SUBMISSION OF THE

CANADIAN FEDERAL PILOTS ASSOCIATION

TO THE

CONCILIATION BOARD
OF THE
PUBLIC SERVICE STAFF RELATIONS BOARD

Chairperson:
Mr. Jules Bloch

Members:
Mr. John Keenan
Mr. Pierce Sutherland

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Submission of the Canadian Federal Pilots Association
to the
Conciliation Board of the Public Service Staff Relations Board

1. Opening Remarks

The Canadian Federal Pilots Association submits the following information and documentation in support of our position in the negotiations between the Employer, the Treasury Board of Canada, Transport Canada (TC) and the Transportation Safety Board (TSB) (best described as the operational representatives of the Employer), and the Canadian Federal Pilots Association (CFPA).

2. Description of the Bargaining Unit

The Canadian Federal Pilots Association (CFPA), formerly known as the Aircraft Operations Group Association (AOGA) prior to January 2001, is a bargaining agent representing the approximately 470 professional pilots whose activities include: federal government aviation inspections, flight testing, licencing, aviation enforcement, certification of aircraft and airline operators, engineering flight testing, development of operating standards, Coast Guard helicopter operation, aviation accident investigation, aviation safety analysis and promotion, and the design, monitoring and regulation of the air navigation system. CFPA members are employed by Transport Canada, the Transportation Safety Board, and Nav Canada. CFPA members hold Airline Transport Pilot Licences, which is the highest level of pilot licence attainable in Canada. Aviation regulations require that our members maintain their professional currency in order to retain their licences.

In the past a high percentage of our group came from military pilot backgrounds; however, we currently find that over 70% of our members originate from the civilian aviation industry. Our members are typically qualified at the check pilot, supervisory, or company management levels prior to starting their careers in service to the public and, as a result, they bring a wealth of expertise and professional experience to their organizations.

All CFPA members within the public service fall into the Aircraft Operations (AO) group definition. The Canada Gazette describes the group as:

> *"The Aircraft Operations Group comprises positions that are primarily involved in inspecting, licensing, and regulating aircraft, aviation personnel, air carriers, aircraft operators, airports and supporting facilities, determining certification, developing aviation legislation, standards and information and ensuring compliance with them, and piloting aircraft."*

The complete group definition from the Canada Gazette may be found at Tab 1.

3. Bargaining Background

We believe that a review of the last round of collective bargaining is important for several reasons. Many if not all of the previous issues have resurfaced. Some very critical issues were not satisfactorily resolved, some were deferred, and others have risen in importance due to the unforeseen emergence of threatening employment practices.

The last negotiations began on September 8, 1998 and were concluded with a new collective agreement being signed on December 6, 1999 (see Tab 21). Due to the government freeze on wages and working conditions, no changes were made to the collective agreement for six years. This was, if not the longest, one of the longest freeze periods among employees in the Public Service. Coming out of the recession, civil aviation was undergoing prolonged and record setting growth. Recruitment and retention of qualified professional pilots took on critical importance. The ranks of civil aviation inspectors were decimated, despite Transport Canada's best efforts, much of which involved delegating authority exercised by the regulator to civil aviation (or as commonly referred to "the client"). In 1998 Transport Canada commissioned a "Review of Recruitment, Retention, and Compensation of the Civil Aviation Inspector Community" by Price Waterhouse Coopers (Tab 2).

The mandate of this review is set out on the first page of the report:

> "*Price Waterhouse Coopers LLP (PWC) has thus been commissioned to conduct a review of TC's recruitment, retention, and compensation practices in contrast to those practices of private operators in the aviation sector that employ licensed aviation personnel who possess similar certifications and qualifications required by TC of its CAI population*".

For some time following the completion of the PWC Report, Transport Canada refused to provide a copy to the CFPA. Minutes of a TC meeting showed a decision was made to withhold the Report until negotiations were concluded, however, the Union was able to obtain a copy. Upon receipt of the study, the Union attempted to engage the Employer in a review and analysis of the data and conclusions contained in the Report. The Employer maintained that it had no relevance to the collective bargaining process.

This, despite the Treasury Board Manual on collective bargaining which states:

> "*The Treasury Board undertakes to fulfill its statutory obligations as the Employer in collective bargaining by negotiating in good faith and with*

> *appropriate dispatch collective agreements for public employees that will provide terms and conditions of employment that compare fairly with those prevailing outside the public service for similar work*."

On this subject in the Cronkright dissenting opinion (Tab 3), the Union nominee to the Board in that round of negotiations states:

> "*The Employer has responded that this policy has been suspended as a result of the 'no catch-up' legislation. This is clearly an understandable and no doubt valid observation. However, this is not the first agreement between the parties, nor is it likely to be the last. Therefore, it is essential in my view that an attempt be made to jointly develop guidelines that would act as a barometer in arriving at agreeable comparators and reasonably become a factor in the long run."*

The Employer has refused to discuss the development of a verifiable compensation standard in order to move toward "terms and conditions of employment that compare fairly with those prevailing outside the public service for similar work." The Employer had previously abandoned the Pay Research Bureau. Any discussion of compensation comparables was not to be entertained.

