IN THE MATTER OF AN ARBITRATION
BY FINAL OFFER SELECTION
PURSUANT TO *AN ACT TO PROVIDE FOR THE CONTINUATION AND RESUMPTION OF AIR SERVICE OPERATIONS*,
Assented to March 15, 2012.

BETWEEN:

AIR CANADA
(the "Company")

-and-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(the "IAM&AW" or the "Union")

SOLE ARBITRATOR: MICHEL G. PICHER

APPEARANCES FOR THE COMPANY:

John Beveridge	- Director, Labour Relations
Dotane Harel	- Manager, Performance Reporting
Enzo Molino	- Director, Airports Resource Planning

APPEARANCES FOR THE IAM&AW:

Mike Ambler	- Negotiations Chairperson
Gary Sinclair	- Negotiations Co-Chairperson
Boyd Richardson	- Negotiations Co-Chairperson
Stanislav Dolnicek	- YYZ Negotiations Representative
Steve O'Hara	- YYZ Negotiations Representative
Robert Laflamme	- YYZ Negotiations Representative
James Lundy	- YYZ Negotiations Representative
Robert C. Box	- YUL Negotiations Representative
Trevor Drennan	- YUL Negotiations Representative
Kent Yanciw	- Alberta Negotiations Representative
Andrew MacFarlane	- LL 1763 Negotiations Representative
Terry Grunerud	- LL 764 Negotiations Representative
John Gorman	- LL 764 Negotiations Representative
Tony Rupps	- LL 714 Negotiations Representative

Mediation meetings were held in Montreal, on May 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 2012 and a final offer selection arbitration was heard in Ottawa on June 5, 2012.

AWARD

This arbitration involves the final offer selection process established by the Parliament of Canada under *Bill C-33, an Act to provide for the continuation and resumption of air service operations*, which received Royal Assent on March 15, 2012. That legislation provides for final offer selection as the process for the final and binding determination of all issues in dispute between Air Canada and the IAM&AW, the Union which represents two groups of employees under a single collective agreement: the mechanical maintenance services employees and the airport services employees in the Company's operations across Canada. The bargaining unit, referred to as the Technical Maintenance and Operational Support bargaining unit, is the largest employee group in the Company, numbering approximately 8,000 employees.

The parties' negotiations were in anticipation of a four-year collective agreement, effective April 1, 2011 until March 31, 2015. After the parties were unsuccessful in negotiating the terms for the renewal of their collective agreement the Minister of Labour, the Honourable Lisa Raitt, appointed Justice Louise Otis as Conciliation Commissioner pursuant to section 72(1)(b) of the *Canada Labour Code*, R.C.S., 1985, c. L-2. The Conciliation Commissioner's report, dated February 22, 2012, relates that after "...four [4] weeks of intensive and productive negotiations" a tentative collective agreement was reached, subject to ratification. The Conciliation Commissioner's report notes that the tentative collective agreement had the unanimous support of all members of the Union's two bargaining committees, representing the mechanical services and

airport services respectively. Unfortunately, in a vote held subsequently, the Union membership refused to ratify the tentative collective agreement.

Shortly thereafter, on March 15, 2012, Parliament enacted *Bill C-33*, referenced above, which establishes a process of final offer selection for the final and binding determination of the provisions of the parties' collective agreement. Following consultation by the Minister with the parties, on May 1, 2012, by mutual agreement I was appointed as Arbitrator pursuant to section 11 of *An Act to provide for the continuation and resumption of air services operations*, with the authority and the duty to decide the outstanding issues in dispute.

The parties' negotiations and this arbitration are particularly significant, considering the difficult times both parties have experienced over the past 10 years. That is reflected in the following passage of the report of Justice Otis:

> Following the costly and complex acquisition of CAIL in 2000, and the occurrence, in 2001, of international events that gravely affected air travel, Air Canada suffered unprecedented financial losses, becoming insolvent by the spring of 2003, and filing under the CCAA on April 1, 2033.
>
> Two separate rounds of bargaining occurred during the CCAA processes, in which all stakeholders made significant concessions. The IAM agreed to various productivity-related concessions including wage and non-wage scale changes. In 2003, the IAM and Air Canada agreed to extend the term of their existing collective agreement to July 1, 2006. They also agreed that on July 1, 2006 the collective agreements would be extended to July 1, 2009, and that in this period, negotiations would be limited to a wage re-opener, subject to arbitration in the case of an impasse. Air Canada and the

> IAM did engage in wage re-opener negotiations, in which the IAM argued for wage adjustments substantially above a normative settlement and Air Canada argued for the preservation of existing wage scales through 2009. Drawing on arbitrator M. Picher's conclusions in an arbitration award between Air Canada and the CAW, arbitrator Donald Munroe concluded that Air Canada's return to profitability following the CCAA process was not still attained and consequently awarded across-the-board wage increases slightly below the normative range. The collective agreement expiring July 1st, 2009 was extended, without substantial changes, for a period for 21 months from the date of expiry, as per a Memorandum of Agreement signed by the Parties on June 8th, 2009.

