SECTION 37
DUTY OF FAIR REPRESENTATION COMPLAINT
CANADA LABOUR CODE

NOTE: If you have any questions concerning this form, please contact a Board officer at 1-800-575-9696.

The personal information provided on this form and any documents submitted with it are collected solely for the purpose of administering the *Canada Labour Code* and will be used to deal with and adjudicate matters that come before the Board. Parties that engage the Board's services should be aware that it involves a public process. The Board provides public access to case files and posts key decisions electronically on its website. Board decisions may identify parties and witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute.

READ THESE INSTRUCTIONS BEFORE YOU BEGIN

This form is intended to assist you in providing the information required for making a duty of fair representation complaint pursuant to section 37 of the *Canada Labour Code* (the *Code*).

Please refer to the Board's Information Circular No. 11 and its decision in *McRaeJackson*, 2004 CIRB 290, which explain the principles the Board will consider. This reference material can also be obtained from the Board's regional offices.

Please note that a duty of fair representation complaint is not an action against your employer.

A complaint under section 37 of the *Code* is made against the union, or any one of its representatives. Section 37 prohibits a union or any of its representatives from acting in a manner that is arbitrary, discriminatory or in bad faith with respect to your rights under the collective agreement. The union has a right to decide whether to take a grievance to arbitration or to settle it, even if you are not in agreement. However, the union must not make this decision in a way that is arbitrary, discriminatory or in bad faith.

The Board will review your complaint having regard to the *Code* and the Board's extensive case law on section 37 complaints. It will consider all of the material on file, including submissions and supporting documentation. It is your responsibility to provide the Board with all of the information that is necessary for it to decide the complaint. Missing information or documents could lead to dismissal of the complaint or delays in its processing.

The information you provide the Board must be sufficient to satisfy the Board that there has been an apparent violation by the union of its duty of fair representation. In other words, you must present evidence that is sufficient for the Board to conclude that, if it accepts your allegations as being true, the union may have failed to meet its duty of fair representation. This is to help the Board assess if there are sufficient grounds for the complaint to proceed. The Board may dismiss the complaint if it is not satisfied that there is an apparent violation.

The Board has Industrial Relations Officers (IROs) involved in the processing of various cases throughout Canada. These IROs mediate cases, where appropriate. If a settlement is not reached during mediation, the officer may continue to assist the parties to achieve a voluntary settlement before the Board decides the matter. An IRO may contact you regarding mediation of your complaint.

Complainant

NAME: [redacted]

ADDRESS: [redacted]

TELEPHONE NUMBER: [redacted] FAX: _____

EMAIL ADDRESS: [redacted]

NAME OF REPRESENTATIVE OR COUNSEL, if applicable: Robert Hawkes, QC / Matthew Macdonald

ADDRESS: 304 8 Ave SW #800, Calgary, AB T2P 1C2

TELEPHONE NUMBER: (403) 571-1520 FAX: _____

EMAIL ADDRESS: HawkesR@JSSBarristers.ca / Matthew@MatthewMacdonaldLaw.ca

It is your responsibility to advise the Board of any changes to your contact information.

Union

NAME OF UNION: AC Component

ADDRESS: 25 Belfield Road, Etobicoke, ON, M9W 1E8

TELEPHONE NUMBER: 416-798-3399 FAX: _____

EMAIL ADDRESS: w.lesosky@accomponent.ca

NAME AND POSITION OF UNION REPRESENTATIVE: Wesley Lesosky - President

Employer

NAME OF COMPANY: Air Canada

ADDRESS: 20 Queen St W 4th floor, Toronto, ON M5H 3S8

TELEPHONE NUMBER: 514-422-5000 FAX: _____

EMAIL ADDRESS: _____

NAME AND POSITION OF EMPLOYER REPRESENTATIVE: _____
Mike Abbott, VP - Labour Relations

I–General Information Concerning the Complaint

Employee Status:

DATE OF HIRE: [redacted]

TITLE OF LAST POSITION HELD: [redacted]

Rights Under the Collective Agreement:

- What sections of the collective agreement apply to your situation?
  Management Rights
- Please attach a copy of the sections cited.

