response to Abraham was total disbelief that Taylor as a Boeing manager would say this to Abraham so Wilkerson approached Taylor who admitted saying this and Taylor further stated to Wilkerson that Taylor knew the labor lawyers would be jumping up and down on his desk if they heard Taylor say this to Abraham. (Tr. 323–324.) Taylor's statement is deemed as antiunion animus.
4. In late 2016 or early 2017, Wilkerson also described "one offhand conversation with a [Boeing] manager" in the lunch cafeteria one day in late 2016 or early 2017. (Tr. 325.) Wilkerson recalls being in line to return trays with Boeing manager Wallace and Wilkerson mentions to Manager Wallace, that "we were in [CBA] contract negotiations, and you know, things were, you know, kind of rough and tumble, up and down, and Paul [Manager Wallace] made a statement in response to the effect that your [Wilkerson's] life would probably be better if you weren't—if that Union didn't exist." (Tr. 325–326.) Manager Wallace's statement is deemed as antiunion animus.
5. In August 2018, all approximately 200 Boeing's nonunion pilots received a 27 percent out-of-cycle pay increase, in addi-

tion to the annual wage increases they received in March 2018 (average of 3 percent) and in March 2019 (average of 5.9 percent). (R. Exh. 1 at 2; R. Exh. 2 at 3.) Their managers also received a 27 percent out-of-cycle pay increase the same day. (Stip. Fact 16, Jt. Exh. 38.) Also, on September 28, 2018, Boeing's Unit flight tech and safety pilots received a 15 percent out-of-cycle pay increase in addition to the annual wage increases they received in March 2018 (average of 3 percent) and in March 2019 (average of 3 percent). Their managers also received a 20 percent out-of-cycle pay increase the same day. (Tr. 228–230; Stip. Fact 17, Jt. Exh. 38.) Therefore, since the CBA freely allowed Boeing to grant a more favorable pay raise than the CBA minimum to its Unit FTA pilots, which in September 2018, Boeing did for the Unit flight tech and safety pilots, Boeing refused to treat its Unit FTA pilots the same as all of its nonunion pilots and managers and differently than it treated the Unit flight tech and safety pilots. At least five Unit FTA pilots left the group before 2020 due to the large pay disparity issue. This pay disparity between the Unit FTA pilots and nonunion pilots and managers in 2018 to February 2020 is deemed to be an example of Boeing's antiunion animus against the Unit FTA pilots. The same is true for the pay disparity between the FTA pilots and the Unit flight tech and safety workers from September 2018 through February 2020. In addition, this large pay disparity led to 5-9 FTA pilots leaving the unit to go to nonunion pilot positions at Boeing and I deem this whittling down by Boeing of the total Unit FTA pilots from about 50 in 2013 to 7 in 2020 as another example of Boeing's antiunion animus.

6. In late 2018 or early 2019, Wilkerson set up a meeting with Bomben and supervisor Otsuka as Wilkerson wanted an explanation about the ongoing pay raise disparity between the Unit FTA pilots and all other pilots employed at Boeing who had received significant pay raise in the fall of 2018 and Bomben did not respond, but Otsuka jumped in, and Manager Otsuka got fairly hostile and agitated toward Wilkerson and said that is not something Bomben and Otsuka, as Boeing managers, can talk to you about, the only way you get raises is through the Union contract negotiation process and it is not appropriate for you to bring up that topic. (Tr. 331.) At this time, Wilkerson remained as shop council representative for the Union. *Id.* Manager Otsuka's statement is deemed as antiunion animus.

7. Many times, from 2018-late 2019, Champlin, as the lead pilot and immediate supervisor of the FTA pilots' group would get quite hostile and highly agitated and combative every time Wendt or some other FTA pilot asked Champlin about the large pay disparity issue and most times Champlin would tell the group in an angry manner to take it up with the Union or that the issue was being handled by upper management. (Tr. 457–458.) Champlin's many hostile and loud statements are deemed as antiunion animus.