While recent years have seen some gains in the profitability of the Company's operations, its overall financial situation remains a concern. That is due, in substantial part, to the current deficit in its pension plan fund. Not surprisingly, the tentative collective agreement reached between the parties, which ultimately failed to be ratified, contained provisions modifying certain terms of the pension plan. With respect to wages, under the terms of the memorandum employees were to receive a lump sum payment equal to two percent of their regular base wages between April 1, 2011 and March 31,2012. Thereafter annual increases of two percent were to be added on April 1, 2012 as well as on April 1, 2013. The final year of the collective agreement saw a wage increase of three percent effective April 1, 2014. Additionally, and critically, the tentative collective agreement involved the establishment of the new and highest rated position of Licenced Aircraft Technician 5. It is common ground that that innovation was agreed to as a means of redressing, at least in substantial part, what the parties recognized as the gap between the high end of their wage scale for technical services

employees, as compared with the general market for comparable services elsewhere in the industry.

I consider it important to stress that the parties have what can fairly be described as a long-standing positive bargaining relationship. Among the Company's unions the IAM&AW has been a leader in recognizing the financial challenges faced by the Company and adjusting its bargaining objectives with a view to the overall economic viability of the Company and the related job security of its own members. In the Arbitrator's view it is not insignificant, as will be seen below, that certain of the Union's bargaining objectives have been accepted by the Company and folded into its own final offer in this arbitration process. To be clear, in my view the Union has bargained skillfully to maximize the best interests of its members, by effectively moving the Company to table an offer in this process which adds substantial value for the benefit of the employees, over and above the value of the tentative collective agreement which was rejected at ratification.

It must also be noted that the instant arbitration is unique, to the extent that it is governed by the terms of *Bill C-33*, a law which places certain clearly defined obligations on the Arbitrator. For the purposes of this Award section 13 and parts of section 14 of the *Act* bear close examination. They provide as follows:

> **13.** (1) Within the time and in the manner that the arbitrator may specify, the employer and the union must each submit to the arbitrator

(a) a list of the matters on which the employer and the union were in agreement as of union were in agreement as of a date specified by the arbitrator and proposed contractual language that would give effect to those matters;

(b) a list of the matters remaining in dispute on that date; and

(*c*) a final offer in respect of the matters referred to in paragraph (*b*).

(2) The final offer must be submitted with proposed contractual language that can be incorporated into the new collective agreement.

14. (1) Subject to section 16, within 90 days after being appointed, or within any longer period that may be specified by the Minister, the arbitrator must

(a) determine the matters on which the employer and the union were in agreement as of the date specified for the purposes of paragraph 13(1)(*a*);

(b) determine the matters remaining in dispute on that date;

(c) select, in order to resolve the matters remaining in dispute, either the final offer submitted by the employer or the final offer submitted by the union; and

(d) make a decision in respect of the resolution of the matters referred to in this subsection and forward a copy of the decision to the Minister, the employer and the union.

(2) In making the selection of a final offer, the arbitrator is to take into account the tentative agreement reached by the employer and the union on February 10, 2012 and the report of the conciliation commissioner dated February 22, 2012 that was released to the parties, and is to be guided by the need for terms and conditions of employment that are consistent with those in other airlines and that will provide the necessary degree of flexibility to ensure

(a) the short- and long-term economic viability and competitiveness of the employer; and

(b) the sustainability of the employer's pension plan, taking into account any short-term funding pressures on the employer.

As a matter of general practice, Canadian arbitrators called upon to resolve interest arbitration disputes have effectively given little or no weight to "ability to pay"

arguments submitted to them by employers. While I consider that approach to be valid and appropriate generally in interest arbitrations in both the public and private sector, I am compelled to recognize that the legislation which defines this process, and my corresponding jurisdiction, is clearly more constraining. That is particularly so as relates to my obligation to take cognizance of the Company's pension plan burden, a factor of such magnitude that it goes indisputably to the long term sustainability of the Company.

Most significantly, the Company faces a critical deadline in 2014. In the interests of protecting the Company's survival following its emergence from CCAA protection, federal pension authorities granted it a moratorium on the payment of its pension deficit until 2014. It was hoped initially that the period of the moratorium would be sufficient to allow the Company to reduce its pension deficit. However, economic events of the last few years, including the recession of 2008 and a fiscal policy that has consistently favoured low interest rates, have in fact led to a significant growth in the pension deficit. It is now clear to all concerned that an extension of the Company's pension moratorium beyond 2014 will be essential to the Company's continued viability. It is against that background that I now turn to consider the issues in dispute, the final offers and supporting submissions of the respective parties.

