

## SCHEDULE "A"

### OVERVIEW AND PARTIES

1. The International Association of Machinists & Aerospace Workers (IAMAW) is the largest trade union in the airline sector in Canada.
2. Air Canada is Canada's largest domestic and international full-service airline providing scheduled and charter air transportation for passengers and cargo.
3. Air Canada rouge ("Rouge") is Air Canada's leisure branded flying product, described by Air Canada as its "new lower-cost leisure carrier". Rouge is a wholly owned and controlled subsidiary of Air Canada.
4. The IAMAW is the certified bargaining agent for three units of Air Canada employees: a unit of employees performing technical, maintenance and operational support functions ("TMOS unit"); a unit of employees carrying out office and clerical functions, and; a unit of employees in Air Canada's finance branch.

IAMAW & Air Canada, Board Order 9996-U (TMOS)

IAMAW & Air Canada, Board Order 9098-U (Office & Clerical)

IAMAW & Air Canada, Board Order 8227-U (Finance Branch)

5. The IAMAW and Air Canada are also party to collective agreements for the above units. The collective agreement for the TMOS unit was put in place as a result of the final offer selection arbitration process pursuant to Bill C-33 "an Act to provide for the continuation and resumption of air service operations" and is effective April 1, 2011 to March 31, 2016. The current collective agreements for the office and clerical unit and the finance branch unit are also effective April 1, 2011 to March 31, 2016.

Air Canada and IAMAW Collective Agreement, TMOS Unit

Air Canada and IAMAW Collective Agreement, Office and Clerical Unit

Air Canada and IAMAW Collective Agreement, Finance Branch

6. The IAMAW has filed this application under section 35 of the Canada Labour Code in order to protect the bargaining and bargained rights of its members at Air Canada and to provide a sound foundation for current and future negotiations between the parties.

## FACTUAL BACKGROUND

### Air Canada rouge

7. Air Canada rouge ("Rouge") is Air Canada's leisure branded flying product, described by Air Canada as its "new lower-cost leisure carrier". Air Canada launched Air Canada rouge on July 1, 2013.

"Introducing Canada's New Leisure Airline", Air Canada Media Release dated December 18, 2012

Air Canada Annual Information Form, 2013, dated March 28, 2014 at 4 ("AIF")

8. Air Canada advises its investors that Air Canada rouge has a lower cost structure "driven by increased seat density of Air Canada rouge-operated aircraft, lower wage rates and more competitive work rules in labour agreements, and by reduced overhead costs".

AIF, *supra* at 8

Air Canada 2013 Management's Discussion and Analysis of Results of Operations and Financial Condition at 7-8 ("MD&A")

9. Air Canada rouge is a wholly owned and controlled subsidiary of Air Canada. Air Canada rouge is constituted as a limited partnership established under the laws of the Province of Quebec. Air Canada holds all the issued and outstanding limited partner units of Air Canada rouge LP and a 100% interest in its general partner, Air Canada rouge General Partner Inc., a corporation incorporated under the laws of Canada which holds a 0.00001% interest in Air Canada rouge LP

AIF, *supra* at 2, 4

10. Air Canada rouge's internet presence is on pages that are part of the main Air Canada website at [www.aircanada.com/rouge](http://www.aircanada.com/rouge). No distinct contact information is provided for Air Canada rouge. The corporate and contact information at the bottom of the pages is that of Air Canada.

Air Canada website ([www.aircanada.com](http://www.aircanada.com)): "Welcome to Air Canada rouge"

11. Rouge is operated under the direction of Michael Friisdaal, an Air Canada officer with the title of President and CEO of the ACLG (Leisure Group). As CEO of ACLG Mr. Friisdahl is responsible for AC rouge as well as AC vacations, another wholly owned subsidiary of Air Canada.

AIF, *supra* at 34

## **Fleet**

12. The Rouge branded fleet is comprised exclusively of aircraft transferred from Air Canada's existing fleet. By the end of 2013, the Air Canada rouge fleet was comprised of eight Airbus A319 and two Boeing 767 aircraft.

MD&A, *supra* at 38

13. In 2014, Air Canada plans to transfer additional aircraft to Air Canada rouge, with the expectation that Air Canada rouge will have up to 33 aircraft in its fleet by the end of 2014. Going forward, Air Canada has announced plans to fly a total of 50 aircraft under the Air Canada rouge banner. This represents approximately one quarter of the total Air Canada fleet complement.

MD&A, *supra* at 39

## **Routes**

14. Air Canada rouge flies on 54 transborder and international routes virtually all of which were converted from Air Canada mainline or otherwise previously operated by Air Canada mainline.

