Submission of the
Canadian Federal Pilots Association
to the
Public Interest Commission
with regard to the
AO Collective Agreement
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Bargaining unit role and perspective in the Public Service

The Canadian Federal Pilots Association (CFPA) represents approximately 435 Airline Transport Pilots who are employed by Transport Canada (TC) and the Transportation Safety Board (TSB). These employees are classified in the Aircraft Operations (AO) group and are subject to the AO Collective Agreement established with the Treasury Board. Approximately 400 of these pilots are employed within the Public Service at TC and the TSB. About 25 AO group members are employed at the TSB, while the bulk of the group is employed at TC.

The AO group is a very small group within the Public Service and is distinctive in that there are ongoing annual and semi-annual requalification requirements to maintain the professional licensing and medical standards necessary for continued employment. Unlike some Public Service occupational groups, there are almost no mobility options within the Public Service for these employees given the concentration of positions predominantly within one department.

The demographics of the group are atypical. The average age of the group is 52 and over 90% of the employees are male. The average service is considerably lower that might be expected for such a mature population, at just under 11 years. AO group employees typically come to the Public Service as a second career. They obtain their qualifications and experience predominantly by working in industry for many years to acquire the skills and credentials that qualify them for an entry level AO position. The Public Service does not offer professional qualification training and therefore must compete with industry to attract experienced personnel.

Bargaining History

The CFPA met with the Employer on February 15, 2011 and engaged in three days of negotiations. The Treasury Board had agreed with the Union prior to the meeting that the parties would participate in accelerated negotiations.

Preliminary discussions with key Treasury Board labour relations personnel led the Union to believe that this round of bargaining could be approached in a progressive and collaborative manner using a more interest-based approach.

Despite our best efforts to cultivate discussion on the real issues in the workplace during the initial negotiation sessions, it became clear that the Employer had decided on a very firm and predetermined agenda with no room for discussion on anything other than full acceptance of the Employer's demands without change. As a result, the talks did not produce an agreement and after numerous exchanges between the principals the parties met again on June 20th, 2011 where the Employer informed us that the accelerated discussions were not successful.

On June 22nd, 2011 the Employer presented an expanded list of demands, and we again provided the Employer with a list of the CFPA's areas of interest for discussion. The Employer requested time to study our areas of interest and requested we set dates for follow-up meetings.

The parties met to resume negotiations on October 4, 5 and 6th, 2011. By the end of the session, we had exchanged all proposals with the Employer and made some progress in the area of a few non-contentious items. The parties met again on October 26-27 and little substantive progress was made. Finally, we met on November 29 thru December 1st of 2011 and after three substantial and comprehensive attempts to satisfy the interests of both parties and move negotiations forward, it became clear that both parties were deadlocked.

The Public Service Labour Relations Board (PSLRB) subsequently established a Public Interest Commission (PIC) to consider the outstanding matters between the parties and to recommend a settlement. On May 29-30, 2012 the two nominees to the Public Interest Commission met with principals from the parties to discuss the items referred to the PIC with the purpose of facilitating resolution of some of the outstanding issues. While there was open and informative dialogue, the parties were unable to achieve any substantial mutual agreement.

Workplace Context

A major reorganization of Civil Aviation within Transport Canada has been ongoing for many years and remains to be finalized. Associated with the reorganization have been many rumours and threats about significant realignment of duties and changes that would blur classification group boundaries. Additionally, the Employer is currently embarking on a major classification review of the AO group the outcome of which is unknown. While it is understood that this Union has minimal say in these matters, it is very difficult to operate within the Public Service, when departments have the ability to ignore applicable frameworks with impunity. Employees have no protective measures to prevent significant personal financial upheaval. The current budgetary pressures and threats of further instability in the workplace have intensified the members' call for appropriate stabilizing measures within the collective agreement.

There is a prevailing belief within the membership, that they are under attack, that they are not wanted, and that their presence in the workplace is problematic. As of

October 2012 there were 102 vacant AO group positions within Transport Canada. Over the course of the past year 34 AO members have vacated their positions and only 9 of those positions were re-staffed. While wholesale elimination of AO positions has not occurred on a widespread basis there continues to be cases of job erosion, vacant positions, and a general resistance to recognizing the need for the specialized expertise of this group by the Employer.

A fundamental misunderstanding continues to exist between CFPA members and the majority of their management as to the need for their professional expertise and the importance of proper adherence to staffing and classification rules. Recent history has seen numerous grievances, PSLRB hearings, even Federal Court cases against the Employer involving these issues. Some issues have been partially resolved, while others continue to simmer. The Union believes that the Employer needs properly qualified personnel to perform AO duties and that the Treasury Board system for staffing and classification should not be circumvented.

Evidence of this thorny approach by the Employer and the difficulty in seeking solutions is the current situation where a TI-6 position (formerly CAI-03) and a PM-6 (formerly CAI-05) position have been assigned to the AO bargaining unit. The Employer reluctantly accedes that the court has assigned these positions to the AO bargaining unit but asserts its exclusive classification authority to maintain the positions in the TI and PM classifications. The applicable terms and conditions of employment for these positions remain in debate between the parties.

Wage Package Composition and History

The wage package for the AO group differs from some others in that a significant portion of the package is outside of the salary tables and a sizable portion of the non-salary is tied to the maintenance of professional qualifications. The AO group wage package has included a non-salary but pensionable allowance tied to professional qualification since it was provided by way of a Treasury Board minute dating back to the mid 1960s. At that time, the allowance amounted to a few hundred dollars per year. The Treasury Board minute was eventually incorporated into the collective agreement as the Extra Duty Allowance (EDA) (Article 46) and minor improvements were made over time. As recruitment and retention pressures increased over the years EDA became a vehicle for both the Union and the Employer to agree to increases that would not otherwise be available in the salary tables because of various arbitrary reasons.

During the "post-freeze" round of bargaining of the late 1990s the Employer was in the difficult position of having significant recruitment and retention issues but was bound by legislative restrictions that limited wage increases. The Employer proposed another allowance to deal with this situation and despite considerable protest from the Union and its members, this "recruitment and retention" allowance was ultimately also added to the wage package. In an arbitration decision several years later the allowance was recognized as an integral component of the wage

package, was equalized for all employees in the bargaining unit, and renamed as the Aviation Aircrew Allowance (AAA) (Article 34). AAA is considered for pension purposes but is not considered part of salary.