* Note: prior to this round of negotiations, an agreement was reached with the Employer to jointly develop comparable compensation and employment data to address this problem. More about this later.

Of course the Union brought up the Report's conclusions on numerous occasions. The Employer dismissed the report, ignored its conclusions, and all the while maintained that the government policy of a 2% per annum wage increase, coupled with the no-catch-up clause, made the Report irrelevant.

As we will demonstrate later in this brief, both of these "rules" were honoured more in the breach. The Employer introduced a Terminable Allowance concept as a quick and cheap fix to recruitment and retention difficulties which was used as leverage to ratchet down the compensation package. It is readily apparent from a review of the wage settlement figures (listed at Tab 4) quantum was not the problem. In other words, in our opinion the Employer internally recognized the validity of the PWC Report, but refused to debate either its conclusions or its relevance to the on-going recruitment and retention problem. Instead, they chose to impose an internally generated patchwork solution on an endemic problem, and called it "Terminable Allowance". So far in the present negotiations, they appear to be proceeding down the same path.

While many of the issues canvassed in the last round have resurfaced in the present set of negotiations, we believe that a review of two of them,

Compensation and Hours of Work, will provide the Board with an important historical perspective.

4. Compensation

The current compensation package for CFPA member consists of several elements: a Salary Scale, Overtime, Extra Duty Allowance, and a terminable Recruitment and Retention Allowance.

Salary

The salary scale for CFPA members is made up of classification levels and steps within each level. The classification for a particular job is determined by the Employer based on an analysis of the job duties and the steps are annual increments that are earned through years of service.

The Civil Aviation Inspector (CAI) salary scale is made up of five (5) classification levels (CAI-1 through CAI-5) and within each level there are either six (6) or seven (7) steps. The CAI-1 classification level is not a factor as there are no jobs classified at this level; entry level positions are classified as CAI-2.

There are only two (2) members of the bargaining unit classified at the CAI-5 level and forty-four (44) members are classified at the CAI-4 level. The overwhelming majority of CAI positions in the bargaining unit are working level positions classified as either CAI-2 or CAI-3. A large percentage of CAI-4 and CAI-5 positions are designated as managerial exclusions and as such are outside of the bargaining unit. While their pay and terms and conditions of employment are determined unilaterally by the Employer, historically, they have matched the wage scales and terms obtained by bargaining unit members through collective bargaining.

Engineering Test Pilots (ETP) have only one classification level ETP-1 and within that level there are six (6) steps.

The Helicopter Pilots and Supervisors (HPS) sub-group consists of two classification levels, HPS-1, the working level and, HPS-2, the supervisor level. Each level has five (5) steps.

Overtime

Overtime is defined as *“authorized work performed in excess of the employee's normal scheduled Hours of Work".*

Extra Duty Allowance

Extra Duty Allowance, which amounts to $6,300.00 per annum, is pensionable and is paid to all members of the bargaining unit except ETPs and HPSs.

Entitlement to receive this allowance is based on the following:

> "*In order to maintain professional currency and to qualify for the applicable Extra Duty Allowance provided for in the January 17, 1990 agreement between the Treasury Board and the Aircraft Operations Group Association [now the CFPA], a medically fit TC CAI is required to, at a minimum, annually demonstrate professional competency in aircraft operations to a level which allows the CAI to:*
>
> *(a) For an aeroplane, maintain a valid Canadian Airline Transport Pilot Licence - Aeroplane, with a valid Group 1 Instrument Rating and, if applicable pass a pilot proficiency check, or,*
>
> (b) *For a helicopter, maintain a valid Canadian Commercial Pilot Licence - Helicopter, with a valid Group IV Instrument Rating, or a valid Canadian Airline Transport Pilot Licence - Helicopter and, in either case, pass a pilot proficiency check."*
>
> *Professional Currency Programs for Civil Aviation Inspectors - Transport Canada TP73068. (*Tab 5*)*

Terminable Recruitment and Retention Allowance – LOA 99-4 (Tab 6)

> *"Employees in Group A and Group B, as defined below, who are incumbents of positions (either on a substantive basis or acting appointment basis) in the Aircraft Operations bargaining unit shall be entitled to a Recruitment and Retention Allowance as shown below:*
>
> *(a) Group A, which comprises:*
>
> *(i) Employees in the Engineering Test Pilot Subgroup,*
>
> *(ii) Employees in the Civil Aviation Inspector Subgroup who are incumbents of CAI positions in:*
>
> *Commercial and Business Aviation at Transport Canada*
>
> *Maintenance and Manufacturing at Transport Canada*

The Transportation Safety Board, employed as Senior Investigators, Team Leaders and Managers

(b) Group B, which comprises all other employees in the Aircraft Operations Group who are incumbents of positions in the bargaining unit."

*Letter of Agreement (LOA 99-4) (*Tab 6*)*

Group A employees receive $4,200.00 annually and Group B employees receive $1,800.00 annually. This allowance is paid biweekly and is pensionable but does not form part of an employee's salary for other purposes, i.e. overtime.

The best, and as it turned out, the only analysis and recommendation regarding compensation emanating from the last negotiations can be found in the Cronkright dissenting opinion (see Tab 3). We strongly recommend that the Board read this opinion in its entirety.

