

MEMORANDUM OF UNDERSTANDING
between the
CANADIAN FEDERAL PILOTS ASSOCIATION
and
TRANSPORT CANADA

Pertaining to the ESSENTIAL SERVICES AGREEMENT

I. INTRODUCTION

Under the new Public Service Labour Relations Act (PSLRA), implemented 1 April 2005, departments are required to negotiate an Essential Services Agreement (ESA) with the Bargaining Agent where the chosen method for resolution of disputes is conciliation/strike. As a result of this change, it is necessary for the employer to clarify how essential services agreement should be dealt with at Transport Canada (TC).

Definitions

Consultation: The parties discuss and offer their opinions about an issue or a position, and then the party that requested the consultation makes a decision and informs the other party. As a result, the parties gain a better understanding of the reasons behind the decision, even though they may not necessarily agree. This approach improves the quality of decisions and promotes a climate of trust, better labour relations, and an understanding of the purpose and the basis of the chosen position.

Co-development: The parties make a joint decision by consensus after examining the needs referred to in this framework and find possible solutions. The parties attempt to satisfy their respective legitimate interests and support the decisions made. This approach promotes a climate of trust and creative solutions and encourages greater concurrence in decisions by those who are affected by them.

Essential Services: Subsection 4(1) of the PSLRA defines an “essential service” as “a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public”. Services should be identified as essential where there are reasonable grounds for

accepting the probability, or even the possibility, that *human life or public safety* would suffer if a work stoppage interrupted the duties of these employees.

II What is an Essential Services Agreement?

The PSLRA defines an "essential services agreement" as "an agreement between the employer and the bargaining agent for a bargaining unit that identifies (a) the types of positions in the bargaining unit that are necessary for the employer to provide essential services; (b) the number of those positions that are necessary for these purposes; and (c) the specific positions that are necessary for that purpose".

III Principles

For the negotiation of essential services to be effective, it must be sincere and constructive. Discussions must be carried out in a climate of collaboration before any decision is taken and must take place as soon as possible, before final decisions are made. All parties recognize that the following values and principals must be adhered to in every step of the discussion / negotiations:

- Respect
- Transparency
- Fairness
- Consistency
- Clear justification
- Internal consultation
- Clear Communication

During the discussions / negotiations, the parties listen openly and discuss the merits of an issue as equals. When a party announces its position on an issue brought forth, it first informs the other party of its decision and reasoning.

Communications must be straightforward and open, and the parties must be willing to listen to each other's point of view. The party faced with the decision must provide the other party with as much information as possible to allow it to fully grasp the problem or issue at hand and to play an active role in finding mutually acceptable solutions.

IV Expectations

The parties agree that the negotiations of essential services will not necessarily satisfy both parties with respect to all aspects. The intention is for the parties to conclude an essential services agreement cooperatively and consensually in order to ensure the delivery of essential services to the public during strikes.

V Process

A centralized process negotiated by the CFPA Essential Services Negotiating Team and the TC Essential Services Negotiating Team will be used to establish the ESA for the AO Group. This Memorandum of Understanding (MOU) between the parties shall be agreed to prior to entering into the mode of essential service discussion / negotiation. This MOU will ensure that specific needs and expectations are adequately addressed and understood throughout the process.

Since the parties have agreed to follow a centralized negotiation process, all regional and headquarters positions with respect to the ESA will be negotiated at the national level by the CFPA and the TC negotiating teams. It is understood that these teams may require consultations/input from their respective regional counterparts.

It is further agreed that while the Treasury Board Secretariat will not participate initially in the discussions /negotiations of the ESA for this group, a representative will be available to join the negotiation process if deemed appropriate. The CFPA and Treasury Board Secretariat will however be required to sign off on the final essential services agreement.

‘Both parties understand that there may be some specific or regional issues that may need to be addressed. Each party will be responsible for carrying out the appropriate regional consultations within their jurisdiction as necessary.’

VI Level of Essential Service

The employer retains the exclusive right to determine the level of essential service required including the extent and frequency of service. However, the parties can negotiate *the number of employees* required to provide the essential services at the level determined by the employer and *the specific positions* that are necessary.

VII Calculation of Level of Essential Service

The calculation of the number of employees required to provide essential services is determined on the following basis:

without regard to the availability of other persons (e.g., unrepresented employees and managers) to provide the essential services in the event of a strike; and the employer would not have to change its normal operations, including the normal hours of work, the extent of the employer's use of overtime and the equipment it uses

In situations where only part of an employee's duties relate to a service that is necessary for safety or security, the parties could agree that a lower complement of employees is

necessary than in normal operations to provide the level of essential services by assigning employees full-time on "safety or security" duties. The following example illustrates this concept. If 20 employees normally spend 50% of their time on duties necessary to provide an essential service, then 10 of those employees could, during a strike, spend 100% of their time on those duties, allowing the other 10 to exercise their right to strike.