Currently, non-salary allowances form a substantial part of the AO wage package. For a new Civil Aviation Inspector (CAI) Level 3 the non-salary portion of their wage package amounts to 15.8% of their salary. It is a point of considerable consternation that the Employer now takes the view that allowances are separate components of the wage package that do not count when considering improvements, particularly because these elements of the wage package were originally instituted as Employer initiatives and in the latter case against considerable resistance from the Union. The Union finds the concept of allowances objectionable; however, it would not be in the members' interests to eliminate them without some method of integration into the salary grid. It would also not be acceptable to arbitrarily exclude a substantial portion of the wages from consideration for inclusion in whatever final settlement is reached.

The provisions of the *Expenditure Restraint Act* (ERA) dominated and brought to a conclusion the previous round of bargaining that resulted in the current AO Collective Agreement. The provisions of the ERA specifically restricted the application of the prescribed monetary increases exclusively to the salary grid and implemented a retrograde period for the AO group wage package. The applicability of this legislation to the AO Collective Agreement ended as of 25 January 2012.

The Wage Package and Changes to "Terms and Conditions"

There is an additional consideration that is very significant in the current workplace circumstances. The Treasury Board has now reconfigured the Public Service Terms and Conditions of Employment Regulations (PSTCER) as a Directive on Terms and Conditions of Employment. In the past, the Employer has repeatedly indicated to this Union that the provisions governing what happened to an individual's wages as a result of job promotion, demotion, or reclassification were governed by the PSTCER which were enabled by the Public Service Employment Act (PSEA) and were not negotiable. The Employer is now making demands relating to certain related provisions in the AO collective agreement and has asserted at the bargaining table that it has the right, now as in the past, to change these provisions at their discretion. When faced with the Union's objection that these provisions are now being portrayed as Employer policies when they have always been presented as "regulation" the Employer relies on an internal legal interpretation that they are unwilling to share.

The legal debate as to the status that these provisions enjoyed in the past is irrelevant to the current context. The Employer has asserted during these negotiations that these provisions are subject to change at their discretion and the Union believes that it is unacceptable to have such substantial and fundamental

terms and conditions of employment subject to unilateral change during the life of the collective agreement.

The unsuitability of the Employer's position on the "Terms and Conditions" directive is exacerbated when their application to the current wage package is examined. The two key considerations relate to the make-up of the AO wage package and the lack of pay-related protections in the AO collective agreement.

Current Employer policies exclude non-salary compensation from any pay protection provisions. The effect is that given the current changes ongoing in the workplace if an AO employee is reclassified by the Employer they will be subject to an immediate pay cut on the order of 15% before their pay is frozen. This can occur without notice or recourse. Other Public Service groups with a salary-based wage package or with pay protection provisions would be fully protected, would suffer no pay loss, and would continue to receive routine pay improvements, even across classification group and collective agreement boundaries.

In examining the issue it was found that the collective agreements pertaining to the majority of other public servants, including those applicable to virtually every other employee in the workplace where AOs work, already contain substantive pay protection provisions. And yet, for the AO group, the Employer is unwilling to agree to any of these protections. It is difficult to comprehend the Employer's rigidity when pay protection provisions are not like wage increases which have an immediate cost to the Employer. Additionally any cost to the Employer is entirely within their control and would only arise if the Employer disaffected an employee, and then only in terms of the inability to implement a discounted pay for a particular position. The Union's interest can be addressed by a realignment of applicable provisions, such as changing the scope of applicability clauses which determine what counts as "salary" or by the incorporation of provisions already agreed to with other groups. In either case there would be no immediate cost to the Employer.

In a related circumstance the non-salary nature of allowances creates an issue for parents taking maternity/parental leave. While the AO group demographic shows this is not a common occurrence, nonetheless, members taking maternity/parental leave should not be penalized simply because of the construct of our wage package and their desire to have children. The CFPA spent considerable time in the past working on this issue with the Employer during the implementation of the AAA and the revision to the payment methodology for EDA and was led to believe that the issue was resolved; however, recent actions by TC has shown this not to be the case. In the case of a maternity leave most other agreements have provisions to allow non-salary wages to be included for the determination of maternity/parental allowance. The AO agreement does not yet contain these provisions because the issue was believed to be resolved and the use of these provisions is infrequent. In dealing with provisions relating to pay protection and appropriate consideration to

minimize the negative effects for employees because of a fragmented wage package, it is important to address the maternity/parental leave issue.

Focal Point Issues

The Employer has made it clear to us that there are two issues of absolute importance to them: the discontinuance of Severance Pay for voluntary separation and a wage increase that follows their established pattern of 1.5% in each of four years with the addition of 0.25% and 0.5% in the second and fourth years of the four-year agreement to recognize the loss of Severance Pay.

The CFPA has understood the priority that the Employer is placing on these issues from the outset of this round of bargaining and that is why we have repeatedly indicated that we would accede to their demands as long as we could get some accommodation to create some tangible value that members would be willing to endorse. There is considerable unrest and fear of instability in the workplace and the Employer has been taking unilateral cuts into the package of terms and conditions established by the collective agreement without negotiation. The employees are open to accepting what they perceive as a retrograde step but they are interested in having their willingness to accept the Employer's agenda recognized by a more comparable value for the loss of severance and the incorporation of several aspects of pay protection that are already in widespread use in other Public Service agreements and provided to their co-workers.

In applying the wage increases to the wage package there is a fundamental dichotomy of perspectives between the parties. The Employer will agree to application of the increases only to the salary portion of the wage package, while the Union believes that any pattern increase should apply to the entire package, otherwise it will be something less than the pattern. There are many examples of additional compensation being provided to various groups in addition to pattern wage increases during this round of negotiations. It is accepted that the ERA continues to impinge on the first year of the anticipated agreement; however, beyond that date, there is no rationale for continuing to move the AO group further backward relative to co-workers.