While all of the above wage components were hotly contested throughout the negotiations, none more so than the Terminable (R&R) Allowance. This allowance was the Employer's solution to the recruitment and retention dilemma.

The Union compromised its principles in accepting these differential allowances and has paid a high price. In the intervening period 146 individual grievances have been filed by our members protesting the arbitrary and discriminatory nature of this allowance. Thus far there have been two PSSRB adjudication decisions on the matter. (Tabs 7 and 8). In addition to creating unrest amongst the employees, Terminable Allowances did not solve the problem of the past and are unlikely to offer any hope for the future.

1) They are discriminatory. For example two CAIs are responsible for carrying out check rides on Citation Jet pilots. If one CAI works in the Aircraft Services Division, he/she will receive Group B allowance. If another CAI works in the Commercial and Business Aviation division he/she will receive Group A allowance.

2) They are not wage rates, they are non-renewable bonuses. When, <u>not if</u>, they are cancelled, employees will face a loss of income, albeit wage rates will remain static. The concept of terminable allowances relies on the flawed presumption of a declining cost of living and a decrease in wage comparators.

3) Terminable Allowances have resulted in a de facto re-classification of six (6) pay levels into ten (10) without any substantiating data.

4) The allowances do not form part of the employees salary, therefore any calculations based on salary level, such as overtime, call-back, standby, and compensatory leave payment are negatively affected.

5) The terminable allowance expired January 25, 2001. The Employer has chosen to extend it three (3) times thus far. The current extension will expire on April 25, 2002.

The wage settlement in the last round of negotiations, inclusive of all forms of compensation, resulted in improvements ranging from a low of 11.3 % for the HPS-1s to a high 21.5% for CAI-5s, with the average increase being approximately 16%. (Tab 9).

5. Hours of Work

During the last round of negotiations, the Union had made a proposal concerning overtime and method of payment. The ensuing discussion evolved into a general review of Hours of Work, particularly with reference to when overtime was triggered. The Union explained to the Employer that with specific exceptions, which were defined in the collective agreement (Tab 10, LOA 99-1), overtime was triggered for time worked outside of “normal hours” on a daily basis. The Treasury Board, after a brief recess, returned to the table with a completely different interpretation and informed the Union that a proposal would be submitted in due course which would deal with what was, in their opinion, a serious misinterpretation of the collective agreement. The Union responded that it did not intend to entertain a proposal which would be specifically crafted to confirm the contract interpretation of the Employer, an interpretation which in fact had no historical basis. Eventually the Employer submitted a proposal which was in effect an elaboration of an ad hoc interpretation made at the bargaining table.

The Conciliation Board, which was chaired by Madam Bilson, did not recommend the Employer proposal. It was subsequently withdrawn by the Employer. Over the life of the current collective agreement the Employer’s interpretation has never been implemented despite numerous threats to do so.

Hours of Work, then as now, is at the heart of the collective agreement. At the time of the PWC Report, overtime comprised 12% of payroll, extreme by any standards. Overtime and method of payment were addressed in Sandra Cronkright’s dissenting opinion (see Tab 3). Both of these issues are being addressed in the current round of negotiations.

6. Present Negotiations

We would like to turn to the present negotiations, which began on February 20, 2001 when the parties met to exchange proposals and continued with negotiation meetings on April 3 - 6, 2001, April 23 - 27, 2001, June 5 - 8, and July 17-19, 2001. On July 19, 2001, the negotiations reached a deadlock and the decision

was made to apply to the Public Service Staff Relations Board (PSSRB) for conciliation. Conciliation meetings were conducted during September 24 - 27, 2001 under the auspices of Denise Wilson without significant progress being made. Due to delays in reaching agreement with the Employer regarding designated (essential service) positions, the Union was not able to apply for the appointment of a Conciliation Board until December 7, 2001.

The following is a full list of the outstanding CFPA proposals submitted to the Public Service Staff Relations Board:

1. Article 19 – Overtime
2. Article 20 – Travel
3. Article 23 – Leave
4. Article 43 – Call Back
5. Article 44 – Standby
6. Article 46 – Extra Duty Allowance
7. Article 47 – Job Security
8. Letter of Agreement 99-4
9. Appendix A – Annual Rates of Pay

There has been very little traditional bargaining between the parties at the table. All too often activities outside of the negotiating arena have served to overshadow our attempts to establish a bargaining rhythm that is so essential to avoiding an impasse.

The following review and analysis of the outstanding proposals will be supported by a series of facts and arguments. We trust that the facts will substantiate the arguments.

Prior to the start of negotiations a meeting was attended by:

Greg Holbrook, National Chairman, CFPA
Shawn Coyle, National Secretary/Treasurer, CFPA
Marcel Nouvet, Chief Human Resources Officer, Treasury Board
Gray Gillespie, Director Employer Representation, Treasury Board
Don Graham, Director of Collective Bargaining, Treasury Board, and,
Merlin Preuss , current Director General Civil Aviation, Transport Canada.

