

Board File No.: _____

Canada Industrial Relations Board

IN THE MATTER OF THE *CANADA LABOUR CODE* (PART I – INDUSTRIAL RELATIONS) AND A COMPLAINT FILED PURSUANT TO SECTION 97(1) THEREOF CONCERNING THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, COMPLAINANT; ALLEGING A VIOLATION OF SECTIONS 8(1), 50, 94(1)(a), 94(3)(a), 94(3)(a)(v) AND 96 OF THE *CODE* BY AIR GEORGIAN LTD., RESPONDENT

BETWEEN:

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

(the "Applicant")

- and -

AIR GEORGIAN LTD.

(the "Respondent")

**APPLICATION BY THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
PURSUANT TO SECTION 97(1) OF THE *CANADA LABOUR CODE***

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**Denis Ellickson
Counsel for the Applicant**

A. THE NAME, POSTAL AND EMAIL ADDRESSES AND TELEPHONE AND FAX NUMBERS OF THE COMPLAINANT AND THEIR LEGAL COUNSEL OR REPRESENTATIVE, IF APPLICABLE;

Air Line Pilots Association, International

Attention: Captain Timothy Canoll
Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Suite, 800
Washington, DC 20036
Tel: (703) 689-2270
Email: tim.canoll@alpa.org

-and-

Attention: Mr. Albert Leger
Labour Relations Advisor
Air Line Pilots Association, International
62 – 16655 64th Avenue
Surrey, BC V3S 3V1
Tel: (604) 219-5228
Fax: (416) 219-8213
Email: albert.leger@alpa.org

and its counsel:

Attention: Mr. Denis Ellickson
CaleyWray
65 Queen Street West
Suite 1600
Toronto, ON M5H 2M5
Tel: 416-775-4678
Fax: 416-366-3293
Email: ellicksond@caleywray.com

B. THE NAME, POSTAL AND EMAIL ADDRESSES AND TELEPHONE AND FAX NUMBERS OF ANY PERSON WHO MAY BE AFFECTED BY THE COMPLAINT;

Air Georgian Limited

Attention: Ms. Julie Mailhot

Chief Operating Officer
Air Georgian Ltd.
2450 Derry Road East
Shell Areocentre
Mississauga, ON L5S 1B2
Tel: 905-676-1221
Fax: 905-676-1151
Email: jmailhot@airgeorgian.ca

and its counsel:

Attention: Mr. Lorenzo Lisi
Aird & Berlis LLP
Brookfield Place
181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9
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Fax: 416-863-1515
Email: llisi@airdberlis.com

C. A REFERENCE TO THE PROVISION OF THE CODE UNDER WHICH THE COMPLAINT IS BEING MADE;

Please see attached Schedule "A".

D. FULL PARTICULARS OF THE FACTS, RELEVANT DATES AND GROUNDS FOR THE COMPLAINT;

Please see attached Schedule "A".

E. A COPY OF THE SUPPORTING DOCUMENTS FOR THE COMPLAINT;

Please see attached Schedule "A".

F. THE DATE AND DESCRIPTION OF ANY ORDER OR DECISION OF THE BOARD RELATING TO THE COMPLAINT;

Please see attached Schedule "A".

G. AN INDICATION AS TO WHETHER A HEARING IS BEING REQUESTED AND, IF SO, THE REASON FOR THE REQUEST;

Please see attached Schedule "A".

H. A DESCRIPTION OF THE ORDER OR DECISION SOUGHT;

Please see attached Schedule "A".

I. THE DATE ON WHICH THE COMPLAINANT KNEW OF THE ACTION OR CIRCUMSTANCE GIVING RISE TO THE COMPLAINT; AND

Please see attached Schedule "A".

J. PARTICULARS OF THE MEASURE TAKEN, IF ANY, TO HAVE TO COMPLAINT REFERRED TO ARBITRATION UNDER A COLLECTIVE AGREEMENT OR THE REASONS WHY THE ARBITRATION DID NOT TAKE PLACE.

Please see attached Schedule "A".