MEDIATION

As part of their negotiation process, in anticipation of the appointment of an arbitrator by the Minister of Labour pursuant to the *Act*, the parties executed their own Memorandum of Agreement dated May 1, 2012. By the agreement of the parties a negotiation process was to commence with the appointment the Arbitrator by the Minister of Labour. The parties agreed to have the Arbitrator assist in the negotiations, which were to extend for a period of 10 days, commencing at a date to be agreed or to be determined by the Arbitrator. In fact, the 10 day negotiation period commenced on May 8, 2012 with negotiations, assisted by the Arbitrator acting as mediator, extending through May 22, 2012.

Under the terms of paragraph 4 of the parties' Memorandum of Agreement the negotiation phase was conducted in full confidentiality, being subject to a media blackout. By the terms of that paragraph the parties undertook not to communicate the specifics of the negotiation to their respective constituents during the negotiation period. As anyone familiar with the collective bargaining process will appreciate, a degree of confidentiality with respect to the exchanges made between parties during the give and take of collective bargaining negotiations is essential. Parties must communicate with each other and with the Mediator in the knowledge that the statements that they make and the tentative positions which they may explore will not be publicly communicated or be made subject to scrutiny and criticism at some later time. In other words, for the frank exchange of positions between the parties it was essential that they could proceed

in the knowledge that their tentative proposals and counter-proposals would remain confidential. For the purposes of clarity, I consider that that confidentiality should continue past the conclusion of the 10 day negotiation period. It is therefore my expectation and direction that the members of the bargaining committees of both parties will maintain ongoing confidentiality with respect to the communications which occurred between the parties as well as between the parties and the Mediator during the 10 day period of the negotiation blackout.

ISSUES

With respect to the issues addressed, significant matters arose which went beyond the tentative agreement initially reached through the efforts of the Conciliation Commissioner. Two major new issues were discussed during the course of the mediation process. The first involved the Company's wish to secure the support of the Union with respect to approaching federal authorities to seek an extension of the pension fund relief which was granted following emergence from *CCAA* and which is now scheduled to expire in 2014. Simply put, the viability of the Company and to a substantial extent, the viability of the pension plan, essentially depend on the granting of an extension of that pension fund relief, hopefully for a period of not less than 10 years beyond 2014. The likelihood of the Company achieving success in its efforts with federal authorities is obviously substantially enhanced to the extent that the Union representing the largest group of employees and retirees in the Plan lends its active support to the effort to obtain an extension of the pension fund relief. It is of critical

interest for the Company to gain that relief now, thereby assuring its long term solvency, consolidating its ability to finance the capital expenditures which are now necessary to maintain and upgrade its fleet in both the near and long term. Conversely, the issue of pension relief remaining unresolved places a cloud over the very viability of the Company, going forward.

While the Union appreciates the importance of the pension funding issue, it had reservations about the Company's approach. In the Union's view the pension funding issue is best addressed outside the arbitration process and would preferably involve all stakeholders. However its submission to the Arbitrator reflects that ultimately it agrees that it should support the Company's effort at gaining relief on the pension funding issue.

As an incentive to the Union agreeing to support the Company's effort for pension fund relief, the Company agreed to the Union's proposal to remove a three percent (3%) reduction in the survivor's pension benefit which had been surrendered as a concession by the Union in earlier bargaining. The willingness of the Company to restore that pension benefit was clearly made contingent on the parties being successful in their joint overtures to the federal authorities for an extension of the pension funding relief beyond 2014.

An additional issue in dispute was the Union's ongoing concern that, while the LAT5 position did provide a degree of wage uplift in the higher classifications of the

Mechanical Maintenance Services, there was still a degree of gap at that level with the wages of employees with similar responsibilities elsewhere in the industry. Additionally, concern was expressed on behalf of the Airport Services employees for the date at which they would be restored to the 30 minute paid lunch period, a benefit which was surrendered in the *CCAA* negotiations. During the negotiations for the tentative agreement the Company proposed to restore the paid lunch, but only as of September 30, 2012. The Union seeks an earlier restoration of the paid lunch, as of August 1, 2012.

What proceeds is by no means an exhaustive list of all of the issues in dispute between the parties, although all of those issues have been duly recorded before the Arbitrator as required by the *Act*. The above were, however, the chief matters in dispute during the course of the mediation phase of my mandate, and remained outstanding in the respective positions of the parties at the stage of this final offer selection.