At this meeting a presentation was made by the Union to the Employer outlining the duties and responsibilities of our members in some detail and pointing out some of the issues unique to our membership. At the conclusion of the presentation Mr. Nouvet questioned both the Union and Transport Canada representatives regarding their views on the most significant issues to be faced in the upcoming round of negotiations. It quickly became apparent that both parties were concerned with compensation and recruitment and retention issues. Mr.

Nouvet offered Treasury Board support for a joint study to be conducted by the parties to ascertain market compensation data and produce a report for use by both sides at the bargaining table. It was agreed that the existing CFPA/Transport Canada Management Issues Sub-Committee, (hereafter referred to as the Joint Committee), would provide an appropriate vehicle to produce the study and report.

The first meeting of the Joint Committee took place on January 18, 2001. The group was composed of representatives from the Canadian Federal Pilots Association (CFPA), Treasury Board (TB), Transport Canada (TC), and the Transportation Safety Board (TSB), all of who are members of the negotiation committee. (Tab 11 - Minutes of CFPA/TC Management Issues Sub Committee).

According to the minutes of the meeting, January 18, 2001…

> *"Data Types and Sources: Discussion at this meeting centered on the types and sources of data required for the upcoming negotiations with the understanding that <u>data agreed to by the committee would be forwarded to the Treasury Board TB for reference during the upcoming negotiations</u> [*emphasis added*]. It was decided that data collected would include: Recruitment and Retention Data; Market Data; and Demographic. This data should be presented in a one to two-page executive summary with supporting data as required."*

These minutes go on to state:

> *"Market Data: the HRDC/KPMG study and the Wings survey data were rejected since they were not comprehensive, not screened and not validated. Data from United States sources (CBAA 2001 Salary Survey etc) was rejected because it was not applicable to the Canadian environment in specific terms. <u>The Price Waterhouse Coopers study data was accepted in principle</u> [*emphasis added*]. The CFPA will attempt to get Air Canada Pilot's Association, Airline Pilot's Association and flight training unit compensation data for consideration. The TB will provide Canadian military pay and benefits data for pilot Captains, Majors, and flying Lieutenant Colonels. TC will attempt to get Vancouver Island Helicopter, Canadian Helicopters and Flight Safety International compensation data for consideration."*

This meeting and others produced a joint study (see Tab 12), which was agreed to on April 20, 2001 and tabled at the negotiations during the week of April 23, 2001.

At the outset of bargaining, February 20, 2001 the Union submitted its proposals in a form, self-described as, "areas of interest" (Tab 13 - original CFPA proposals). There had been some talk between the parties of "interest based

bargaining". The Employer followed the same theme and submitted areas of interest, some of which merely opened contract terms by reference to article numbers, with specific proposals "to be submitted at a later date".

Negotiations reconvened in Ottawa on April 3, 4, and 5, 2001. While a wide ranging review of the Union proposals ensued, the following two (2) items were discussed in some depth: Article 46 as it relates to change to the Professional Currency Program and, Article 47 - Job Security.

Article 46 – Professional Currency Program

The CFPA proposal:

> 46.01 (a) wage related
>
> 46.01 (b) be revised as follows:
>
> > Changes to the "Transport Canada Professional Currency Programs for Civil Aviation Inspectors" and the "TSB Policy on CAI Professional Aviation Currency" may be made by mutual agreement between the Union and the Employer [emphasis added].
>
> 46.01 (c) no change.

The Professional Currency Program for Civil Aviation Inspectors at Transport Canada is described in Transport Canada document TP73068 (Tab 5). The program was developed in the early nineties after considerable consultation between the Association and the Employer. The principles of the program are outlined in the document and the mutually agreed nature of the program is highlighted in the background section as follows:

> *"Since the development of the "Green Paper", Transport Canada and the Aircraft Operations Group Association have been working together to develop a mutually agreeable professional currency policy."*

The professional currency program is based on the principle that CAIs will maintain their pilot proficiency and licences by flying departmental aircraft for a minimum of 48 hours per year. At the employee's option and subject to approval of the Professional Currency Steering Committee, a CAI may select an alternative currency program which is deemed to be equivalent to the 48 hour status quo program. The successful completion of their Professional Currency Program qualifies a CAI for payment of the Extra Duty Allowance.

The fundamental principles for the alternative programs are expressed in the policy document as follows:

> *"These policies are founded on the fundamental principle that it is a mutually reached decision between the employee and Employer as to whether he or she will follow a professional currency program based on flying aircraft with the Aircraft Services Directorate or whether the Civil Aviation Inspector will pursue an approved alternate professional currency program. It is up to the Civil Aviation Inspector to propose an alternate professional currency program for consideration by his or her manager and ultimate approval by the Profession Currency Steering Committee. In the absence of the medically fit Civil Aviation Inspector proposing such a program, or in the case where the program is not approved, the medically fit Civil Aviation Inspector will continue to pursue the professional currency program which is based on flying aircraft for a minimum of forty-eight (48) hours a year."*

On or about November 6, 2000 the Employer provided a new version of the professional currency program document for consideration by the Association. The proposed document contained language that clearly indicated that the Employer no longer intended to maintain the concept of mutual agreement and intended to implement their proposal unilaterally.