SCHEDULE "A"

Background

1. The Air Line Pilots Association, International ("ALPA"), is a trade union that represents over 60,000 pilots employed worldwide. In Canada, ALPA is the certified bargaining agent of pilots employed by numerous airlines including WestJet, Jazz Air LP, Air Transat, Canadian North, First Air, etc.
2. Air Georgian Limited ("Air Georgian") is a privately owned airline based in Mississauga, Ontario with bases at Toronto Pearson Airport and Calgary International Airport. Air Georgian's fleet includes 14 Beechcraft 1900 aircraft and 17 Regional Jets (CRJ).
3. Air Georgian exclusively operates regional flights for Air Canada and is part of the Air Canada Express family. As a result of its relationship with Air Canada, Air Georgian pilots are entitled to a job interview with Air Canada through those parties' Pilot Mobility Agreement. Typically, Air Georgian pilots will accumulate sufficient hours and experience at that carrier before continuing their careers at Air Canada. This has been the historical and natural progression.
4. On November 4, 2016, ALPA filed an application for certification to represent the pilots of Air Georgian Limited ("Air Georgian") (Board File No. 31860-C).
5. On the same day, CUPE filed an application for certification to represent flight attendants (Board File No. 31862-C) and Unifor filed an application for certification to represent grounds crew and office staff (Board File No. 31861-C).
6. In conjunction with the three applications for certification, the Ontario Regional Employee Association ("OREA") filed a request for review of the bargaining unit structure at Air Georgian pursuant to section 18.1 of the *Canada Labour Code* (the "*Code*") (Board File No. 31865-C). The bargaining unit structure sought by OREA mirrored the bargaining units proposed in the three concurrent applications for certification.
7. The Board ordered a vote and sealed the ballot boxes pending a decision with respect to OREA's section 18.1 application.
8. On January 26, 2017, the Board released its decision in connection with the application filed by OREA pursuant to section 18.1 of the *Code*. In that decision,

the Board granted the application for review and restructured the bargaining units accordingly (2017 CIRB 847).

9. On February 3, 2017, the Board certified ALPA as the bargaining agent for a group of pilots employed by Air Georgian. Shortly thereafter, Air Georgian filed an application for reconsiderations of the Board's decisions, ultimately delaying bargaining for an extended period.
10. As set out in more detail below, since ALPA was certified Air Georgian has delayed and frustrated the bargaining process resulting in unreasonable delays in achieving a first collective agreement. Most recently, as a result of ALPA filing a Notice of Dispute requesting the Minister appoint a Conciliation Officer, Air Georgian has responded by: threatening to lay off pilots; threatening to deny promotions; refusing to negotiate terms and conditions of employment; targeting union representatives; and denying flight releases for union representatives.
11. Air Georgian's conduct constitutes bargaining in bad faith and is in violation of the *Code* warranting immediate intervention by the Board in order to fulfill the objectives of the *Code*.

Twenty months since notice to bargain was sent

12. On February 22, 2017, ALPA issued a Notice to Bargain to Air Georgian in accordance with section 36(2) of the *Code*. In that notice, ALPA advised Air Georgian of its desire to schedule dates and meet to conduct collective bargaining expeditiously.
13. Shortly thereafter, ALPA engaged in discussions with Air Georgian in respect to the deduction and remittance of union dues. During those discussions, Air Georgian refused to implement a dues structure in accordance with ALPA's instructions. Air Georgian took the position that it would not deduct and remit dues to ALPA at all electing instead to maintain the dues structure established under OREA. Further, Air Georgian advised ALPA that it intended to hold such dues in "trust" until such time as the Board disposed of its application for reconsideration.
14. On May 26, 2017 ALPA and Air Georgian jointly requested the appointment of a mediator from the Federal Mediation and Conciliation Service (FMCS) to provide the parties with interest-based bargaining training and to endeavour to assist the parties in concluding a collective agreement. FMCS ultimately scheduled interest-based bargaining training to take place with the parties from July 19 to July 21st, 2017.