Terms and Conditions of Employment for which Conciliation is Requested

Contained in the application to the Public Service Labour Relations Board for the establishment of a Public Interest Commission was a list of the contract articles that were yet to be finalized. The list is considerable but it must be viewed in context to avoid confusion. The list is more extensive that might normally be anticipated at this juncture because the Union attempted to use a principle-based methodology for crafting proposals during negotiations. The belief was that this approach would provide more flexibility to satisfy the interests of both parties. Each of the solutions proposed involved only a few of the articles and if any solution was found acceptable the requirement to change the other articles would no longer be

necessary. While it was clear what would satisfy the Employer's interest, we were never able to create any combination acceptable to the Employer that would allow for any Union interests to be accommodated. As a result, we have yet to reduce the list of open articles. The Union hopes that by concentrating on the principles of the solution the detail of the open articles will follow without undue effort.

The outstanding issue of establishing terms and conditions of employment for the TI and PM classified members who have been assigned to the CFPA's Bargaining Unit has not been discussed at length between the parties. We understand that the Employer has considerable rigidity on this issue and we are concerned that the Employer's demands will not allow for the Union to fairly represent the members concerned. The CFPA understands its representation obligations but we are currently unable to propose any elegant solutions to this situation that we believe would have any level of acceptability for the Employer. At this time we can only express the petition that these positions not be forced into a substantial negative shift.

Seeking Solutions

The principles guiding the Union position on potential solutions are:

1. The Union understands and accepts the Employer's need to eliminate severance pay for voluntary separations;

2. The Union believes that the Employer has underestimated the value of severance pay to the AO group membership;

3. The Union believes that there is a need for provisions that would afford reliable pay protection for employees commensurate with that already provided to others within the workplace taking into consideration the unique nature of the group's wage package, and the current instability of the workplace;

4. The Union understands and accepts the Employer's need to maintain economic increases within a pre-determined pattern; and,

5. The Union believes that pattern economic increases must apply to all components of the wage package.

The following discussions and suggestions are provided to provide application of the above principles.

- The Employer has outlined their demands in detail with regard to the cessation of severance pay and related consequential amendments and the Union has indicated that it will accept the Employer's language in that regard.

The Employer attributed the value of the loss of severance based on detailed demographic analysis of employees who are members of the Public Service Alliance of Canada and created a package of offsets designed to satisfy their interests. The Employer has purported to apply the same pattern to the AO group without accounting for the significant difference in demographics. The package of offsets does not have the same value when applied to the AO group, and while the Employer has admitted this across the table, there has been no attempt to address the matter.

During the most recent meeting between the parties where an attempt was made to reduce the list of issues referred for determination by the Commission, the Employer noted that the salary grid for the AO group did not fit the ideal Employer pattern for a salary grid and offered a salary grid realignment proposal. In analyzing the Employer's proposal it was clear to the Union that the method proposed would have the effect of irritating the majority of the membership and significantly aggravating the group's most senior and experienced members. While the Employer was not aware of the full costing of this exercise, the Union analyzed the offer and the related cost envelope for the Employer. The Union suggested modifying the proposal to more effectively invest the Employer's dollars in making visible improvements for most members; however, the Employer indicated that it was a pre-approved and conclusively defined offer that could only be accepted without change. The Union was left with no option but to decline the offer as it was presented and reiterate the requirements of ratification by the membership.

- It is clear to the Union that the Employer has some additional funds available to be invested in the AO agreement. It makes no sense to the Union to have those funds applied in a manner that will annoy employees. It would seem to be a much more effective investment to apply the available funds in a manner that would be beneficial to the interests of both parties.

The Employer's change to a Directive on Terms of Conditions of Employment would ordinarily be regarded as an innocuous and largely administrative change worthy of little concern. However, the Employer's assertion during these negotiations that these provisions are subject to change at the Employer's sole discretion is cause for considerable unease for the Union. Many of these provisions are fundamental to the interpretation and determination of what happens to an employee in relation to rate of pay, definition of remuneration, reclassification, promotion, demotion and other related situations. There is a requirement for a few provisions that are unique to the AO group but it is unlikely to be seen as reasonable to expect that all the provisions of the Directive be incorporated in the AO Collective Agreement to assure the consistency and stability of those terms and conditions for the duration of the collective agreement.

- It is suggested that the references to the Directive on Terms of Conditions of Employment in the collective agreement include a document reference date so that it is clear to all parties what terms and conditions of employment will apply for the duration of the collective agreement.

The workplace reorganization, reclassification, and budgetary cutback initiatives have created considerable instability and insecurity in the workplace. It has become increasingly important to employees that the issue of pay protection be addressed. The AO group does not have a long history of concern for pay protection; however, the Employer's initiatives have permanently changed the employment landscape for AO employees. AO employees do not currently enjoy a level of pay security commensurate with their workplace peers and the level of threat to their financial security is more acute now than it has ever been previously. The significant non-salary components of the AO wage package exacerbate the need for pay protection provisions. Additionally, the provisions in the AO agreement relating to maternity/parental leave have not kept pace with other Public Service agreements. The Employer's Directive on Terms and Conditions of Employment is simply not effective in protecting an AO employee from significant financial hardship as a result of Employer initiated workplace change. Other groups have been subject to these changes in the past and have been able to establish long-standing agreements with the Employer to address these situations.

The Union believes that it is not necessary to establish completely new and unique pay protection provisions for the AO group. A review of existing Public Service agreements provides numerous examples of acceptable provisions that the Employer has already agreed to that could be easily adapted to address these issues. The Salary Protection annexes of several Public Service Alliance of Canada agreements with the Employer were reviewed. The provisions of these documents already apply to the non-AO classified members of the AO bargaining unit as it provides protection across the boundaries of "any collective agreement". While the Employer disputes the applicability of this terminology legal advice has been sought on this matter and a copy of the opinion will be provided to the Commission.

During the course of negotiations the Union tabled several options relating to pay-protection, sometimes under the misnomer "Job Security". Unique solutions, solutions relating to simple changes to a few key definitions, and even the incorporation of existing clauses from long-standing Public Service agreements were offered for consideration in addressing this issue. None of the options were found in any way acceptable to the Employer. It is incongruent that the Employer expects AO employees to accept less than pattern wage increases but is absolute in its refusal to offer the wage protections similar to those of their co-workers.