All CAIs are required to posses an Airline Transport Pilot Licence in order to qualify for initial hiring. To maintain their jobs CAIs must maintain their professional currency and thereby renew their licence qualification in accordance with Aviation Regulations. Although some members fly more than 48 hours per year, it has been determined that 48 hours is the minimum standard for maintenance of professional currency. Any reduction in hours flown as a result of budgetary problems are likely to downgrade the value of our members qualifications below any recognizable industry standard.

The Transportation Safety Board has a similar professional currency program and TSB pilots fly Transport Canada aircraft in the course of obtaining their 48 hours of flying time on the status quo program.

<u>Article 47 – Job Security</u>

The CFPA proposal:

> 47.01 Renew current language
>
> 47.XX " Functions which are presently performed by members of the Aircraft Operations group will not be assigned to members of other bargaining units or delegated to other persons or groups."
>
> 47.XX " Where either party deems it desirable to deviate from this understanding, the parties agree to enter into discussions to consider such proposals and may mutually agree to make exceptions to the foregoing."

This proposal is intended to deal with two (2) problems:

1. The Employer practice of making temporary (acting) appointments of unqualified personnel to CAI positions. While this practice is recognized in the Public Service Employment Act and Regulations, its use is limited to a maximum of four (4) months. These appointments have regularly exceeded the four-month limit.

2. These temporary appointments have evolved into permanent appointments of employees from other bargaining units, most recently referred to as part of "the multi-group process." The Employer is currently appointing previously unqualified persons from other Unions, to CAI positions by changing job descriptions. The successful applicant receives a pay raise under the terms of their collective agreement. This pay rate is less than that of the historical incumbent. This so-called "new practice" is introduced as a thinly veiled attempt to ameliorate, if not solve, the recruitment and retention shortfall.

On April 20, 2001 representatives of the CFPA and the Union of Canadian Transportation Employees (UCTE) were invited to a meeting with TC, chaired by, Art LaFlamme, the Director General Civil Aviation at that time, to engage in consultation regarding a proposed new initiative wherein supervisory positions (not excluded from the bargaining unit) would be redefined to include the opportunity for Technical Inspectors (TI) to make application along with Civil Aviation Inspectors (CAI) to fill vacant positions previously and historically filled by CAI's, i.e. "the multi-group process."

As you will note from the description of the bargaining unit, (Tab1), CAI is a specific job classification with minimum professional qualification requirements, not a generic job title. All CAIs require Airline Transport Pilot Licences and instrument ratings; other Transport Canada inspector classifications (TIs for example) do not require any professional qualifications, or pilot licences. While other employees of Transport Canada may perform various inspection duties, like those relating to airport security, aircraft maintenance, and occupational safety and health, only members of the CFPA are classified as Civil Aviation Inspectors.

The CFPA advised Mr. LaFlamme that since the proposed introduction of this "new practice" was very vague we would like to see some written documentation fleshing out the concept. More importantly, we stressed that this matter was the subject of ongoing negotiations, which in fact were due to reconvene in several days, and suggested that the matter be referred to the bargaining table.

On May 16, 2001 Mr. LaFlamme wrote to the CFPA (Tab 14):

> *"Your feedback and comments would be appreciated by June 1, 2001, as urgent recruitment cases exist and need to be pursued. Therefore, if I'm*

> *not made aware of reasons that we should not be proceeding we anticipate moving ahead following this timeframe."*

On June 1, 2001, Captain Holbrook, National Chairman of the CFPA replied to Mr. LaFlamme (Tab 15) again requesting, *…"that any proposals supporting the introduction of "this new practice" be forwarded to the negotiating table for consideration."*

At the end of May 2001 prior to the LaFlamme deadline of June 1, this "new practice" was implemented. (Tab 16).

Since, in the Union's view, the entire Recruitment and Retention issue and Article 47, in particular, were on the bargaining table, Transport Canada's action was considered to be a demonstration of Bad Faith and a violation of the statutory freeze. To this effect the Union filed for appropriate redress before the Public Service Staff Relations Board (PSSRB).

A mediated settlement was reached before the Board of these and other issues on February 15, 2002 (Tab 17, Minutes of Settlement), which states in part:

> *"Transport Canada agrees to suspend immediately its use of the multi-group process, for the staffing of any indeterminate or term positions that are currently classified as positions in the AO group. The suspension shall remain in effect until the signing of the new collective agreement".*

Further…

> *"The Article 47 proposals that are presently the subject of negotiations between the parties shall continue to be addressed through the negotiation and/or conciliation processes. The parties hereby acknowledge that the use of multi group recruitment is part of the CFPA's proposal on Article 47".*

It is essential to the integrity of the bargaining unit that CAI positions not be homogenized with other bargaining units as a substitute for facing the Recruitment and Retention issue. In Mr. LaFlamme's own words *"urgent recruitment cases exist".*

Negotiations reconvened on April 23 – 26, 2001. Two important issues were discussed at length during this period: 'Hours of Work' and 'Wages'. The Employer elaborated on their position regarding the "proper" interpretation of the collective agreement, namely that:

1. The Employer may vary Hours of Work during the week,

2. The Employer may schedule work other than Monday to Friday, (i.e. Wednesday to Sunday),

3. The Employer may schedule work outside normal hours without compensation, and,

4. The Employer does not find any reference in the collective agreement regarding pay for coffee breaks or rest periods.

The Employer indicated some flexibility in item 4 above.