15. ALPA has always been committed to working with Air Georgian to establish a positive relationship for the betterment of its members. It has gone above and beyond to do so. For instance, on May 29, 2017, ALPA hosted a dinner with representatives of Air Georgian to foster to promote harmonious labour relations. Unfortunately, Air Georgian has steadfastly refused to reciprocate or make any good faith effort to work with ALPA as it is required to do in accordance with the *Code*.
16. In order to prepare for collective bargaining, ALPA sent correspondence to Air Georgian dated June 14, 2017 in which it made specific and detailed requests for routine documentary disclosure necessary to engage in reasoned and informed collective bargaining.
17. On July 17, 2017, days before the FMCS interest-based bargaining training was scheduled to commence, Gabriella Marsala, the Director of Human Resources for Air Georgian, wrote to ALPA advising that the company would not be remitting union dues, would not participate in interest-based bargaining training, and would not commit to collective bargaining dates until it received the Board's decision in respect of its application for reconsideration.
18. Also on July 17, 2017, Aleksandra Dojcinovic, Employee and Labour Relations Manager for Air Georgian, wrote to the FMCS advising that it would not be participating in the interest-based bargaining training that had been scheduled to take place between July 19-21, 2017.
19. Air Georgian's unwillingness to enter into collective bargaining with ALPA, to remit union dues to ALPA and to produce documentation relevant to collective bargaining to ALPA frustrated ALPA's ability to represent its members in accordance with its status as the certified bargaining agent of pilots employed by Air Georgian.
20. On July 25, 2017, ALPA instructed its counsel to issue correspondence to the Board setting out its concerns with respect to the conduct of Air Georgian. Specifically, ALPA noted Air Georgian's refusal to remit union dues and refusal to engage in collective bargaining effectively constituted a repudiation of the collective bargaining process and an outright refusal to recognize ALPA's status as the certified bargaining agent of pilots employed by Air Georgian. In that correspondence, ALPA respectfully requested that the Board issue a decision on Air Georgian's request for reconsideration at its earliest opportunity hoping that such decision would bring an end to Air Georgian's unlawful conduct.

21. On July 28, 2017, the Board confirmed receipt of ALPA's correspondence dated July 25, 2017 and advised that Air Georgian's application for reconsideration was currently in deliberation before the Board and that a decision would be communicated shortly.
22. On August 15, 2017, the Board released its decision dismissing Air Georgian's application for reconsideration. Notwithstanding the Board's decision dismissing its application for reconsideration, Air Georgian continued to disregard the Board's decisions and ALPA's status as bargaining agent.
23. On August 28, 2017, Air Georgian issued correspondence to ALPA confirming receipt of the Board's August 15, 2017 decision and advising that it was reviewing its "options" with its legal counsel. Further, Air Georgian advised that it would continue to withhold union dues from ALPA, that it was not prepared to schedule firm dates for collective bargaining with ALPA and that it was not prepared to respond to ALPA's request for documentary production relevant to collective bargaining.
24. On August 29, 2017, ALPA's counsel sent correspondence to Air Georgian's counsel objecting to its August 28, 2017 correspondence and demanding that it immediately rescind same and take all steps necessary to recognize ALPA's bargaining rights forthwith. ALPA requested confirmation of Air Georgian's position on its demands by no later than August 30, 2017.
25. The foregoing resulted in ALPA being compelled to file an Application Pursuant to Section 97 of the *Code* ; an Application for an Interim Order; and an Application Pursuant to Section 23(1) of the *Code* all against Air Georgian on September 1, 2017 (Board File No.s 32270-C; 32269-C; and 32271-C)). ALPA refers to and relies upon its pleadings in those Applications.
26. By decision dated October 2, 2017 the Board declined to issue any interim order compelling Air Georgian to bargain in good faith or any interim orders around union dues.
27. The parties eventually reached an agreement in relation to the issues giving rise to the Section 97 Application in or around February, 2018.
28. As a result of Air Georgian refusing to recognize ALPA's bargaining rights the parties did not meet in bargaining for the first ten (10) months following certification. Bargaining sessions have only been held on the following dates (all in 2018):