- It is suggested that a minor modification be made to Article 25.08/25.11 – Maternity Allowance/Parental Allowance to include the non-salary portions of the wage package in the calculation of the allowance such as has been done for most other Public Service collective agreements.

- It is suggested that Appendix U of the Technical Services Group Agreement, which is a Memorandum of Understanding regarding Salary Protection, be considered as a basis for adaption to the AO Agreement and references to pay should be consistent with the Employer's definition of remuneration in the Directive on Terms and Conditions of Employment.

It is particularly important that any pay protection provisions be implemented as of the date of expiry of the current agreement. The bureaucratic protraction of these negotiations should not be allowed to deny affected employees and their families of any pay protection provisions that may be agreed to.

The Employer has laid out the pattern for wage increases of 1.5% in each of four years, with an additional 0.25% in year two and 0.5% in year four linked to the acceptance of their severance demands. The Employer applies these increases exclusively to the salary grid; the Union argues that to be a pattern settlement the increases must be applied to the entire wage package.

The AO group has already been subjected to several years of retrograde relativity and there is no rationale to continue this backward movement. It is understood that the effect of the ERA will continue to restrict the first year of the agreement, but in recognition of the Union's interest in not falling behind more than absolutely necessary, some form of applicability to the wages outside the salary grid should be examined.

Several options are available to apply increases to the entire wage package to achieve a result more reflective of a pattern settlement. An approach that the Employer has used with other groups during this round has been to incorporate allowances into the salary structure. The following options are suggested for consideration:

- the wage package composition could remain status quo, the pattern increases could be applied to the salary grid and with the exception of the first year of the agreement the pattern increases could be applied to the non-salary elements of the wage package individually,

- the pattern increases could be applied to the salary grid and the non-salary components of the wage package could be incorporated into the salary grid at the expiry of the ERA provisions,

- the non-salary components of the wage package could be incorporated into the salary grid in stages over the course of the life of the agreement achieving full incorporation by the end of the agreement, or

- some combination of the above concepts could be considered.

The CFPA welcomes the opportunity to discuss these issues with the Commission and trusts that a rational examination of the applicable interests and principles will point to reasonable solutions. The CFPA is interested in accepting a durable settlement that will allow employees to continue their duties on behalf of the Employer without interruption.

Gilles Grenier-Request for Conciliation

Appendix A

The CFPA met with the employer on February 15, 2011 and engaged in three days of negotiations. The Treasury Board had agreed with the Union prior to the meeting that the parties would participate in accelerated negotiations. The talks did not result in an agreement and after numerous exchanges between the principals the parties met again on June 20th where we were informed by the employer that the accelerated discussions were not successful.

On June 22nd the employer presented an expanded list of demands, and we again provided the employer with a list of the CFPA's areas of interest for discussion. The employer requested time to study our areas of interest and requested we set dates for follow-up meetings.

The parties met to resume negotiations on October 4, 5 and 6th. By the end of the session, we had exchanged all proposals with the employer and made some progress in the area of non contentious items. The parties met again on 26, 27 October and little substantive progress was made. Finally, we met on November 29 thru December 1st and after three substantial and comprehensive attempts to satisfy the interests of both parties and move negotiations forward it became clear that both parties were deadlocked.

Appendix B

The terms and conditions of employment from the AO Collective Agreement that are referred for conciliation are:

ARTICLE 2 – Interpretation and Definitions,

ARTICLE 3 – Application,

ARTICLE 18 – Hours of Work,

ARTICLE 19 – Overtime,

ARTICLE 20 – Travelling Time,

ARTICLE 21 – Pay Administration,

ARTICLE 23 - Vacation Leave,

ARTICLE 24 – Sick Leave,

ARTICLE 25 – Other Leave With or Without Pay,

ARTICLE 28 - Severance Pay,

ARTICLE 34 – Aviation Aircrew Allowance (AAA),

ARTICLE 43 - Call-Back,

ARTICLE 46 – Extra Duty Allowance,

ARTICLE 47 – Professional Aviation Currency,

ARTICLE 52 – Job Security,

ARTICLE 54 – Duration,

APPENDIX A – Annual Rates of Pay,

Salary Protection Provision(s), and

Provisions for Bargaining Unit Members classified as TI and PM.

Appendix C

The CFPA's position on each of these terms and conditions of employment focuses on addressing a few key issues:

- the union's interest in developing provisions for reliable salary protection given the unique nature of the group's wage package, and the current instability of the workplace,

- the union's interest in the application of the economic increases to all components of the wage package,

- an understanding of the employer's interest in eliminating severance pay for voluntary separations,

- an understanding of the employer's interest in maintaining economic increases within a pre-determined pattern, and

- establishing terms and conditions of employment for the TI and PM classified members who have been assigned to CFPA's Bargaining Unit.

Note: Underlining denotes modifications except where the provision is marked at the beginning with (New) indicating that the entire provision is new.

ARTICLE 2 – Interpretation and Definitions

(d) "Continuous Employment" has the same meaning as specified in Part 5 of the Appendix to the Treasury Board Directive on Terms and Conditions of Employment that was effective on 1 April 2009.

XX "Higher Classification Level" is, in relation to an acting appointment, a level where the maximum annual rate of pay and applicable allowances exceeds the maximum annual rate of pay and applicable allowances of the person's substantive level.

ARTICLE 3 – Application

(New) 3.03 Except where otherwise specified in this Agreement the provisions of the Treasury Board Directive on Terms and Conditions of Employment, effective 1 April 2009 shall apply.

ARTICLE 18 – Hours of Work

Renew without change

ARTICLE 19 – Overtime

Renew without change

ARTICLE 20 – Travelling Time

20.01 - Renew without change

20.02 - Renew without change

20.03 - Renew without change

20.04 - Travel Status Leave

(a) An employee who is required to travel outside his or her headquarters area on government business, as these expressions are defined by the Employer, and is away from his or her permanent residence for twenty (20) nights during a fiscal year shall be granted seven decimal five (7.5) hours off with pay. The employee shall be credited with one (1) additional period of seven decimal five (7.5) hours for each additional twenty (20) nights that the employee is away from his or her permanent residence to a maximum of eighty (80) additional nights.