8. Wilkerson describes a new unjustified Boeing rule enacted in 2019 by his Lead Pilot Supervisor Champlin with Manager Ballou which prevents the Union from using Boeing's empty conference room during lunch hour breaks and scheduling the meetings using Boeing's Outlook calendar software as

Wilkerson had done many times before without incident or a change of rule but this time Champlin instructs Wilkerson that he needed to ask Champlin's permission going forward to have union pilot meetings on our lunch hour. (Tr. 334.) Champlin's new rule is deemed unlawful and another example of Boeing's antiunion animus toward Unit FTA pilots.

Boeing may argue that it is improper for me to consider these above-referenced events outside the Section 10(b) period as evidence of animus. The Union filed its initial charge on February 9, 2021. (GC Exh. 1(a)-(b).) Thus, each of the above events occurred more than 6 months before the filing of the charge. Nonetheless, it is well established that events outside the 10(b) period can be used as background evidence of an employer's animus. *Bemis Co., Inc.*, 370 NLRB No. 7 slip. op at 26 fn. 66 (2020) (citing *CSC Holdings, LLC*, 365 NLRB 665, 668 (2017) (same.)). Moreover, conduct that exhibits animus but that is not independently alleged or found to violate the Act nevertheless may be used to shed light on the motive of other conduct that is alleged to be unlawful. *Brinks, Inc.*, 360 NLRB 1206, 1206 fn. 3 (2014). Accordingly, it is proper for me to rely upon the above-referenced events as evidence of Boeing's discriminatory motivation in this case as I analyze whether Boeing acted with antiunion animus in connection with its mass layoff of the Unit FTA pilots and subcontracted out this work to contractor pilots in 2020 and 2021.

Boeing's antiunion animus is further inferred by the company's complete change of plans and shifting, false, or exaggerated reasons offered for its complete flip-flop of instructor pilot training plans centered around the unsuccessful April 14, 2020 vote on the 2nd decertification petition. The evidence heavily supports that Boeing completely reversed itself from a plan involving its fully employed blue badge Unit FTA instructor pilots from May 2019 to April 13, 2020, to Boeing new contractor instructor pilot plan which completely flipped Boeing's training program starting immediately on April 17, 2020, which included replacing the soon-to-be laid off Unit FTA pilots with contractor instruction pilots with questionable less-than-gold standard Boeing training in direct response to the failed 2nd decertification petition.

I find that in mid-April 2020, all 7 Unit FTA pilots had volumes of work expected with the 737 Max RTS work, ferrying planes, and their usual entitlement/line assist and pop-up work. In fact, from May 2019 through October 2019, Davis and Champlin made reference to how busy the Unit FTA pilots could expect to be for at least the next 2–5 years. (Tr. 98, 101–102, 432–452; Jt. Exhs 7, 14, and 15.) In addition, Davis' Return to Gold Standard Instructor Pilots Training Plan including the hiring of 5 new Unit FTA pilots was still in play from October 2019 through April 14, 2020. *Id.* Also, Plunkett presented direct evidence of bargaining negotiations on January 31, 2020, where the two sides agreed to language in the new CBA where “[the FTA] instructor pilots will continue to perform exactly the same tasks [entitlements/line assist and pop-up work] for the foreseeable future. . . .” (Tr. 1094–1095; CP Exh. 2 at 1.) All signs continued to show hiring 5 new FTA pilots, implementing the Gold Standard Instructor Pilot Training Plan and staying very busy with plenty of work on the horizon for 2-

5 years as late as April 13, 2020. (Tr. 112; R. Exh. 31 at 3537; R. Exh. 21 at 3898 and 3900; and R. Exh. 21 at 3903.)