January 15, 17

February 13, 15

June 6, 8, 14

September 25

29. In total through these dates, only 3 articles of the collective agreement have been agreed to (Preamble, Deduction of Dues and Missing and Internment) while an additional thirty (30) articles remain outstanding.
30. ALPA's Bargaining Committee comprises the following:
 - Albert Leger, ALPA Labour Relations Advisor
 - Marc Delorme, ALPA Labour Relations Counsel
 - Robert McCallum, Negotiating Chairman
 - Jim Macarthur, MEC Chairman
 - John Sviergula, Negotiating Committee Member
 - Paul Peace, ALPA National Collective Bargaining Committee Member
 - Rushi Patel, ALPA Senior Economic Analyst

Beechcraft 1900 and Application for Conciliation

31. On or about September 13, 2018 Air Georgian President and CEO Eric Edmondson advised ALPA Air Georgian MEC Chairman James Macarthur that the Company was planning to "park" (stop flying) its fleet of fourteen (14) Beechcraft 1900 aircraft. Mr. Edmondson assured Mr. Macarthur that there would be no layoff of pilots as a result of this decision.
32. On September 19th the Company issued a memo to all employees announcing the retirement of the Beechcraft fleet and assuring all employees that their employment "is secure".
33. Bargaining was scheduled to continue on September 25th. Prior to bargaining, Air Georgian's Chief Operating Officer, Julie Mailhot, advised Robert McCallum, ALPA's Air Georgian Negotiating Chairman, that the Company did not wish to involve ALPA Staff or counsel in any discussions about the retirement of the Beechcraft 1900 fleet. Ms. Mailhot stated it was a "local issue" and only wanted Messrs. McCallum and Macarthur to work on any potential letter of understanding to address that issue.

34. Shortly after and once again prior to bargaining on September 25th, Mr. Edmondson requested a meeting with Mr. McCallum and Mr. Macarthur. No ALPA staff or counsel were invited to attend.
35. At this meeting, Mr. Edmondson on behalf of the Company again assured Messrs. McCallum and Macarthur that there would be no layoffs as a result of this decision to retire the Beechcraft fleet. The Company committed to working on a letter of understanding to this effect. Messrs. McCallum and Macarthur left this meeting cautiously optimistic. Bargaining did not occur on this date as a result of this meeting.
36. Given nearly twenty (20) months had passed since notice to bargain had been given, ALPA concluded that it was necessary to prepare to file for conciliation. The necessary form was prepared and signed by ALPA President, Captain Tim Canoll on this date.
37. On September 27th, ALPA provided a draft letter of understanding to Air Georgian in relation to the retirement of the Beechcraft fleet. This proposal reflected the parties' discussions on September 25th and Mr. Edmondson's assurances that there would be no layoffs.
38. Air Georgian responded the same day with its own proposal that was completely at odds with the assurances provided by Mr. Edmondson. The Company refused to include any provision for job security and adequate pay protection.
39. Convinced that Air Georgian was acting in bad faith and would not voluntarily agree to a collective agreement, ALPA advised the Company that its proposal was not acceptable and filed its Notice of Dispute seeking the appointment of a conciliation officer that evening.
40. Air Georgian responded to ALPA filing for conciliation in several ways.
41. Air Georgian's Vice President of Flight Operations, Troy Stephens, advised ALPA in an email on September 28th that "mitigation discussions" surrounding the retirement of the Beechcraft fleet "are formally off the table and the Company will proceed with Furlough of the B1900 YYZ Pilots as per the existing Collective Agreement."
42. Air Georgian issued a memo to all pilots announcing that ALPA had filed for conciliation and expressing its disappointment on September 29th.

43. In response, ALPA MEC Chairman Macarthur advised Mr. Stephens that his decision was "disappointing" and that he hoped Air Georgian's reputation would not be "significantly damaged."