(b) The maximum number of hours off earned under this clause shall not exceed thirty-seven decimal five (37.5) hours in a fiscal year and shall accumulate as compensatory leave with pay.

(c) This leave with pay is deemed to be compensatory leave and is subject to paragraph 19.04(a), (b) and (c).

The provisions of this clause do not apply when the employee travels in connection with courses, training sessions, professional conferences and seminars, unless the employee is required to attend by the Employer.

ARTICLE 21 – Pay Administration

(New) 21.06 When the employee agrees to substantially perform the duties of a position with a lower pay level the employee is to be compensated with the pay and allowances that apply to their substantive position.

ARTICLE 23 - Vacation Leave

(New) 23.16 Notwithstanding the definition of "continuous employment" in Article 2 and exclusively for the purposes of determining vacation leave accrual in accordance with Article 23.02(a) and Article 23.02(b) only, an employee shall be provided credit for up to eight years of professional pilot experience upon provision of standardized documentation to the satisfaction of the employer.

ARTICLE 24 – Sick Leave

Renew without change

ARTICLE 25 – Other Leave With or Without Pay

ARTICLE 25.02 – Bereavement Leave With Pay

For the purpose of this clause, immediate family is defined as father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, spouse, (including common-law spouse resident with the employee), child (including child of common-law spouse), stepchild or ward of the employee, grandparent, father-in-law, mother-in-law, grandchild and relative permanently residing in the employee's household or with whom the employee permanently resides.

(a) When a member of the employee's immediate family dies, an employee shall be entitled to a bereavement period of <u>seven (7)</u> consecutive calendar days. Such bereavement period, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. During such period the employee shall be paid for those days which are not regularly scheduled days of rest for that employee. In addition, the employee may be granted up to three (3) days' leave with pay for the purpose of travel related to the death.

(b) Renew

(c) Renew

<u>(d) If, during a period of sick leave, vacation leave or compensatory leave, an employee is bereaved in circumstances under which he or she would have been eligible for bereavement leave with pay under</u>

this Article, the employee shall be granted bereavement leave with pay and his or her paid leave credits shall be restored to the extent of any concurrent bereavement leave with pay granted.

ARTICLE 25.16 – Leave With Pay for Family-Related Responsibilities

(a) For the purpose of this clause, family is defined as spouse (or common-law spouse resident with the employee), children (including children of legal or common-law spouse), parents (including stepparents or foster parents), or any relative permanently residing in the employee's household or with whom the employee permanently resides.

(b) The Employer shall grant the employee leave with pay under the following circumstances:

(i) to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;

(ii) to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;

(iii) to provide for the immediate and temporary care of an elderly member of the employee's family;

(iv) for needs directly related to the birth or the adoption of the employee's child;

(v) to attend school functions, if the supervisor was notified of the functions as far in advance as possible;

(vi) to provide for the employee's child in the case of an unforeseeable closure of the school or daycare facility;

(vii) to attend an appointment with a legal or paralegal representative for non-employment related matters, or with a financial or other professional representative, if the supervisor was notified of the appointment as far in advance as possible.

(c) The total leave with pay which may be granted under this Article shall not exceed thirty-seven decimal five (37.5) hours in a fiscal year.

ARTICLE 28 - Severance Pay

Acceptance of the employer's multi-faceted proposal related to the elimination of the Severance Pay for Voluntary Separation is contingent on an acceptable combination of provisions that satisfy the union's interests.

ARTICLE 34 – Aviation Aircrew Allowance (AAA)

34.03 Application

A.

(i) Incumbents of positions identified above shall be eligible to receive the following annualized Aviation Aircrew Allowance to be paid biweekly:

$5281 until January 25, 2012.

(ii) [deleted]

~~(iii)~~ (ii) An employee shall be paid the Allowance for each calendar month for which the employee receives at least seventy-five (75) hours pay as an incumbent of a position in the AO bargaining unit.

B. Part-time employees shall be entitled to the Allowance on a pro rata basis.

C. The parties agree that disputes arising from the application of this article may be subject to consultation.

D. Effective January 25, 2012 this allowance is cancelled.

***NOTE**: This proposed article is contingent on the acceptance by the employer of proposal at APPENDIX A - Effective January 26, 2012 – increase for cancellation of AAA: $5281*

ARTICLE 43 Call-Back

Renew without change

ARTICLE 46 – Extra Duty Allowance

46.01

(a) Subject to clause (b) of this article, all employees in the bargaining unit shall be paid the following Extra Duty Allowance

$7480 until January 25, 2012.

Effective January 26, 2012 this allowance is cancelled.

NOTE: This proposed article is contingent on the acceptance by the employer of proposal at APPENDIX A - Effective January 26, 2012 – increase for cancellation of EDA: $7480

ARTICLE 47 – Professional Aviation Currency

Renew without change

ARTICLE 52 – JOB SECURITY

52.01 Subject to the willingness and capacity of individual employees to accept relocation and retraining, the Employer will make every reasonable effort to ensure that any reduction in the work force will be accomplished through alternation and attrition.

(New) 52.02 The employer agrees to allocate positions in accordance with the Treasury Board Policy on Classification System and Delegation of Authority.

(New) 52.03 An employee whose services will no longer be required because of a work force adjustment situation shall be subject to the provisions of the Work Force Adjustment Directive that forms part of this collective agreement.