Historically CAIs have had consistent fixed Hours of Work consisting of 7.5 hours per day Monday to Friday totaling 37.5 hours per week. These "normal" Hours of Work are typically established consistent with Treasury Board policy between the employee and their manager and are usually reviewed on an annual basis. In most work sections individuals have different start times to work their blocks of 7.5 hrs, i.e. 0730-1530, 0800-1600, or, 0900-1700. These are worked out and documented with the local manager. It is our position that any work in excess of 7.5 hrs per day and/or outside of an employee's normal Hours of Work, either before or after there scheduled normal hours, is entitled to overtime compensation. This system has worked for many years to provide mangers with the flexibility to insure availability of employees across an extended service period, i.e. 0700 – 1800, and is consistent with both Treasury Board and departmental policies regarding Flexible Hours of Work.

The provisions of LOA 99-1 (Tab 10) confirm the model of consistent normal hours of 7.5 hours per day by providing for an exception to this rule for in-flight inspections where duty periods of short duration, or spanning two days and outside of normal hours, are likely to occur on a frequent basis. This clause is clearly aimed at providing a reasonable balance between compensation and working conditions.

> *"In the event that the duty hours are less than seven and one-half (7 1/2) hours, he or she shall be entitled to compensatory leave on an hour-for-hour basis for the balance of the difference between seven and one-half (7 1/2) hours and the duty time involved."*

The Employer is proposing to incorporate the exception in LOA 99-1 into the body of the collective agreement thus making the exception, the rule, for all employees.

We are aware that there are a number of employees who for whatever reason have established "local deals" with their manager that vary from this model. These deals are typically motivated by some mutual advantage but are nonetheless a deviation from the contract and are not prevalent. The lack of a mechanism under the Public Service Staff Relations Act (PSSRA) for the Union

to bring forward a policy grievance has left the association without any substantial tools to defend their collective agreement. Additionally, the lack of meaningful negotiations over the extended period of the 1990's allowed for deviations and local interpretations to take root. As a result of the Employer's position on this issue throughout these rounds of negotiation, the awareness surrounding this issue has increased amongst our members and it is our impression that the frequency of deviations and flexibility of employees is declining.

Our contract has no provision for refusal of overtime; our members have always carried out their duties as assigned by the Employer. There is no question about getting the work done; this is simply a debate about the level of compensation to be provided to employees after having done the work. It has only become a point of contention with Transport Canada management with the continued reduction and pressure on overtime budgets without a reduction in workload commitments. The Employer's position seeks to solve their resource shortfalls by eliminating "normal" Hours of Work. The Employer's proposal in its simplest context is more work for less pay or in some cases the same work with less people.

Compensation

On April 27th the Union submitted its wage proposal as outlined below.

The Union committee explained that this proposal was based on the market analysis produced by the Joint Committee. The Employer has refused to entertain any discussion of the Joint Committee report, which in fact had been authorized by the Employer the previous January. Accordingly, at this time we saw no point in pursuing a one-sided debate. In our opinion the wage dispute, then, as now, is about the use of a mutually agreed study which has arrived at verifiable comparators to produce a bench mark position for all CAI’s covered by this collective agreement.

	Current Mid Pt	EDA	R&R	Current TTL	Market Comparison
CAI-03	$ 67,836	$ 6,300	$ 4,200	$ 78,336	$ 129,210
CAI-04	$ 72,177	$ 6,300	$ 4,200	$ 82,677	$ 136,370
CAI-05	$ 77,952	$ 6,300	$ 4,200	$ 88,452	$ 145,896
HPS-01	$ 62,995	$ 6,300	$ 4,200	$ 73,495	$ 121,225
HPS-02	$ 66,098	$ 6,300	$ 4,200	$ 76,598	$ 126,343
ETP-01	$ 84,521	$ 6,300	$ 4,200	$ 95,021	$ 156,731

Market Comparison

Air Canada A320	$ 195,986
Canada 3000 A320	$ 119,309
Air BC BAE146	$ 108,538
Air BC Dash 8	$ 93,008
Market Average	$ 129,210

The above proposal used the CAI-3, 4 and 5 mid-point wage scales as was used in the original PWC Report and revalidated in the Joint Committee Summary (Tab 12). In job match comparisons we found no difference in the job descriptions between CAI-2s and 3s and accordingly we have combined them at the CAI-3 level. The wage proposal incorporates Annual Rates of Pay - Appendix A, Extra Duty Allowance – Article 46, and Recruitment and Retention Allowances - LOA 99-4.

The next set of negotiations took place on June 5 - 8, 2001. The Hours of Work issue was revisited. During these discussions it became apparent to both parties that the establishment of a sub-committee to deal with the Hours of Work might provide a more manageable arena for further discussions. While it appeared that the sub-committee made substantial progress, the Employer was unable to proceed with the sub-committee recommendations. The Employer further stated that they would be referring this matter to their “Steering Committee”, a reference that we would hear frequently over the next several months. We fully understand that agreements reached in sub-committee are tentative and subject to confirmation by the whole committee. However, when a sub-committee, made up of the most senior members from TC and the CFPA, reaches a détente, which is overruled by a steering committee, negotiations are sure to falter.