DECISION

Having heard and carefully reviewed the full positions of the parties tabled at the final offer selection hearing conducted in Ottawa on June 5, 2012, it is my judgement that the final offer tabled by the Company is preferable. It is the offer I hereby select and determine to form the balance of the terms of the collective agreement between the parties, when coupled with the issues already in agreement, as reflected both in the

previous collective agreement and in the tentative agreement reached with the assistance of the Conciliation Commissioner.

In my view it is the Company's final offer which best responds to the constraints which I am compelled to respect in accordance with section 14(2) of *Bill C-33*, the legislation from which I draw my jurisdiction. Firstly, by enlisting the support of the Union in its efforts to gain from federal pension authorities an extension of the pension fund relief previously granted, and scheduled to expire in 2014, the Company's offer goes directly to what may well be described as the most critical issue relating to the ongoing viability of the Company. Related to that, of course, is the viability of the pension plan which benefits the Union's retirees and the very job security of its members who are now actively employed by Air Canada. There can be little doubt but that the Union recognizes the urgency of that issue. Significantly, the Company's offer has met a Union demand by putting on the table an additional benefit to the Union in the form of the return of the three percent (3%) survivor pension benefit which was previously forfeited in negotiations, in the event that the Company and Union together are successful in obtaining an extension of the pension funding relief. Should that relief not be obtained, grave existential questions will arise with respect to the future of both the pension plan and of the Company itself. I have no reason to doubt that the Union, which has participated constructively and in good faith in all phases of the negotiation and arbitration process, will honour its contractual obligations by respecting the terms of the Award and giving to the Company the unqualified support it needs in obtaining an extension of its pension burden relief beyond 2014 from federal authorities. Nor, in my

view, is it insignificant that success in that endeavour will gain to the Union's members not only pension security, but also a benefit beyond what was achieved through the original tentative agreement which was not ratified.

The Company's offer extends the term of the collective agreement to five years, with an additional three percent (3%) wage increase in the fifth year. That, in my view, goes a substantial way towards satisfying the Union's desire to see the Licenced Aircraft Technician 5 classification move much closer to a position of parity with what is currently seen elsewhere in the industry. That is particularly so when the extension of the collective agreement is coupled with the Company's offer of an upwards adjustment from $90.00 to $100.00 in the Aircraft Endorsement Premium. The Company has also indicated willingness in its offer to provide for a partial forwarding of the paid lunch, albeit at no greater cost.

As should be evident from the foregoing, the Company's offer provides to the Union a significant increase in value over and above what was achieved through the initial tentative agreement which did not receive ratification. To anyone who might ask how it is possible that the Union was able to achieve more than was realized through the tentative agreement, there is an obvious answer. By introducing the elements of support for the Company's efforts to achieve an extension of the pension funding relief beyond 2014, and the wage gains to be realized by adding an additional fifth year to the collective agreement, out of sensitivity to the Union's interests, the Company was able to fashion a proposal for a more advantageous collective agreement, from the

standpoint of the employees, than was in fact realized in the tentative agreement. It should again be stressed, as indicated earlier in this award, that these gains, folded into the Company's final offer, are the product of astute and creative bargaining on the part of the Union's bargaining committee and a productive openness on the part of the Company. By comparison, while made in the best of good faith, the Union's final offer would place on the Company a burden in respect of employee compensation and productivity that in my view are beyond what is realistic and in keeping with the constraints enunciated in section 14(2) of the *Act*.

For all of the foregoing reasons I find and declare that the offer of the Company is hereby selected, and shall constitute the terms of the parties' collective agreement. That offer is attached and herby incorporated into this Award as Appendix "A". I retain jurisdiction in the event of any dispute between the parties concerning the interpretation or implementation of this final offer selection, or its ultimate drafting into the terms of the parties' collective agreement. For the purposes of clarity, nothing herein derogates from the exercise of the parties' mutual discretion in accordance with article 104 of the collective agreement.

Dated at Ottawa this 17th day of June, 2012.

Michel G. Picher
Arbitrator

APPENDIX A

APPENDIX A INDEX

17. Appendix J – Letter from John Beveridge to Mike Ambler, April 04, 2012 – Part Time Wage Scale Progression

18. Appendix K – Memorandum of Agreement – Shift Schedules

19. Appendix L – Memorandum of Agreement No. 10 – Advancement to Licensed Aircraft Technician Level 5

20. Clarifying document to selected Tentative Agreement items between IAMAW and Air Canada

21. Memorandum of Agreement Between Air Canada (the "Company") and International Association of Machinists and Aerospace Workers (Technical Maintenance and Operational Support Bargaining Unit) (the "Union")

22. Conciliation Commissioner Louise Otis' Report