Only immediately *after* the unsuccessful vote for the 2nd decertification on April 14, 2020, did things materially shift for the Unit FTA pilots when Bomben and other Boeing managers began to make up reasons for the material changes to now suddenly abandon the Return to Gold Standard Instructor Pilot Training Plan to a completely different and false plan to hire 70 gray badge contractor instruction pilots to replace the remaining 7 Unit FTA pilots who were being punished for their vote on April 14 in the 2nd decertification petition to keep the Union in place as representative and also, strangely enough, Boeing now says suddenly there was no work for the 7 Unit FTA pilots in the next 2–5 years. These announced changed or shifted false positions from Boeing began immediately after the April 14 failed vote on April 17 and manager meetings thereafter in late April, May, and June 2020. (R. Exh. 32 at 3525; R. Exh. 11 at 3373–3374; and R. Exh. 16.) These fully changed conditions were not shared with the Unit FTA pilots or the Union in late summer. This news of completely changed conditions beginning immediately after Boeing lost the April 14 2nd decertification vote is alarming but more evidence of its antiunion animus and its discriminatory motivation to punish the remaining Unit FTA pilots at all costs.

Respondent defends that it was suffering financial difficulties at this time from two Model 737 Max crashes and the pandemic. While Boeing blames this complete flip-flop of position on the pandemic, I reject this reasoning as false based on Boeing's history of antiunion animus directed at the Unit FTA pilots and find Boeing's flip-flop to be contrary to common sense. While generally I would not second guess the business decision of a large company like Boeing, here it is apparent to me that Bomben's false statements and the strong evidence before and after the April 14 unsuccessful 2nd decertification vote along with the absence of Davis, Champlin, White, Locklear, and Shelton as witnesses to shed a better light on the reasons for the flip-flop in Boeing's plans leave a huge void as to whether the economic conditions legitimize Boeing's business justifications for the flip-flop in plans or not.

In addition, it is apparent that the personal vendetta that Kinsey, as a gray badge contractor pilot with a history of bad-blood with the Unit FTA pilots, was not qualified for Boeing to elevate to upper management and in place of Davis' Return to Gold Standard Instructor Pilot Training Plan, Kinsey became the architect of Boeing's shocking flip-flop plan away from improved quality instructor training and, instead, toward a mass layoff of Boeing's blue badge Unit FTA instructor pilots to maybe save money. Kinsey, as architect, quietly leaves Boeing a month after spilling the beans to Wendt about how the 2nd decertification vote failure wreaked havoc with Boeing upper management and abandoned the Return to Gold Standard Instructor Pilot Training Plan allowing Boeing to implement the lower quality Kinsey plan so that Boeing could punish the Unit FTA pilots with a mass layoff.

Furthermore, Boeing's antiunion animus is also demonstrated directly through Kinsey's April 22, 2022 statement to Wendt that Boeing had to freeze the Return to Gold Standard Instructor Pilot Training Plan because the unsuccessful 2nd decertifi-

cation vote had thrown things into chaos and Boeing was moving in a new direction without Kinsey.²⁹ (Tr. 112, 437–438, 460, 464, 573–575.) Kinsey's April 22 conversation with Wendt confirms that Boeing's plan to abandon the Return to Gold Standard Instructor Pilot Training Plan began immediately after the April 14 unsuccessful vote on the 2nd decertification petition.

The timing of events here between the Unit pilots' vote to defeat the 2nd decertification petition in mid-April to the announcement of their mass layoff in late summer 2020 is also suspect and supports finding animus. The Board has long held that the timing of adverse action shortly after an employee engaged in protected activity will support a finding of unlawful motivation. *Alternative Entertainment*, 363 NLRB 1139, 1148 (2016); *Trader Horn of New Jersey, Inc.*, 316 NLRB 194, 198 (1995). Boeing's antiunion animus can also be inferred from Boeing's demonstrated knowledge of general union activity as Bomben emailed all voting Unit members on February 13 encouraging them to vote to pass the 2nd decertification, Bomben and Boeing followed the failed vote and knew on April 14 that the 2nd decertification petition had failed again and the timing of the adverse mass layoff to punish the Unit FTA pilots by Boeing just 4 months after the failed 2nd decertification vote was known to Boeing and is further evidence of Boeing's animus toward the Unit FTA pilots.