44. Mr. Stephens then responded on September 29th bizarrely accusing ALPA of bad faith and stating:

The ALPA MEC is naïve in grand proportion or being fueled and misguided by parties not working towards our mutual success. Any goodwill the Air Georgian shareholders or our single customer was willing to offer in an attempt to mitigate job losses due to a large reduction in our fleet understandably evaporated when ALPA filed for conciliation. (emphasis added)

45. Since this time, Air Georgian has repeatedly requested ALPA withdraw its request for conciliation in exchange for no pilots being laid off.

46. On October 1st, Mr. Stephens and the Company's Aleksandra Dojcinovic had a call with Mr. McCallum. Mr. Stephens requested ALPA cancel the request for conciliation and meet in bargaining – without a third party present – in October in exchange for no layoffs.

47. Mr. Stephens also advised Mr. McCallum that if ALPA proceeded with conciliation Air Canada would not hire any Air Georgian pilots.

48. Mr. Macarthur had a similar discussion also on October 1st with Mr. Edmondson.

49. On October 2nd Mr. Edmondson called Mr. McCallum. Mr. Edmondson promised to get bargaining "back on track". Mr. Edmondson advised Mr. McCallum that if the Union withdrew the request for conciliation, the Company would remove Ms. Mailhot from bargaining. Ms. Mailhot has been widely seen as a difficult bargaining partner by ALPA.

50. On October 5th, the Union advised the Company that, "after much thought and contemplation" ALPA would not be withdrawing its request for the appointment of a conciliation officer.

51. Air Georgian responded the following day stating, in part, as follows:

It is extremely disappointing that at this juncture, ALPA would choose to disrupt our voluntary negotiating process, signaling that you wish to proceed only under conciliation. Further, when presented with a reasonable request to delay conciliation, you have refused, opting instead

to continue on a path designed to inflict the maximum damage to Air Georgian, our relationship with Air Canada and your membership.

ALPA filing for conciliation has altered the landscape and budgetary parameters under which are operating. We need to proceed with contingency plans and their related expenses, as well as identify steps we can take to protect the employment of our entire organization of close to 580 employees – pilots, mechanics, flight attendants, administration and support staff. We explained to you several times that your decision to proceed with conciliation would result in an inability on our part to protect surplus pilots. The fact you are willing to dismiss this group of your membership is extremely concerning to us.

52. To be clear, ALPA has not refused to engage in collective bargaining and has not refused to negotiate a letter of understanding on the retirement of the Beechcraft 1900 fleet and its consequences.
53. In the meantime, ALPA has also learned that Mr. Stephens is inquiring of employees, including bargaining unit members, if Mr. McCallum is “talking union” in the crew rooms.
54. Air Georgian has also denied Mr. Macarthur time off for Union business subsequent to ALPA filing for conciliation. In September, 2018 Mr. Macarthur had bid (requested) ten (10) days off for Union business. All ten (10) days were granted by Air Georgian. In October, 2018 Mr. Macarthur bid twelve (12) days off for Union business. Air Georgian denied the request – except for five (5) days previously scheduled for bargaining commencing the week of October 22nd.

Legal Submissions

55. ALPA submits that Air Georgian has violated sections 8(1), 50, 94(1)(a), 94(3)(a) and 94(3)(a)(v) and 96 of the *Code* warranting intervention by the Board.
56. The relevant provisions of the *Code* include the following:

Employee Freedoms

- **8 (1)** Every employee is free to join the trade union of their choice and to participate in its lawful activities.

Duty to bargain and not to change terms and conditions

50 Where notice to bargain collectively has been given under this Part,

- **(a)** the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall
 - (i)** meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and
 - (ii)** make every reasonable effort to enter into a collective agreement; and
- (b)** the employer shall not alter the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until the requirements of paragraphs 89(1)(a) to (d) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

...

Federal Mediation and Conciliation Service

- **70.1 (1)** The Federal Mediation and Conciliation Service, the employees of which are employees of the Department of Employment and Social Development, advises the Minister of Labour with respect to industrial relations matters and is responsible for fostering harmonious relations between trade unions and employers by assisting them in the negotiation of collective agreements and their renewal and the management of the relations resulting from the implementation of the agreements.
- *Head*
 - (2)** The head of the Federal Mediation and Conciliation Service reports to the Minister in respect of responsibilities relating to the resolution of disputes.