MD&A, *supra* at 39

AIF , *supra* at 8

15. The most recent expansion of Rouge was into Western Canada, as announced by Air Canada on March 25, 2014, as follows:

Air Canada flights on the following routes will be converted to Air Canada rouge Airbus A319 service beginning this spring:

Vancouver  
to: Las Vegas, NV, daily flights effective April 28.  
Los Angeles, CA, four times daily effective May 1.  
Anchorage, AK, daily effective May 16.  
San Francisco, CA, four times daily effective July 1.  
Phoenix, AZ, daily effective December 17.

Calgary  
to: Las Vegas, NV, daily effective April 28.  
Los Angeles, CA, twice daily effective May 1.  
Phoenix, AZ, daily effective December 17.

Toronto  
to: San Diego, CA daily effective March 29.  
Phoenix, AZ, daily effective May 4; up to three times daily during the winter season.

"Air Canada rouge Expands to Western Canada", Air Canada  
Media Release dated March 25, 2014

### **Staffing**

16. Air Canada rouge aircraft are flown by pilots represented by the Air Canada Pilots' Association ("ACPA") within the bargaining unit covered by the collective agreement between Air Canada and ACPA. The pilots flying Air Canada rouge branded aircraft are on the Air Canada pilots' system seniority list.
17. Terms and conditions of work for the pilots operating Rouge branded aircraft are set out in the collective agreement between Air Canada and ACPA, effective April 1, 2011 to March 31, 2016, as varied by Letter of Understanding No. 74 within that agreement.

Air Canada and ACPA, Collective Agreement, LOU 74

18. ACPAs current agreement with Air Canada contains certain limitations on the type and volume of flying that Air Canada may carry out through Air Canada rouge. At present, for example, Air Canada is limited to operating 50 aircraft under the rouge brand.
19. Air Canada's existing plans involve operating Rouge to the current allowable maximum under the ACPA agreement. Other than the scope terms of this collective agreement, which is mirrored in some respects in Air Canada's agreement with the Canadian Union of Public Employees, there is no given limitation on the percentage of Air Canada's current flying that it could choose to convert to the rouge brand.
20. Flight attendants operating Air Canada rouge branded flights are represented by the Canadian Union of Public Employees "in accordance with the certification issued by the Canadian Industrial Relations Board to CUPE to represent all cabin personnel at Air Canada". The flight attendants employed at Rouge are part of a single bargaining unit consisting of all Cabin Personnel at Air Canada.

Agreement between Air Canada and Canadian Union of Public  
Employees – Rouge Component, dated November 30, 2012 to  
March 31, 2015

21. The terms and conditions of work of flight attendants staffing Rouge flights are set out in a Memorandum of Agreement that forms part of the collective agreement between Air Canada and CUPE.

"LCC", CUPE Media Release, dated December 7, 2012

22. There has been extensive hiring of flight attendants into positions at Rouge. Applications for these positions are submitted on the Air Canada website

Air Canada Website (www.aircanada.com), Air Canada rouge hiring pages

23. As we understand it, customer service operations related to Air Canada rouge are presently carried out by members of Unifor's Air Canada bargaining unit under the general terms of Unifor's current collective agreement with Air Canada and in accordance with the seamless customer service offered by Air Canada in relation to its mainline and rouge operations.
24. Members of the IAMAW Air Canada bargaining unit currently carry out the line maintenance, baggage and ground-handling work on Air Canada rouge aircraft, just as they did before these aircraft were repainted with the rouge logo.
25. Air Canada has, however, to date not formally acknowledged that Air Canada rouge is bound by the IAMAW bargaining certificates and collective agreement with Air Canada.
26. Instead, the IAMAW has been advised that the work on Rouge aircraft is now being carried out by Air Canada as the result of a contract (a service level agreement) between Air Canada and Air Canada rouge, such that the work may be "lost" to the members of the bargaining unit at Air Canada if Rouge should elect not to renew the contract with Air Canada going forward.
27. In discussions the IAMAW has been told that Air Canada rouge is deciding whether to continue to obtain these services under a service level agreement with Air Canada, or instead, to contract out to third parties or provide the services using Air Canada rouge's employees, rather than members of the bargaining unit.

Air Canada Presentation to the IAMAW, dated November 26/27, 2013<sup>1</sup>

28. The IAMAW has requested a copy of the service level agreement or agreements under which Air Canada says it provides a range of services within the scope of the IAMAW's bargaining units at Air Canada, including but not limited to maintenance, baggage and ground handling services to Air Canada rouge, but, to date, these have not been provided.
29. With respect to the finance and clerical units, Air Canada has advised the IAMAW only that "the status quo will be maintained for this group until the termination of the current collective agreement between the parties".

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<sup>1</sup> Air Canada may wish to assert confidentiality protections in relation to this document. We therefore ask the Board not to forward the complete file to third parties without providing Air Canada with an opportunity to state its position.