  ⦿ Attached

  ○ Not attached – Reason: _____
- Please indicate the nature of the incidents or issues respecting your rights under the collective agreement regarding which you believe the union was supposed to provide you with representation:

  ☐ Termination of employment – date of termination: _____

  ☐ Seniority rights

  ☑ Disciplinary action

  ☑ Discrimination

  ☑ Collective agreement interpretation issue

☐ Collective bargaining issue

☑ Workplace accommodation

☐ Insurance–Pension–Benefits – Please specify: _____

☑ Other See Attached Schedule "A"

- Did you ask your union to file a grievance?

  ⦿ Yes – When did you ask the union to file a grievance? [redacted]

  ○ No – Reason: _____

- Did the union file a grievance?

  ○ Yes

  ⦿ No – Reason: See Attached Schedule "A"

  ○ Do not know

- On what date was the grievance filed? _____

- Have you attached a copy of the grievance?

  ○ Yes

  ○ No – Reason: _____

- Did the union tell you its decision regarding the grievance filed?

  ⦿ Yes – On what date? [redacted]

  ○ No – Reason: _____

- Have you attached a copy of the decision from the union?

  ⦿ Yes

  ○ No – Reason: _____

- Is there an arbitration award, settlement agreement or court decision regarding your grievance?

  ○ Yes

  ⦿ No

- Have you attached a copy of the arbitration award, settlement agreement or court decision?

  ○ Yes

  ○ No – Reason: _____

II–Duty of Fair Representation

What is the nature of your complaint against the union? The following are examples only:

- ☑ Refusal to file a grievance
- ☑ Grievance not referred to the grievance procedure
- ☑ Grievance not referred to arbitration
- ☐ Grievance dropped or withdrawn
- ☐ Grievance settled without your consent
- ☐ Handling of grievance at arbitration
- ☐ Failure of union to convey to you its decision concerning the grievance
- ☑ Other (specify): See Attached Schedule "A"

How did the union fail to fairly represent you?

Please describe, if applicable, how each conduct applies to your complaint against the union:

☑ **Arbitrary Conduct**

Arbitrary conduct by a union generally means that the union has failed to investigate a grievance or an issue or has handled the case in a superficial manner. However, this does not mean that the union cannot make mistakes or that it must always be correct in every assessment it makes.

Please describe why you believe that your union acted in a manner that was arbitrary with respect to your rights under the collective agreement:

See Attached Schedule "A"

☑ **Discriminatory Conduct**

A trade union must not discriminate against an employee on a ground such as age, race, religion, gender or medical condition. Also, it must not treat individuals or groups of employees differently based on unreasonable or irrational grounds. However, this does not mean that every instance of different treatment is discriminatory.

Please describe why you believe that your union acted in a manner that was discriminatory with respect to your rights under the collective agreement:

See Attached Schedule "A"

☑ **Bad Faith**

A union must not act with an improper purpose. The conduct or a decision of the union motivated by personal feelings of hostility or ill will may constitute bad faith.

Please describe why you believe that your union acted in bad faith with respect to your rights under the collective agreement:

See Attached Schedule "A"

III–Chronological Summary

Provide a chronology of the facts and events in support of your complaint. Provide detailed facts and reasons as to why you believe the union's decision was made based on improper factors or motives. Be sure to include details such as the dates on which events occurred, the date on which you filed any grievances or took other actions, the names of union officials involved and the names of any witnesses.

You may use additional pages if necessary to provide the information requested. **Please print clearly, number the pages, and refer to the attached documents (e.g., A, B, C).**

See Attached Schedule "A"

IV–Supporting Documents

List below any relevant documents in support of your complaint, and attach and number relevant documents that you are filing in support of your complaint.

Examples of relevant documents include: the termination letter or any other disciplinary letter, a copy of the articles of the collective agreement under which the union was supposed to represent you, a copy of the grievance, any responses received, and communications with union representatives. Please indicate if certain documents are not in your possession and why.