I further find that Boeing's business justification for the layoff of 7 FTA pilots to be entirely lacking in credibility and comprised entirely of pretext. In addition, I further find that Boeing's assertion that it had long planned to layoff the group of 7 FTA pilots to be false, especially after Wendt, Wilkerson, and Laxton each confidently testified to a version of events that flatly contradicts Boeing's pretextual reasons behind the layoffs. Boeing's flip-flop in plans away from Davis' Return to Gold Standard Instructor Pilot Training Plan which acknowledged the lower quality gray badge contractor instruction pilots defies logic as I do not think Boeing would normally sacrifice safety and quality of its instruction pilots to save money especially after the 2018 and 2019 Max crashes put the company under a microscope.³⁰

Moreover, Boeing's April 17 flip-flop plan came about after Davis and Champlin announced as recently as late 2019 through mid-April 2020 how vital the FTA pilots were to Boeing's increased quality of instruction training to become Davis' Return to Gold Standard Instructor Pilot Training Plan including the hiring of five additional Unit FTA pilots. Boeing's flip-

²⁹ Kinsey left Boeing a little more than a month after this meeting with Wendt on April 22. Another strange departure for a contractor pilot after he was oddly plucked by Boeing from his contractor world and elevated to Boeing's upper management by December 2019 to be returned to his gray badge contractor instruction pilot world on June 1, 2020, just over a month after his spilling the beans to Wendt.

³⁰ For example, it is one thing to contract out internet or credit card customer service to a foreign country at a lower cost but contracting out the instruction pilot work which teaches Boeing's customer airlines' pilots how to fly their new or upgraded Boeing airplanes seems ill-advised with Davis' admission that some contractor instruction pilots were qualified below Boeing's gold standard blue badge employee standards..

flop plan is more pretext and evidence of Boeing's antiunion animus. At no time did Boeing present evidence that its military operations which average about 40 percent of Boeing's operations experienced any negative financial effects from the pandemic in 2020–2021 to require the mass layoff of all Unit FTA pilots. In addition, Bomben admits that he never reached any headcount reduction goal of laying off 10-15 percent of his 800-person workforce and, in the end, in 2020, Bomben laid off only 47 people in total -- 40 people in design build and all of the remaining 7 Unit FTA pilots but no other pilots including none of the 18 flight tech and safety pilots Bomben managed. (Tr. 874–876, 886, 939, 974.) Moreover, only 2 other Boeing pilots in Boeing's entire 160,000-person workforce were laid off. (Tr. 719, 726, 791–792, 913–914, Jt. Exh. 37 at table 3.)

As stated above, Bomben declared a 10–15 percent workforce layoff in 2020 supposedly due to the two 737 Max crashes and the pandemic despite the fact that Boeing's disparate pay raise issue in 2018-2019 had resulted in whittling down the Unit FTA pilots from 17-20 to 7 Unit FTA pilots in early 2020. This loss of 10–13 Unit FTA pilots is sufficient to cover the mandate for the Unit FTA pilots as, once again, *none* of the 18 Unit flight tech and safety pilots were laid off and *only 2 of the other 200 nonunion pilots* lost their jobs as part of the pandemic and Boeing's mandate in 2020. This disparate treatment toward the Unit FTA pilots in relation to all other Boeing pilots is another example of antiunion animus and Boeing's discriminatory motive against the Unit FTA pilots.