ARTICLE 54 – DURATION

54.01 Duration of collective agreement shall be from date of signing to January 25, 2015.

54.03 - *Accept Employer proposal to extend implementation period to 150 days.*

APPENDIX A – AO ANNUAL RATES OF PAY

Effective January 26, 2011 – increase rates of pay: 1.5%
Effective January 26, 2012 – increase for cancellation of AAA: $5281
Effective January 26, 2012 – increase for cancellation of EDA: $7480
Effective January 26, 2012 – increase rates of pay: 1.75%
Effective January 26, 2013 – increase rates of pay: 1.5%
Effective January 26, 2014 – increase rates of pay: 2.0%

(New) TI-7

A) Effective January 26, 2011 – increase rates of pay: 1.5%
B) Effective January 26, 2012 – increase for cancellation of TA: $9118
C) Effective January 26, 2012 – increase for cancellation of AAA: $5281
D) Effective January 26, 2012 – increase rates of pay: 1.75%
E) Effective January 26, 2013 – increase rates of pay: 1.5%
F) Effective January 26, 2014 – increase rates of pay: 2.0%

	1	2	3	4	5
X	$ 73,278	$ 75,607	$ 77,946	$ 80,280	$ 83,491
A	$ 74,377	$ 76,741	$ 79,115	$ 81,484	$ 84,743
B	$ 79,658	$ 82,022	$ 84,396	$ 86,765	$ 90,024
C	$ 88,776	$ 91,140	$ 93,514	$ 95,883	$ 99,142
D	$ 90,330	$ 92,735	$ 95,151	$ 97,561	$100,877
E	$ 91,685	$ 94,126	$ 96,578	$ 99,025	$102,391
F	$ 93,518	$ 96,009	$ 98,510	$101,005	$104,438

(New) PM-6

A) Effective January 26, 2011 – increase rates of pay: 1.5%
B) Effective January 26, 2012 – increase for cancellation of AAA: $5281
C) Effective January 26, 2012 – increase rates of pay: 1.75%
D) Effective January 26, 2013 – increase rates of pay: 1.5%
E) Effective January 26, 2014 – increase rates of pay: 2.0%

	1	2	3	4	5
X	$ 84594	$ 87812	$ 91145	$ 93883	$ 96725
A	$ 85,863	$ 89,129	$ 92,512	$ 95,291	$ 98,176
B	$ 91,144	$ 94,410	$ 97,793	$100,572	$103,457
C	$ 92,739	$ 96,062	$ 99,505	$102,332	$105,267
D	$ 94,130	$ 97,503	$100,997	$103,867	$106,846
E	$ 96,013	$ 99,453	$103,017	$105,945	$108,983

(New) XX – TI Terminable Allowance

A.

(i) Incumbents in positions within the AO bargaining unit that are classified by the Employer as Technical Inspectors (TI) shall be eligible to receive the following annualized Allowance to be paid biweekly at the following rate:

$9118 until January 25, 2012.

(ii) An employee shall be paid the Allowance for each calendar month for which the employee receives at least seventy-five (75) hours pay as an incumbent of a position in the AO bargaining unit.

B. Part-time employees shall be entitled to the Allowance on a pro rata basis.

C. The parties agree that disputes arising from the application of this article may be subject to consultation.

D. Effective January 26, 2012 this allowance is cancelled.

(New) APPENDIX B - MEMORANDUM OF UNDERSTANDING - SALARY PROTECTION

GENERAL

1. This Memorandum of Understanding shall remain in effect until amended or cancelled by mutual consent of the parties.

2. This Memorandum of Understanding supersedes the Directive on Terms and Conditions of Employment respecting Pay on Reclassification or Conversion where the Directive on Terms and Conditions of Employment are inconsistent with this Memorandum of Understanding.

3. Where the provisions of any collective agreement differ from those set out in this Memorandum of Understanding, the conditions set out in this Memorandum of Understanding shall prevail.

4. This Memorandum of Understanding will form part of the AO collective agreement to which the Canadian Federal Pilots Association and Treasury Board are parties, with effect from January 26, 2011.

PART I

Part I of this Memorandum of Understanding shall apply to the incumbent of any position which is reclassified to a group and/or level having a lower attainable maximum rate of pay after the date this Memorandum of Understanding becomes effective.

NOTE: The term "attainable maximum rate of pay" means the maximum rate of pay including all allowances.

1. Prior to a position being reclassified to a group and/or level having a lower attainable maximum rate of pay, the incumbent shall be notified in writing.

2. Downward reclassification notwithstanding, an encumbered position shall be deemed to have retained for all purposes the former group and level. In respect to the pay of the incumbent, this may be cited as Salary Protection Status and subject to Section 3(b) below shall apply until the position is vacated or the attainable maximum rate of pay of the reclassified level, as revised from time to time, becomes greater than that applicable, as revised from time to time, to the former classification level.

3.

(a) The Employer will make a reasonable effort to transfer the incumbent to a position having a level equivalent to that of the former group and/or level of the position.

(b) In the event that an incumbent declines an offer of transfer to a position as in (a) above in the same geographic area, without good and sufficient reason, that incumbent shall be immediately paid at the rate of pay for the reclassified position.

4. Employees subject to Section 3, will be considered to have transferred (as defined in Treasury Board Directive on Terms and Conditions of Employment) for the purpose of determining increment dates and rates of pay.

PART II

Part II of the Memorandum of Understanding shall apply to incumbents of positions who are in holding rates of pay on the date this Memorandum of Understanding becomes effective.

1. An employee whose position has been downgraded prior to the implementation of this memorandum and is being paid at a holding

rate of pay on the effective date of an economic increase and continues to be paid at that rate on the date immediately prior to the effective date of a further economic increase, shall receive a lump sum payment equal to 100% of the economic increase for the employee's former group and level (or where a performance pay plan applied to the incumbent, the adjustment to the attainable maximum rate of pay) calculated on his annual rate of pay.

2. An employee who is paid at a holding rate on the effective date of an economic increase, but who is removed from that holding rate prior to the effective date of a further economic increase by an amount less than he would have received by the application of paragraph 1 of Part II, shall receive a lump sum payment equal to the difference between the amount calculated by the application of paragraph 1 of Part II and any increase in pay resulting from his removal from the holding rate.