Negotiations reconvened on July 17th. The Employer submitted a comprehensive Hours of Work proposal (Tab 18) which included a Policy Statement regarding overtime. When questioned about the use of the Policy Statement the Employer replied to the affect that … “trust the department to put in policy but can’t put in collective agreement. It is very precedent setting.” The

Union responded the following day with a counter proposal (Tab 19). Discussions continued with no further result at that time.

The Union had been pressing for a wage proposal despite the Employer's refusal to discuss either the Union's wage proposal or the Joint Committee report. On July 19th the Employer submitted what it referred to as its 'opening pay proposal' which was a 24 month collective agreement, 2 % pay raise effective January 26th each year. The Union was agreeable to the duration, but rejected the wage proposal.

It was equally apparent to both parties that the gulf between us was too big to close without the assistance of a third party. Accordingly, we jointly requested the services of a conciliation officer. Subsequently, Madam Denise Wilson was appointed and reconvened the negotiations on September 24th, 2001.

The first full committee meeting reviewed for the benefit of the conciliation officer a list of proposals in dispute. On September 25th without any prior discussion, the Employer submitted a new 'Hours of Work' proposal (Tab 20), which was a more extreme version of their July proposal (Tab 18) on the same subject. We were informed, however, that this new proposal reflected the opinion of senior management. An immediate recess was called wherein the Union informed the conciliation officer that the Employer's retreat from its own previously held position constituted bad faith bargaining, designed to create a deadlock.

The conciliation officer reconvened the parties on September 26th. The Union emphasizing the difficulty of attempting to move forward while the Employer was moving backward. The Union demanded that the Hours of Work proposal be rescinded as a pre-condition to reconvening joint meetings. The Employer refused. The conciliation officer attempted to bring the parties together through a series of sub-committee meetings discussing 'Professional Currency' and 'Leave'. While some off-the-record progress was made in these two areas, the negotiations were effectively brought to a halt. The Union filed an application for the appointment of a Conciliation Board on December 7, 2001.

The Union included the Employer's conduct concerning the Hours of Work proposal in the bad faith bargaining action cited above. As a result of mediation at the PSSRB hearing**,** this proposal was withdrawn on February 15th, 2002 (See Minutes of Settlement, Tab 17).

Article 19 - Overtime

The CFPA proposal:

> Article 19.04 - Overtime
>
> The incorporation of the concept that such compensation be paid in cash in the pay period following that in which the credits were earned and that upon request of the employee and with the approval of the Employer such compensation may be credited as compensatory leave to be granted at times convenient to both the employee and the Employer.

We believe that the Union proposal regarding the method of payment for overtime worked is fairly straightforward. The employee should be entitled to pay for time worked. The present system that gives the Employer the option of providing pay or compensatory time off for overtime worked is being abused. Overtime is being used to staff unfilled positions. Budget managers are pressing employees to work overtime without pay. This practice by the Employer is also related to the Hours of Work dispute. We object in the strongest terms to this argument. Under any definition of overtime, the employee is entitled to payment for his/her labour. The government's ability to pay is not an issue, despite arguments to the contrary. Sometime ago the system of Employer option worked reasonably well as a "gentleman's agreement". It was understood that the employee was entitled to payment, but time off could be substituted at a time convenient to both. This is no longer the case.

Article 19 – Overtime

The CFPA proposal:

> The employee be compensated at double (2) time for all work performed on the second day of rest (Sunday) whether or not the first day of rest was worked.

The concept of double-time compensation for work on the Sunday (second day of rest) is already enshrined in the current contract. It is, however, predicated on having worked on the previous day (Saturday). This has lead to manipulation of work hours to prevent liability for payment of double-time by the Employer. Given that it is already accepted that work on Sunday is worth more that work on a Saturday, we believe that the guarantee of double-time compensation for Sunday work should be included in the contract. This proposal also relates to the proposal below regarding the consideration of travelling time as time worked for all purposes.

Article 20 - Travelling Time

The CFPA proposal:

20.01 Where an employee is required to travel to or from his or her headquarters area, as normally defined by the Employer, the employee's method of travel shall be determined by the Employer and the employee shall be compensated in the following manner:

(a) On a normal working day on which the employee travels but does not work, the employee shall earn:

(i) his or her regular pay for the day for a period of travel not exceeding seven and one-half (7 1/2) hours,

and

(ii) the applicable overtime rate for additional travel time in excess of seven and one-half (7 1/2) hours.

(b) On a normal working day on which the employee travels and works, the employee shall earn:

(i) his or her regular pay for the day for a combined period of travel and work not exceeding seven and one-half (7 1/2) hours,

and

(ii) the applicable overtime rate for any additional period of travel and work in excess of seven and one-half (7 1/2) hours.

(c) On a day of rest or on a designated paid holiday, the employee shall be paid at the applicable overtime rate for hours traveled and/or worked.

20.02 Renew

20.03 Renew

20.XX For the purposes of Articles 18, 19, 22 and 45, time spent travelling will be considered as hours worked.