See Attached Schedule "A"

V–Timeliness

Section 97(2) of the *Code* requires that you file your complaint within 90 days after the date on which you first knew, or ought to have known, of the action or circumstances giving rise to your complaint. On what date did you know of the union's action or the circumstances giving rise to your complaint?

September 17, 2021

Although section 16(m.1) of the *Code* allows the Board to extend the 90-day time limit set out in section 97(2), the Board will only do so in exceptional circumstances. If you want the Board to consider extending the 90-day time limit, you must explain the exceptional circumstances that you feel the Board should consider in deciding whether or not to exercise its discretion. Provide supporting documentation, if necessary.

VI–Oral Hearing

There is no requirement for the Board to hold a hearing even if one is requested, and most complaints are decided without a hearing on the basis of the submissions on file. Is a hearing necessary?

- (•) Yes
- ( ) No

If yes, why do you believe that a hearing is necessary?

As this complaint raises issue of possible bad faith and ulterior motives for the failure to act, credibility will be an issue of Union witnesses.

Where would you want the hearing to take place?

Anywhere that it can be heard as soon as possible due to the urgency of the matter. Counsel for [redacted] is willing to travel to Montreal, Toronto, Vancouver or elsewhere to have it heard expeditiously, as long as the Complainant can attend by videoconferencing from Calgary.

VII–Remedies

What remedies are you seeking against the union?

In general, subsection 99(1) of the *Code* allows the Board to order the union to exercise, on behalf of the employee, the right and remedies which, according to the Board, the union should have exercised, or assisted the employee to exercise.

See Attached Schedule "A"

VIII–Filing Your Complaint

The Board has an e-filing Web Portal (Portal) service, which allows you to file your Portable Document Format (PDF) documents in the Board's centralized document filing system. You can access the Portal here.

If you choose to file your document electronically using the Portal, do not forward a hard copy of the same document to the Board. The electronic version will be considered the original copy.

[redacted]

Signature

Date

SECTION 37

DUTY OF FAIR REPRESENTATION COMPLAINT
CANADA LABOUR CODE

Complainant

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES, AIR CANADA COMPONENT

Respondent

SCHEDULE "A" TO THE DUTY OF FAIR REPRESENTATION COMPLAINT

The Parties

1. ("the Complainant, is a union member of the Canadian Union of Public Employees, Air Canada Component ("**CUPE**") and an Employee and Cabin Personnel of Air Canada Mainline ("**Air Canada**"). She is entitled to the rights and benefits afforded to her under the collective bargaining agreement as between CUPE and Air Canada, dated April 1, 2015 (the "**CBA**"), attached as **Appendix "A"** to this Complaint.

2. CUPE represents all members of the bargaining unit ("**Members**") subject to the CBA. CUPE is exclusive, union representative, and responsible to her to bargain in good faith with AC regarding, among other things, reasonable working conditions. The CBA is the result of fulsome bargaining efforts as between CUPE and Air Canada to achieve good working conditions and sound labour-management relations. The CBA prescribes the working conditions of the employees until March 31, 2025.

3. This is a Complaint pursuant to section 37 of the *Canada Labour Code*, RSC 1985, c L-2 (the "***Code***") that CUPE has violated its duty for fair representation (the "**Duty**"). The Complaint is submitted to the Canada Industrial Relations Board in accordance with sections 97 to 99 of the *Code*.

Employment

4. is a long-time member of CUPE and an employee of Air Canada. She was hired on , as a flight attendant. She now has nearly years of service with Air Canada.

5. [redacted]

6. [redacted] current remuneration includes an annual salary and significant other perquisites and benefits, such as health benefits, pension, travel privileges and other forms of remuneration. [redacted] is very close to qualifying for early retirement under Air Canada's pension plan. In 2020, [redacted] reported T4 salary from Air Canada was [redacted], in addition to other taxable benefits.

7. [redacted] is an exemplary employee, with no disciplinary record. She has committed her entire working life and career to servicing Air Canada and contributing to its success. [redacted] has also been an active member of the local CUPE association and dedicated many additional hours of work to the benefit of CUPE and its Members.