Here, I further find that Boeing provided varying reasons for laying off all 7 FTA pilots despite its position that it was reducing its workforce by 10 percent in August 2020 and 10 percent of 7 FTA pilots is less than one not all 7. Moreover, Boeing falsely argues that all 7 FTA pilots' work had gone away by August 2020 yet as long as Boeing continued to manufacture airplanes, its 7 FTA instructor pilots would have work to do and as recently as May and October 2019, Managers Davis and Champlin unequivocally stated that the FTA pilots had 5 years of work and there would be almost too much work when the 737 Max was ungrounded and returned to service, the FTA pilots were necessary for no other reason than to train the new contractor pilots so they could improve the quality of training to get back to Boeing's gold standard enjoyed by its blue-badged FTA pilots and all other pilot employees at Boeing. I find that Boeing's pretextual explanations support a finding that Respondent discriminated against the 7 laid off FTA pilots because they engaged in protected union activities and as punishment for engaging in these union activities. Respondent therefore fails to meet its burden to prove it would have laid off the 7 Unit FTA pilots if they had not engaged in the failed 2nd decertification vote in April 2020.

This string of events, while a complete flip-flop way from the Return to Gold Standard Instructor Pilot Training Plan for improving the quality of contractor instructor pilot's training which Davis opined had become diluted with contractor pilots coming from training that was beneath Boeing's gold standard Blue University training that all Unit FTA pilots possessed which included adding 5 new Unit FTA pilots, cannot be a legitimate business justification. Boeing failed to bring forward its most knowledgeable witnesses, Davis, Champlin, Locklear,

and White, to properly explain the flip-flop and Kinsey, a known foe to the Unit FTA pilots for more than 10 years, was not believable and Bomben also was impeached several times.

Boeing's layoff violates its agreement in the successor CBA that work would stay with the Unit FTA pilots in the foreseeable future from March 2020 going forward and Boeing is required to work with the Union before announcing its mass layoff of all 7 FTA instructor pilots which Boeing did not do. It is unlawful for Boeing to renege on the successor CBA and this unlawful conduct is yet more evidence of Boeing's antiunion animus. See *Bates Paving & Sealing, Inc.*, 364 NLRB 509, 511 (2016)(contemporaneous ULPs evidence of animus.)

Respondent went through a list of things an employer could have done, for example, to support decertification. It left out the thing this employer actually did, which was engage in gross and explicit salary discrimination beginning in 2018, repeating over and over, as the evidence has shown, drawing to the bargaining unit's attention the responsibility of the Union for this discrimination. In addition, Boeing falsely says that it "did not campaign during the 2020 [2nd] decertification election." (R. Br. at 28.) However, on February 13, 2020, before the 2nd decertification vote, Bomben weighed in with Boeing's antiunion position and told the Unit FTA pilots that Boeing preferred working directly with the pilots without the Union. When your boss—the person who signs your paycheck, sets your schedule and advocates for (or prevents) your promotion or continued existence as an employee—and says a union is a bad idea, it is hard to disagree. Nonetheless, to the shock of Boeing and Kinsey, a majority of the Unit pilots did disagree and the 2nd decertification petition failed and did not pass on April 14, 2020.

Boeing's use of the Covid-19 pandemic is a pretext for its layoff of the 7 FTA pilots as it is a classic bait-and-switch guise where for years Boeing whittled away this small group of gold-standard trained blue-badge employees with its antiunion animus and wore down the Unit FTA pilots so that its ranks had dipped down 5-10 pilots since 2018 to 7 and since 2013, Boeing laid off 25-35 simulator instruction pilots in Renton and transferred this work to Miami, Boeing forced two separate failed decertification votes, and finally the August/September 2018 unfair substantial pay raise disparity plan was practically the last straw until Davis and his team came in October 2019 and promised the Unit FTA pilots that they would get 5 new instructor pilots and be part of a Boeing future business plan to train and convert gray-badged contractor pilots to become blue-badged Boeing employees after returning to the Boeing gold standard training by FTA pilots. The Unit FTA pilots believed Davis and his Return to Gold Standard Instructor Pilot Training Plan was put forth in good faith.