Notice of dispute

- **71 (1)** Where a notice to commence collective bargaining has been given under this Part, either party may inform the Minister, by sending a notice of dispute, of their failure to enter into, renew or revise a collective agreement where
 - (a)** collective bargaining has not commenced within the time fixed by this Part; or
 - (b)** the parties have bargained collectively for the purpose of entering into or revising a collective agreement but have been unable to reach agreement.

- *Copy to other party*

(2) The party who sends a notice of dispute under subsection (1) must immediately send a copy of it to the other party.

...

Employer interference in trade union

- **94 (1)** No employer or person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or

(b) contribute financial or other support to a trade union.

- *Exception*

(2) An employer is deemed not to contravene subsection (1) by reason only that they

(a) in respect of a trade union that is the bargaining agent for a bargaining unit comprised of or including employees of the employer,

- **(i)** permit an employee or representative of the trade union to confer with them during hours of work or to attend to the business of the trade union during hours of work without any deduction from wages or any deduction of time worked for the employer,
- **(ii)** provide free transportation to representatives of the trade union for purposes of collective bargaining, the administration of a collective agreement and related matters, or
- **(iii)** permit the trade union to use their premises for the purposes of the trade union;

(b) contribute financial support to any pension, health or other welfare trust fund the sole purpose of which is to provide pension, health or other welfare rights or benefits to employees; or

(c) express a personal point of view, so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

- *Prohibition relating to replacement workers*

(2.1) No employer or person acting on behalf of an employer shall use, for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives, the services of a person who was not an employee in the bargaining unit on the date on which

notice to bargain collectively was given and was hired or assigned after that date to perform all or part of the duties of an employee in the bargaining unit on strike or locked out.

- *Prohibitions relating to employers*

(3) No employer or person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person

- **(i)** is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union,
- **(ii)** has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,
- **(iii)** has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,
- **(iv)** has made or is about to make a disclosure that the person may be required to make in a proceeding under this Part,
- **(v)** has made an application or filed a complaint under this Part, or
- **(vi)** has participated in a strike that is not prohibited by this Part or exercised any right under this Part;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred on them by this Part;

(c) suspend, discharge or impose any financial or other penalty on an employee, or take any other disciplinary action against an employee, by reason of their refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike or subject to a lockout that is not prohibited by this Part;

(d) deny to any employee any pension rights or benefits to which the employee would be entitled but for

- **(i)** the cessation of work by the employee as the result of a lockout or strike that is not prohibited by this Part, or
- **(ii)** the dismissal of the employee contrary to this Part;

(d.1) where the requirements of paragraphs 89(1)(a) to (d) have been met, cancel or threaten to cancel a medical, dental, disability, life or other insurance plan, whether administered by the employer or otherwise, that benefits employees, so long as the bargaining agent tenders or attempts to tender to the employer payments or premiums sufficient to continue the plan;

(d.2) where the requirements of paragraphs 89(1)(a) to (d) have been met and the bargaining agent has tendered or attempted to tender to the employer payments or premiums sufficient to continue an insurance plan referred to in paragraph (d.1), deny or threaten to deny to any employee any benefits under the plan to which the employee was entitled before those requirements were met;

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from

- **(i)** testifying or otherwise participating in a proceeding under this Part,
- **(ii)** making a disclosure that the person may be required to make in a proceeding under this Part, or
- **(iii)** making an application or filing a complaint under this Part;

(f) suspend, discharge or impose any financial or other penalty on a person employed by them, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act that is prohibited by this Part; or

(g) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with a trade union in respect of a bargaining unit, if another trade union is the bargaining agent for that bargaining unit.

...