Letter to from Stuart Ducoffe re. interpretation “any collective agreement”

Woolgar VanWiechen Ketcheson Ducoffe LLP BARRISTERS & SOLICITORS

Stuart Ducoffe
Tel: 416 867 1708
sducoffe@woolvan.com

September 24, 2012

By Courier and Email

Private and Confidential

CFPA-APFC
Suite 509, 350 Sparks Street
Ottawa, ON K1R 7S8

Attention: Daniel Slunder
National Chairperson

Dear Mr. Slunder:

Re: Canadian Federal Pilots Association

I am in receipt of your letter requesting an interpretation of specific provisions contained in both Appendix "F" to the collective agreement relating to the Professional Institute of the Public Service of Canada ("PIPSC Memorandum of Understanding"); and Appendix "U" to the collective agreement relating to the Public Service Alliance of Canada ("PSAC Memorandum of Understanding") (collectively, the "Appendices"). Attached are a copy of that letter and its attachments.

I have reviewed the Appendices and the phrase: "*Where the provisions of any collective agreement differ from those set out in the Memorandum of Understanding, the conditions set out in the Memorandum of Understanding shall prevail.*" For the reasons set out below, I am of the view that, in the context of that phrase and the Appendices in which it originated, "*any collective agreement*" may refer to a collective agreement other than the PIPSC Agreement and PSAC Agreement.

The legal and dictionary definition of the word "*any*" has been interpreted to include: "all", "every", "several", "one", "some" or "whichever". One particular definition has even gone as far as to interpret "*any*" as including the broadest possible interpretation. The principles of contractual interpretation recognize that a word or phrase should be accorded its plain and ordinary meaning. In this instance, the reference to "*any*" would therefore be interpreted as including "all" and "every" collective agreement. However, principles of contractual interpretation also recognize that a word or phrase must be accorded its plain and ordinary meaning *when read in the context of the provision and its surrounding circumstances*. Accordingly, the word "*any*" must be considered within the phrase of "*any collective agreement*…" and within the context of its surrounding circumstances.

When examined in light of the specific provision, the term "*any*" is characterized by the term "collective agreement". The remainder of the provision is silent on which specific collective agreement or collective agreements the term "*any*" is limited or qualified to. Without this limitation or qualification, what remains is whatever plain and ordinary meaning may be attributed to the term "*any collective agreement*." In this instance, that plain and ordinary meaning is simple: *all collective agreements*. Within the context of the provision, "*any collective agreement*" is therefore not limited to the PIPSC Agreement or the PSAC Agreement.

However, that is not the end of the analysis. As referenced, principles of contractual interpretation also require that the plain and ordinary meaning of a specific provision accord with the context of its surrounding circumstances. In this instance, surrounding context can be found in the provision which follows. This provision states (at point 5): "*The Memorandum of Understanding will form part of all collective agreements to which the Public Service Alliance of Canada and Treasury Board are parties, with effect from December 13, 1981*." Here, the term "*all collective agreements*" (which I note is similar to "*any collective agreement*") is deliberately qualified by the phrase "*to which the Public Service Alliance of Canada and Treasury Board are parties*…" This qualification is absent from the provision in dispute and therefore indicates to the interpreter that, unlike the disputed provision, this provision is intended to be more narrowly construed and limited in scope. Furthermore, this qualification indicates a deliberate intention by the drafter of the Appendices not to limit or qualify that application of "*any collective agreements*"; the rationale being that, as the drafter possessed the power to limit or qualify its application, it clearly could have chose (and chose not) to do so.

Subject to additional information being (or becoming) available for the purposes of my review, the interpretation of "*any collective agreement*" must have broad interpretation in light of the context and surrounding circumstances. This plain and ordinary interpretation would not create an absurdity or inconsistency when reading the provision alone, or when reading it in the context of the surrounding circumstances and contract as a whole.

Yours truly,

Stuart Ducoffe
SMD/jb

Encl.

CFPA-APFC
Canadian Federal Pilots Association
Association des Pilotes Fédéraux du Canada

Woolgar Van Wiechen Ketcheson Ducoffe LLP
70 The Esplanade, Suite 401
Toronto, Ontario M5E 1R2

Attention: Mr. Stuart M. Ducoffe

Dear Mr. Ducoffe:

Re: Canadian Federal Pilots Association

Please find attached to this correspondence two Appendices (Appendix F and U) to Collective Agreements affecting public servants under two separate collective agreements, namely, one relating to the Public Service Alliance of Canada (PSAC) and the second being the Professional Institute of the Public Service of Canada (PIPSC). Both of these appendices relate to the conditions of employment respecting the pay of employees upon being reclassified. You will note that the wording of both of these memoranda is very similar, if not identical. A good example of an employee whose position has been downgraded is set out in Part II, point #1.

I refer you specifically to the General Section, point #4, in both Appendices which states *"Where the provisions of any collective agreement differ from those set out in the Memorandum of Understanding, the conditions set out in the Memorandum of Understanding shall prevail"*. It is my understanding that the words "Memorandum of Understanding" refer to Appendix F and Appendix U respectively.

I would seek your opinion on the following matter. In the opening line of point #4 it states "where the provisions of *any collective agreement*…"

In relation to Appendix F, dealing with PIPSC, do the words "*any collective agreement*" relate only to the collective agreements to which PIPSC and the Treasury Board are parties, as specified in General, point #5, or are the words "*any collective agreement*" broader and potentially applicable to "*any collective agreement*"? For example, could the words "any collective agreement" apply to a collective agreement where the terms and provisions of employment are governed by a collective agreement where the bargaining agent is not PIPSC?

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In relation to Appendix U dealing with PSAC, I would ask for your opinion on exactly the same issue as set out above for PIPSC, the only difference being that the consideration of PIPSC is amended to PSAC.

Your assistance on this matter is requested and sincerely appreciated.

Yours very truly,

Canadian Federal Pilots Association

Per:

Daniel Slunder
National Chairperson

APPENDIX "F"

MEMORANDUM OF UNDERSTANDING
RED CIRCLING

GENERAL

1. This Memorandum of Understanding sets out conditions of employment respecting pay upon reclassification for all employees whose bargaining agent is the Professional Institute of the Public Service of Canada.

2. This Memorandum of Understanding shall remain in effect until amended or cancelled by mutual consent of the parties.

3. This Memorandum of Understanding supersedes the Regulations respecting Pay on Reclassification or Conversion where the Regulations are inconsistent with the Memorandum of Understanding.