I find that Boeing was motivated by antiunion animus and was punishing its unit FTA pilots for their union activity in April 2020 as Boeing fully expected to rid itself of the Union for this small unit of pilots once and for all at that time. No other rational explanation exists for Boeing to justify its substantial flip-flop in position from its Return to Gold Standard Instructor Pilot Training Plan to its layoff of all 7 Unit FTA pilots. As a result, I find that the General Counsel has presented a prima facie case for violation of Section 8(a)(3) and (1) by

Boeing's mass layoff its 7 Unit FTA pilots as punishment for their union activity of voting against the 2nd decertification petition in April 2020.

Because I have found that the General Counsel has satisfied her initial showing, the burden of persuasion shifts to the employer to show that it would have taken the same action in the absence of unlawful motive. Under *Wright Line*, an employer cannot simply present a legitimate reason for its action. *Igramo Enterprise*, 351 NLRB 1337, 1338 fn. 10, 1340 (2007), rev. denied 310 Fed.Appx. 452 (2d Cir. 2009). Where the General Counsel has made a strong showing of discriminatory motivation, the employer's defense burden is substantial. *East End Bus Lines*, *Ibid*; *Bally's Park Place, Inc.*, 355 NLRB 1319, 1321 (2010), enfd. 646 F.3d 929 (D.C. Cir. 2011).

Respondent contends that it would have laid off all 7 FTA pilots, regardless of their union activity. I find that Respondent does not carry its burden of persuasion in light of the ample evidence of antiunion animus and pretext and because Boeing failed to bring forward its key witnesses to prove it did not layoff its Unit FTA pilots as punishment for their April 14 vote on the 2nd decertification petition and abandon its Return to Gold Standard Instructor Pilot Training Plan without antiunion animus. See *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003) ("[I]f the evidence establishes that the reasons given for the [employer's] action are pretextual . . . the [employer] fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis."); *Limestone Apparel Corp.*, 255 NLRB 722 (same). Boeing looks to have prioritized cutting costs and ridding itself of a group of union pilots it has historically treated badly over following through to improve the quality of its contractor instructor pilots to get back to Boeing's renowned gold standard training as it was prepared to do in late 2019 and early 2020 before Boeing saw that the results of the unsuccessful 2nd decertification vote did not go as expected and decided to flip-flop its training plan and layoff all of its FTA instructor pilots as punishment for their April 14 vote.

As a result, I further find that Respondent discriminatorily laid off the 7 FTA pilots in late 2020 and early 2021, due to the FTA pilots' union activities in violation of Section 8(a)(3) and (1) of the Act. Given the totality of the circumstances here and turning to Boeing's affirmative defense, I conclude that Boeing did not meet its burden of showing that it would have taken the same mass layoff action in the absence of the FTA Unit pilots' union activity. While the plane crashes in 2018 and 2019 and pandemic in 2020 caused great economic harm to Boeing, I reject this business justification under the unique facts here and further find that the true motive for laying off the FTA pilots and deciding to subcontract more contractor pilots in their place was an antiunion animus.

2. Boeing's Transfer of the Unit FTA Pilots Work to Contractor Pilots Was Unlawful In Furtherance of Its Unlawful Mass Layoff

The General Counsel's complaint further alleges that beginning after August 21, 2020, Boeing unlawfully subcontracted all of the work of the Unit FTA pilots also in violation of Sec-

tion 8(a)(3) and (1).

A standard *Wright Line* analysis, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. (1982), as in section B.1. above, applies here to analyze whether Boeing violated § 8(a)(3) and (1) of the Act by subcontracting bargaining unit work in response to union activity and discriminatory subcontracting of work from a bargaining unit has been found consistently to violate Section 8(a)(3) when motivated by antiunion animus. *San Luis Trucking, Inc.*, 352 NLRB 211, 231 (2008.); see also *Chemical Solvents, Inc.*, 362 NLRB 1469 (2015).