30. The IAMAW position is that it is entirely proper under the *Code* for Air Canada to make its business case to the union for distinct terms and conditions applicable to work on Rouge branded aircraft, and the IAMAW fully intends to continue to participate in such discussions. However, under law, the IAMAW is not required to make concessions for the purpose of retaining its existing bargaining rights. This application has therefore been filed to ensure that current discussions and negotiations towards new agreements in 2016 proceed on a sound labour relations foundation.

## **SUBMISSIONS**

31. The IAMAW submits that Air Canada rouge is a single employer alongside Air Canada.
32. Air Canada cannot seek to rely on the existence of a legal entity which it created, owns and controls in order to take existing operations outside the scope of its bargaining certificates and negotiated job security protections.
33. Board certificates and section 35 of the *Code* would have no meaning if a corporation that is bound by a certificate and by a collective agreement containing provisions against contracting out, may move its operations outside the scope of the bargaining unit by the simple administrative measure of incorporating a new company and drafting a contract between itself and that new company.
34. The Board has identified five "objective criteria" which must be met before it will exercise its discretion under section 35 to make a single employer declaration. The Board requires that there be:
- (a) two or more enterprises, i.e. businesses,
  - (b) under Federal jurisdiction,
  - (c) associated or related,
  - (d) of which at least two, but not necessarily all, are employers...and,
  - (e) the said businesses being operated by employers having common direction or control over them.

### ***Objective Criteria***

35. There can be no serious dispute that the objective criteria are met in this case, given Air Canada's acknowledged ownership and control of Air Canada rouge, including its labour relations, and given that Air Canada has bargained and continues to bargain with all of its unions concerning Air Canada rouge operations and labour relations.

36. It is submitted that control of this nature is alone sufficient reason for the Board to exercise its discretion to issue a single employer declaration.

***Exercise of Discretion***

37. The Board has stated that where the same functions are being performed on both sides of the corporate veil this alone satisfies the need for a labour relations reason for the Board to exercise its discretion in a single employer application. This test is more than met where, as here, work actually performed within a bargaining unit is moved across the corporate veil.

*Canadian Freightways* (1997) 105 di 9 at para 36

*Transport Route Canada* (1987) 70 di 153 at 160.

38. The IAMAW further submits that the employers can find no support in this Board's decision with respect to its, then several, regional connectors. That decision was expressly based on the finding that the model of the mainline and several regional airlines and the related bargaining rights appeared at that time to be fairly settled, such that labour relations were open to destabilisation by a Board declaration. In our submission, that decision was never intended to act as an invitation to Air Canada to destabilize its bargaining structures by engaging in corporate restructuring and moving parts of its current operations outside the scope of its bargaining units.

*Air Canada* [1999] CIRB No. 44

39. The IAMAW would remind the Board that the issues raised by Air Canada rouge and this application are identical to those raised in two earlier single employer applications filed by the IAMAW before the Board that have resulted in consent awards amending the certificates between Air Canada and the IAMAW to add other corporate entities.

40. ZIP Air was also a corporate entity created by Air Canada to carry out low cost flying under a distinct brand. Like Air Canada rouge, ZIP was a wholly owned subsidiary, carrying out flying previously carried out by Air Canada and subject to two way contracts under which Air Canada provided it with services such as maintenance and ground-handling.

41. The Board issued a certificate adding ZIP Air to the IAMAW's certificate with Air Canada on March 21, 2003

Board Order No. 8444-U, dated March 21, 2003

42. The same issues were also raised by Air Canada's creation of ACTS Limited Partnership, AC Cargo Limited Partnership and ACGHS Limited Partnership as

distinct corporate entities to carry out work previously performed by Air Canada's internal divisions. In that case also Air Canada had entered into two-way contractual arrangements that, like those with Air Canada rouge, threatened to divorce the bargaining unit from the legal entity purporting to own work carried out by bargaining unit members under the collective agreement with Air Canada.

43. On April 21, 2006 the Board issued a certificate adding ACTS Limited Partnership, AC Cargo Limited Partnership and ACGHS Limited Partnership to the IAMAW's certificate.

Board Order No. 9085-U, dated April 21, 2006

44. The IAMAW hopes that a similar process can be followed in this matter, given the virtually identical fact situations.

### REMEDIES REQUESTED

45. The IAMAW respectfully requests the following remedies:
- (a) An order that the Respondent employers produce all contractual agreements all other documents and information concerning the transactions and relationships in issue, subject to appropriate confidentiality orders.
  - (b) A declaration that Air Canada and Air Canada rouge constitute a single employer within the meaning of Section 35 of the *Code*.
  - (c) An order amending the certificates in Board Orders 9996-U; 9098-U and 8227-U to add "Air Canada rouge LP".
  - (d) A declaration that Air Canada rouge is bound by the collective agreements operative between Air Canada and the IAMAW.
  - (e) Such further and other relief as the IAMAW may request and the Board allow.

Dated at Toronto this 25<sup>th</sup> day of April, 2014



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of Machinists and Aerospace Workers