20.XX When an employee is in travel status, but does not work or travel, and is required to remain outside of the employee's headquarters area on

a day of rest, or a designated paid holiday, the employee will be granted 7.5 hrs of compensatory leave.

20.XX When an employee is required to remain overnight in accommodation outside of their headquarters area while in travel status, the employee will be granted with 1.5 hours of compensatory leave.

This proposal incorporates:

- the recognition of travel time as time worked,
- compensation for actual hours spent travelling, and,
- the provision for compensation for an employee required to remain overnight in travel status away from home.

Travel time needs to be recognized as work on behalf of the Employer because employees are being sent on travel to a work location on Saturday and then when working on Sunday are not entitled under current provisions for double-time compensation because they Employer maintains they have not "worked" on the previous day of rest.

The current cap of eight (8) hours for travel time compensation is unreasonable for employees who are required to conduct long periods of domestic or international travel. An inspector proceeding to Europe to conduct an inspection or check ride is faced with spending considerable time without compensation.

The frequency of travel and the amount of time spent away from home have significantly increased in recent years and this is becoming burdensome for our members. Oftentimes the time and method of travel is dictated by the availability of airline seat sales for over-weekend travel schedules. Our members increasingly find themselves being forced to give up days of rest at home to save the Employer travel costs. A day in a hotel away from home on a weekend is not a day off.

Article 23 - Leave

During the meetings in September which resulted in a deadlock over the Employers Hours of Work proposal. A sub-committee discussed the Union's leave proposal. We believe that a tentative agreement was reached based on the provisions of the recent PSAC settlement; however, due to the abrupt termination of those meetings the terms of the agreement were never finalized. It is our hope to recreate that agreement before the Board.

Article 43.02 – Call Back

The CFPA proposal:

> An employee who receives a call to duty or responds to a telephone or data line call on a designated holiday or a day of rest or after he or she has completed his or her work for the day, may, at the discretion of the Employer, work at the employee's residence or at another place to which the Employer agrees. In such instances, the employee shall be paid the greater of:
>
> (a) compensation at the applicable overtime rate for any time worked,
>
> or
>
> (b) compensation equivalent to four (4) hours' pay at the straight-time rate, which shall apply only the first time an employee performs work during an eight-hour period, starting when the employee first commences the work.

Because the Employer is providing the employees with cellular phones and portable computers on a regular basis with the expectation that employees have these items available to them at all times, we maintain that pay related to actual time on the telephone or at the computer is seriously under-compensating an employee for the frequent interruption to his/her home life and/or days off. Prior to the widespread distribution of personal computers and cell phones, call back meant only one thing; return to the office.

The current contract provision takes no notice of the evolving technological change to the work environment. Prior to this development it was unusual to perform any but the most minor tasks from the employees home or other location. It has become an increasingly common practice intrude on the employee's off-duty hours. The ability of the Employer to provide around-the-clock access to these qualified professionals greatly increases the level of service that the Employer provides to their clients without commensurate compensation to the employee.

Article 44.01 - Standby

The CFPA proposal:

> Article 44.01 (b) - An employee on standby shall be compensated at the rate of one (1) hour for each four (4) hours or portion thereof that the employee has been designated as being on standby duty.

We are proposing two (2) hours of compensation for each eight (8) hour period of standby. The existing quantum of one (1) hour for eight (8) hours of standby duty has been in existence without change for several contracts spanning over two decades and simply no longer reflects current compensation levels. Neither does this provision account for the lack of a guaranteed minimum number of days off per month in our contract nor does it provide any limitation to the amount of time that the Employer may direct the employee to be on standby.

9. Conclusion

In conclusion, it will be no surprise to the Board that a very strained relationship exists between the employees and the Employer. The causes of this increasing tension may be debatable, but the need for a cure is not. The “Alphonse Gaston” nature of the Employer relationship exacerbates these difficulties. A clear example can be seen in the debate over Hours of Work. The Employer (Treasury Board) listens to the discussion between the Union and the other Employer (Transport Canada) at the bargaining table concerning Hours of Work. The Employer (Treasury Board) says, “that’s not what the contract means, that would be against Treasury Board policy”; ergo, the Union and a large part of Transport Canada management must have been in error.

As soon as the Employer (Treasury Board) makes a claim that the Hours of Work provision provides management with the ability to avoid overtime payment, a significant group of managers pick up this theme and threaten the employees with a new interpretation, which the employees know has never been utilized by the managers prior to this time.

The Employer (Treasury Board) now decides to write a new proposal the aim of which is to specify all of the flexibility that they thought should have been in the collective agreement years ago. However, the Employer (Treasury Board) is not technically capable of writing that language so the Employer (Transport Canada) writes the proposal as a wish list.

Unfortunately, this is not an isolated example of the lack of communication between the employees, the Union, Employer Number One and Employer Number Two, plus regional management which in many cases seems to have an independent mandate.

The worst outcome of the failed negotiation in this instance is not, in our view, withdrawal of services by CFPA members, but rather the inevitable decline in Transport Canada’s ability to monitor and regulate Canada’s civil aviation safety and security system.