Here, similar to Section B.1. above, I find that the General Counsel has met her burden of showing that Boeing's antiunion animus was a motivating factor in Boeing's decision to subcontract out all of the Unit FTA pilots same work performed by the PSP contractor pilots and ongoing work which remained vital and continued and was expected to continue unchanged for at least 2-5 years from the dates of each Unit FTA pilot's layoff as Boeing's business is expected to continue. Because Boeing sells or upgrades its airplanes, the Unit FTA pilots will have work teaching airlines' pilots how to safely fly Boeing's airplanes well into the future. I further find that Boeing has failed to demonstrate that it would have subcontracted out all of the 7 Unit FTA pilots' work if not for their union activity on April 14, 2020 when they voted against the 2nd decertification and given Boeing's long history of antiunion animus against the Unit FTA pilots. I further find that Boeing acted unlawfully when it subcontracted out all of the Unit FTA pilots work to PSP contractor pilots in retaliation and punishment for the Unit FTA pilots' denial of the 2nd decertification.

As a result, I find that on or after August 21, 2020, Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily subcontracting all the work of the 7 Unit FTA instructor pilots including Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson because they participated in union activity.

CONCLUSIONS OF LAW

1. Respondent, The Boeing Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Charging Party, The Society of Professional Engineering Employees in Aerospace, affiliated with the International Federation of Professional and Technical Engineers, Local 2001 has been a labor organization within the meaning Section 2(5) of the Act.

3. Respondent's President and Chief Executive Officer David Calhoun, Howard E. McKenzie, and Mark T. Locklear, are supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act.

4. On August 21, 2020, Respondent unlawfully announced the discriminatory layoff and later terminated the employment of 7 unit FTA instructor pilots including Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson, as punishment for their union activity in violation of Section 8(a)(3) and (1) of the Act.

5. On or after August 21, 2020, Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily subcontracting the

work of the 7 unit FTA instructor pilots including Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson because they participated in union activity.

6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. All other complaint allegations are dismissed.

REMEDY

I find that a general cease-and-desist order is warranted, as well as a typical duration notice posting.

Specifically, having found that Respondent violated Section 8(a)(3) and (1) by disparately laying off Instructor Pilots Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson (collectively “the 7 FTA Pilots”), I order the Respondent to offer each of the 7 FTA Pilots immediate and full reinstatement without prejudice to their seniority or any other rights and/or privileges previously enjoyed and make each of the 7 FTA Pilots whole for the wages and other benefits each of them lost commencing immediately after each of their respective last days of work at Boeing because Respondent unlawfully laid them off, including reimbursing each of them for search for work expenses and any other direct or foreseeable pecuniary harms suffered as a result of their unlawful layoff and expunge from all of Respondent’s files all negative references to unlawful layoff of each of the 7 FTA Pilots and notify each of them in writing that this has been done and that all negative references to the unlawful layoff will not be used against each of them in any way. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson for their reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall compensate Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson for lost compensation associated with the unlawful layoff and any other direct or foreseeable pecuniary harms incurred as a result of the unlawful layoff for each of the 7 FTA Pilots. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), Respondent shall compensate Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson for the adverse tax

consequences, if any, of receiving a lump-sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), Respondent shall, within 21 days of the date that each amount of backpay is fixed, either by agreement or Board Order, file with the Regional Director for Region 19 a report allocating backpay to the appropriate calendar year(s) for Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson, if any.

I order that Respondent post a notice at its Renton facility and at all other of its Seattle Area facilities in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. *Id.* supra at 13.