4. Where the provisions of any collective agreement differ from those set out in the Memorandum of Understanding, the conditions set out in the Memorandum of Understanding shall prevail.

5. This Memorandum of Understanding will form part of all collective agreements to which the Professional Institute of the Public Service of Canada and Treasury Board are parties, with effect from December 13, 1981.

PART I

Part I of this Memorandum of Understanding shall apply to the incumbents of positions which will be reclassified to a group and/or level having a lower attainable maximum rate of pay after the date this Memorandum of Understanding becomes effective.

NOTE: The term "attainable maximum rate of pay" means the rate attainable for fully satisfactory performance in the case of levels covered by a performance pay plan or the maximum salary rate in the case of all other groups and levels.

1. Prior to a position being reclassified to a group and/or level having a lower attainable maximum rate of pay, the incumbent shall be notified in writing.

2. Downward reclassification notwithstanding, an encumbered position shall be deemed to have retained for all purposes the former group and level. In respect to the pay of the incumbent, this may be cited as Salary Protection Status and subject to section 3(b) below shall apply until the position is vacated or the attainable maximum of the reclassified level, as revised from time to time, becomes greater than that applicable, as revised from time to time, to the former classification level. Determination of the attainable maxima rates of pay shall be in accordance with the Retroactive Remuneration Regulations.

3.

(a) The Employer will make a reasonable effort to transfer the incumbent to a position having a level equivalent to that of the former group and/or level of the position.

(b) In the event that an incumbent declines an offer of transfer to a position as in (a) above in the same geographic area, without good and sufficient reason, that incumbent shall be immediately paid at the rate of pay for the reclassified position.

4. Employees subject to section 3, will be considered to have transferred (as defined in the Public Service Terms and Conditions of Employment Regulations) for the purpose of determining increment dates and rates of pay.

PART II

Part II of this Memorandum of Understanding shall apply to incumbents of positions who are in holding rates of pay on the date this Memorandum of Understanding becomes effective.

1. An employee whose position has been downgraded prior to the implementation of this memorandum and is being paid at a holding rate of pay on the effective date of an economic increase and continues to be paid at that rate on the date immediately prior to the effective date of a further economic increase, shall receive a lump sum payment equal to one hundred per cent (100%) of the economic increase for the employee's former group and level (or where a performance pay plan applied to the incumbent, the adjustment to the attainable maximum rate of pay) calculated on his annual rate of pay.

2. An employee who is paid at a holding rate on the effective date of an economic increase, but who is removed from that holding rate prior to the effective date of a further economic increase by an amount less than he would have received by the application of paragraph 1 of Part II, shall receive a lump sum payment equal to the difference between the amount equal to the difference between the amount calculated by the application of paragraph 1 of Part II and any increase in pay resulting from his removal from the holding rate.

SIGNED AT OTTAWA, this 21st day of the month of July 1982.

**APPENDIX U

MEMORANDUM OF UNDERSTANDING
SALARY PROTECTION - RED CIRCLING

GENERAL

1. This Memorandum of Understanding cancels and replaces the Memorandum of Understanding entered into between the Treasury Board and the Public Service of Alliance of Canada on June 9, 1978.

2. This Memorandum of Understanding shall remain in effect until amended or cancelled by mutual consent of the parties.

3. This Memorandum of Understanding supersedes the Regulations respecting Pay on Reclassification or Conversion where the Regulations are inconsistent with the Memorandum of Understanding.

4. Where the provisions of any collective agreement differ from those set out in the Memorandum of Understanding, the conditions set out in the Memorandum of Understanding shall prevail.

5. This Memorandum of Understanding will form part of all collective agreements to which the Public Service Alliance of Canada and Treasury Board are parties, with effect from December 13, 1981.

Part I

Part I of this Memorandum of Understanding shall apply to the incumbents of positions which will be reclassified to a group and/or level having a lower attainable maximum rate of pay after the date this Memorandum of Understanding becomes effective.

NOTE: The term "attainable maximum rate of pay" means the rate attainable for fully satisfactory performance in the case of levels covered by a performance pay plan or the maximum salary rate in the case of all other groups and levels.

1. Prior to a position being reclassified to a group and/or level having a lower attainable maximum rate of pay, the incumbent shall be notified in writing.

2. Downward reclassification notwithstanding, an encumbered position shall be deemed to have retained for all purposes the former group and level. In respect to the pay of the incumbent, this may be cited as Salary Protection Status and subject to section 3(b) below shall apply until the position is vacated or the attainable maximum of the reclassified level, as revised from time to time, becomes greater than that applicable, as revised from time to time, to the former classification level. Determination of the attainable maxima rates of pay shall be in accordance with the Retroactive Remuneration Regulations.

3.

(a) The Employer will make a reasonable effort to transfer the incumbent to a position having a level equivalent to that of the former group and/or level of the position.

(b) In the event that an incumbent declines an offer of transfer to a position as in (a) above in the same geographic area, without good and sufficient reason, that incumbent shall be immediately paid at the rate of pay for the reclassified position.

4. Employees subject to section 3, will be considered to have transferred (as defined in the Directive on Terms and Conditions of Employment) for the purpose of determining increment dates and rates of pay.

Part II

Part II of the Memorandum of Understanding shall apply to incumbents of positions who are in holding rates of pay on the date this Memorandum of Understanding becomes effective.

1. An employee whose position has been downgraded prior to the implementation of this memorandum and is being paid at a holding rate of pay on the effective date of an economic increase and continues to be paid at that rate on the date immediately prior to the effective date of a further economic increase, shall receive a lump sum payment equal to 100 % of the economic increase for the employee's former group and level (or where a performance pay plan applied to the incumbent, the adjustment to the attainable maximum rate of pay) calculated on his annual rate of pay.

2. An employee who is paid at a holding rate on the effective date of an economic increase, but who is removed from that holding rate prior to the effective date of a further economic increase by an amount less than he would have received by the application of paragraph 1 of Part II, shall receive a lump sum payment equal to the difference between the amount calculated by the application of paragraph 1 of Part II and any increase in pay resulting from his removal from the holding rate.

SIGNED AT OTTAWA, this 9th day of the month of February 1982.