VIII Selection of “positions” when more than one exists

The parties recognize that several positions with the same essential services duties may exist in a work unit. In these cases, the following principles should be respected when selecting the position(s) (or incumbent) of the position(s):

- be fair
- avoid preferential treatment
- discuss the selection method with the union (i.e. rotation (monthly schedule) or names in a hat)
- be transparent

IX Essential Services Codes:

The parties recognize that the use of « Codes », to qualify the degree at which essential services are to be delivered, will facilitate the negotiation of an ESA as well as ensuring the necessity for the safety or security of the public. These codes should be selected by taking into consideration the work conditions, environmental circumstances, probability, or even the possibility, that *human life or public safety* would suffer if a work stoppage interrupted the duties of these employees.

Code	Category	Description
1	Full Time	A position for which essential services have been identified and are required on a regular basis
2	Alternate	A position whose incumbent would serve as an alternate to a full time and/or conditional Essential Services Position
3	Conditional	A position for which essential services have been identified and whose incumbent is required to perform these essential services when specific conditions are met and agreed to by the parties (e.g., essential at certain times / or unpredictable circumstances).

X Notification Notice

Pursuant to Section 130(1) of the PSLRA, the employer must provide every employee who occupies a position that has been identified in an essential services agreement as being a position that is necessary for the employer to provide essential services with a notice informing the employee that the employee occupies such a position.

Transport Canada management will make a reasonable effort to jointly deliver these notices to applicable employees with a CFPA representative and to have these notices signed by these said employees.

XI COMMUNICATION

The CFPA formal points of contact for this MOU will be:

- a. Chairman CFPA, Greg Holbrook
- b. National Secretary / Treasurer, Greg McConnell
- c. Essential Services Agreement Team Leader, Greg McConnell

The TC formal points of contact for this MOU will be:

- a. Chief, Labour Relations Occupational Safety & Health, Lyne Landriault
- b. Senior Labour Relations Advisor, Nicole Houle
- c. Director, Flight Operations Aircraft Services Directorate, Steve Buckles
- d. Director, National Operations, Civil Aviation Directorate, Jennifer Taylor

XII Details of the working contacts are in Annex A. (Contact Co-ordinates TC, TBS, and CFPA Team Members)

XIII SETTLEMENT OF DISPUTES

Should a conflict arise between the CFPA, TC and TBS regarding the conduct or interpretation of this MOU and the ESA, every effort will be made to resolve the issue. Should the issue remain in dispute, it will be presented to the Public Service Labour Relations Board for determination.

XIV This MOU:

- a. Will come into effect upon signature.
- b. May be amended with the written consent of the signatories.

Dated at Ottawa, Ontario, Canada this 5th day of December, 2007.

Original signed by:

Merlin Preuss
Director General of Civil
Aviation
Transport Canada

Greg Holbrook
National Chairman
Canadian Federal Pilots
Association

Michel Gaudreau
Director General Aircraft
Services Directorate
Transport Canada

APPENDIX "A" ESA Contact List

Canadian Federal Pilot Association ESA Team

National Chairman	Holbrook, Greg cfpa@cfpa-apfc.ca	(613) 230-5476
National Secretary/Treasurer	McConnell, Greg mccong@tc.gc.ca	(613) 990-1099
Consultant	Young, Ronald young.ronald@gmail.com	
Vice Chairman Ontario Region	Thornton, Donald	(416) 952-0032
Chairman NCR	Grant, Bob	(613) 952-3176
Engineering Test Pilot	Brulotte, Michel	(613) 952-4317
Chairman Quebec Region	Tamborriello, Umberto	(514) 633-3541

Transport Canada ESA Team

Director General, Human Resources	Brouillette, Linda	(613) 991-6317
Senior Director, Human Resources Services	Marion, François	(613) 993-0230
Director National Operations (Civil Aviation Directorate)	Taylor, Jennifer	(613) 991-9982
Regional Director, Civil Aviation	Allan, Arthur	(506) 851-7220
Director Flight Operations (Aircraft Services Directorate)	Buckles, Steve	(613) 998-3419

Chief, Labour Relations, Occupational Safety & Health	Landriault, Lyne	(613) 991-6292
Senior Labour Relations Advisor	Houle, Nicole	(613) 990-9854
Labour Relations Advisor (Civil Aviation Directorate)	Williams, Nicolas	(613) 990-6619

Labour Relations Advisor (Aircraft Services Directorate) Vertolli, Dominic (613) 991-5919

Treasury Board of Canada

Sr. Employer Representation Advisor | Bourgeois-Doré, Lise (613) 946-4947

Labour Relations Operations | Labour
Relations and Compensation Operations
Sector |

Employer Representation Officer | Labour
Relations Operations | Labour Relations &
Compensation Operations | Willis, Keith (613) 952-3176