In addition, in accordance with *Containerboard Packaging-Niagara*, 370 NLRB No. 76, as modified in 371 NLRB No. 25 (2021), Respondent is ordered to file, with the Regional Director for Region 19, a copy of W-2 forms reflecting the backpay award for Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson, if any.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendations.³¹

ORDER

Having found Respondent, The Boeing Company, has engaged in certain unfair labor practices, I find that it, through its officers, agents, successors, and assigns, must cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent, The Boeing Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - a. Laying off employees because of their union activity;
 - b. Transferring employees’ work to subcontractors in retaliation for employees’ union activity, and
 - c. In any like or related manner interfering with, coercing, or restraining employees in the exercise of their Section 7 rights.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - a. Resto re the FTA pilot work, as well as all other work handled by the pilot unit, defined most recently in Case 19–RD–254116, that was subcontracted out beginning in 2020;
 - b. Within 14 days of the Board’s Order, offer immediate and full reinstatement to their former positions to Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, David Whitacre, and Jim Wilkerson;
 - c. Pay Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, David Whitacre, and Jim Wilkerson for the wages and other benefits they lost, including search for work expenses and any consequential and compensatory damages, because Respondent laid them off and subcontracted their work;28

³¹ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Orders shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

d. Remove from Respondent's files all references to the layoffs of Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, David Whitacre, and Jim Wilkerson;

e. Reimburse Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, David Whitacre, and Jim Wilkerson for an amount equal to the difference in taxes owed upon receipt of their lump-sum backpay payments and the amount of taxes that would have been owed had they not been laid off;

f. Submit appropriate documentation to the Social Security Administration for Jeffrey Cotton, Brian Lavelle, Gregory Laxton, Timothy Patterson, Diego Wendt, David Whitacre, and Jim Wilkerson so that when backpay is paid, it will be allocated to the appropriate periods;²⁹

g. Provide the Regional Director with a backpay report allocating the payment(s) to the appropriate calendar year and a copy of the IRS form W-2 for wages earned in the current calendar year no sooner than December 31st of the current year and no later than January 30th of the following year;

h. Within 14 days after service by the Region, post at its at its U.S. commercial airplane facilities copies of the attached notice marked Attachment A, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of notices, Respondent shall mail copies of the notices to all current pilot employees and former pilot employees who were employed at any time since August 21, 2020, and distribute the notices electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicated with its employees by such means; and

i. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C., March 22, 2024

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT lay you off because of your union membership or support.

WE WILL NOT divert your work to a subcontractor because of your union membership or support.

WE WILL NOT eliminate any classification or unit of employees because you support or are members of a union.

WE WILL restore all work we subcontracted out beginning in 2020 that was formerly done by our flight training airplane (FTA)/flight operations instructor pilots as well as those in the following unit:

All full-time and regular part-time pilots employed in Instructor Pilot positions with flying duties and requiring a current FAA pilot certificate who were employed at and permanently assigned to the Longacres Training Center located at 1301 SW 16th Street, Renton, Washington, and all of our full-time and regular part-time standards pilots, safety pilots, technical pilots, and simulator-only pilots/instructors who were permanently assigned to and work at or out of our Renton, Washington facilities; excluding pilots on Pilot Early Leave, BTE pilots, executive pilots, pilots located and working remotely outside the State of Washington, office clericals, all other employees, and guards and supervisors as defined in the Act.

WE WILL reinstate the FTA/flight operations instructor pilot classification and pilot's unit we announced elimination of on August 21, 2020.

WE WILL offer Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson immediate and full reinstatement to their former jobs without prejudice to their seniority or any other rights or privileges previously enjoyed

WE WILL pay Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson for the wages and other benefits they lost, including consequential and compensatory damages as well as search for work expenses, because we laid them off and subcontracted out their work.

WE WILL remove from our files all references to the layoffs of Jeff Cotton, Brian Lavelle, Greg Laxton, Tim Patterson, Diego Wendt, Dave Whitaker, and Jim Wilkerson, and WE WILL notify them in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL in any like or related manner interfere with your rights under Section 7 of the Act.

THE BOEING COMPANY

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/19-CA-272489> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