General prohibition

96 No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union.

57. As noted, after nearly twenty (20) months of attempting to conclude a first collective agreement, ALPA elected to exercise its right under the *Code* and filed an application for the appointment of a conciliation officer. In retaliation, Air Georgian elected to engage in the following conduct:

-renege on its promise that there would be no layoffs as a result of the pending retirement of the Beechcraft 1900 fleet and threaten to layoff up to 40 pilots unless ALPA withdraws its notice of dispute

-refuse to continue discussions on a letter of understanding to mitigate the consequences of the Company's unilateral initiative in relation to the Beechcraft 1900 fleet unless ALPA withdraws its notice of dispute

-targeting, intimidating and threatening the MEC Chairman and MEC Bargaining Committee Chairman and by denying flight releases to attend to Union business

58. Prior to September 27th, Air Georgian had assured ALPA and the pilots that there would be no layoffs (or "furlough") of any pilots and was engaged in negotiating a letter of understanding to mitigate the adverse consequences of the retirement of the Beechcraft 1900 fleet.

59. Upon ALPA filing for conciliation, Air Georgian immediately reneged on that promise, has threatened layoffs of up to 40 pilots, and refused to negotiate an agreement reflecting their earlier commitments. Such conduct constitutes bad faith bargaining contrary to Section 50 of the *Code* and constitutes interference in the administration of the Union and the representation of employees contrary to Section 94(1)(a) of the *Code*.

60. Similarly, prior to ALPA filing for conciliation, the Union's representatives had routinely been granted time off to attend to Union business. Immediately following September 27th, Air Georgian elected to deny leave to the MEC Chairman, Mr. Macarthur, even though such leave had been granted the month prior.

61. Further, both Mr. Macarthur and Mr. McCallum now appear to be targeted by members of Air Georgian management. VP Operations Stephens has made

inquiries of other pilots to determine if there is something he can uncover to discipline either Union representative. This is intimidating and threatening behaviour and is obviously inexplicably tied to the Union's request for conciliation.

62. These actions are also contrary to the *Code*, including Sections 94(1)(a), 94(3)(a)(i) and 96 thereof.
63. ALPA has not taken a strike vote or even initiated that process. ALPA is committed to bargaining a collective agreement but, after 20 months with minimal progress, ALPA in good faith exercised its right under the *Code* to request third party assistance. There is absolutely nothing improper in this. What is improper, is Air Georgian's response and its various threats to ALPA to either withdraw its notice of dispute or cause the layoff of up to 40 pilots; derail pilots' career projections and expectations; threaten discipline of Union representatives; and deny leave for Union business.
64. The right of any party to file a notice of dispute for the purposes of obtaining third party assistance in the process of collective bargaining is a fundamental right under the *Code*. Any party that threatens retaliation or causes a chilling effect on that right commits a serious breach of the *Code* in ALPA's respectful submission. This is exactly the type of conduct Air Georgian is currently engaged in and requires the Board's immediate intervention.

Remedy

65. In order to remedy Air Georgian's numerous violations of the *Code*, ALPA respectfully requests the following relief:
 - i. A declaration that Air Georgian has violated the *Code*;
 - ii. An order directing Air Georgian to cease and desist violating the *Code*;
 - iii. An order directing Air Georgian to cease any and all retaliations for ALPA requesting the assistance of a conciliation officer including an order directing Air Georgian to cease and desist from any layoffs of pilots and the threat of any layoffs of pilots; an order directing Air Georgian to cease and desist threatening pilots that they may not be promoted to Air Canada; an order directing Air Georgian to cease and desist from intimidating, threatening or otherwise discipline any representative of ALPA as a result of their lawful

union activities; an order directing Air Georgian to reinstate the flight release for Mr. Macarthur; and an order directing Air Georgian to bargain in good faith with ALPA all issues surrounding the retirement of the Beechcraft 1900 fleet;

- iv. An order directing Air Georgian to post a notice in conspicuous locations throughout the workplace consistent with the Board's findings in this matter; and
- v. Such further and other orders that ALPA may request and the Board deems appropriate to grant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Denis Ellickson
Counsel to ALPA

Dated this 9th day of October, 2018