Air Canada's Policy

8. On August 25, 2021, Air Canada announced that it would implement a mandatory vaccination policy which would apply to all employees working for Air Canada, including the employees represented by CUPE and under the CBA.

9. The policy was described in the News Release, published by Air Canada, as follows:

> Air Canada today said it has introduced a new health and safety policy…that makes it mandatory for all employees of the airline to be fully vaccinated against COVID-19 and to report their vaccination status as of October 30, 2021. […]
>
> Under the mandatory vaccination policy, testing will not be offered as an alternative… failure to be fully vaccinated by October 30, 2021 will have consequences up to and including unpaid leave or termination…
>
> (the "**AC Press Release Policy**")

10. The AC Press Release Policy is attached to this Complaint as **Appendix "B"** and is available online at https://aircanada.mediaroom.com/2021-08-25-Air-Canada-Introduces-Mandatory-COVID-19-Vaccination-Policy-for-All-Employees-and-New-Hires.

11. On September 9, 2021, employees who had not complied with the AC Press Release Policy were informed that they would be placed on unpaid leave for six months and would face

termination of their employment. Attached to this Complaint as **Appendix "C"** is the September 9, 2021 email.

12. On or around September 10, 2021, Air Canada published its COVID-19 Vaccination Policy (the "**Vaccine Policy**"). The Vaccine Policy is attached to this Complaint as **Appendix "D"**.

13. The Vaccine Policy imposed a retroactive requirement on Air Canada employees to have disclosed their vaccination status and upload proof of vaccination by September 8, 2021, two days before the Vaccine Policy was released. As stated in the Vaccine Policy, "Employees who have not reported their status and uploaded their proof of vaccination by September 8, 2021 will automatically be considered unvaccinated."

14. Those considered unvaccinated were not permitted to bid for November shifts.

15. Under the Vaccine Policy, employees are required to be vaccinated by October 31, 2021, which includes receiving a second dose of the vaccine by no later than October 16, 2021. Despite mandating vaccinations against an employee's own will, Air Canada asserts in its policy that it is not liable for any side effects caused by the COVID-19 vaccines.

16. The Vaccine Policy indicates that Air Canada will offer accommodation in accordance with its duty to accommodate under human rights provisions, but otherwise does not allow for medical exemptions such as contraindications to vaccination, or natural immunity.

17. The Vaccine Policy purports to put any employee who fails to comply on unpaid leave without benefits or travel privileges until April 30, 2021, where Air Canada will reassess the employment relationship. According to the AC Press Release Policy, this is a disciplinary measure which is likely to result in termination of employment.

Grievance Provision in the CBA

18. Grievances by the CUPE are anticipated in the CBA at section 13.03:

> Grievances of a general or policy nature may be initiated by the Union at the appropriate higher level of this procedure depending on the nature and scope of such grievance.

19. As will be described below, CUPE has not and apparently will not, grieve the Vaccine Policy. CUPE has not met its Duty to Members with respect to the Vaccine Policy, and by operation of the CBA, Members have no recourse.

Employees Raise the Policy with CUPE

20. Following the announcement of the Vaccine Policy, a group of employees (including [redacted] wrote to CUPE on August 30, 2021, requesting details on its understanding and involvement in negotiating the Vaccine Policy. This email is attached as **Appendix "E"** to this Complaint.

21. After receiving no substantive response, [redacted] was forced to retain counsel to assist. CUPE refused to communicate anything to her or other members about the Vaccine Policy and she is facing the threat of imminent discipline or termination by Air Canada.

22. [redacted] counsel wrote to the CUPE on September 14, 2021 demanding that the CUPE take action against the Vaccine Policy. That correspondence is attached as **Appendix "F"**.

23. Counsel informed CUPE that other unions were objecting to policies substantively like the Vaccine Policy and provided the reasons those unions cited. The correspondence further noted that the Vaccine Policy unreasonably intrudes on its members' rights, and it appears CUPE has made no effort to refine, improve, review, or grieve the Vaccine Policy. CUPE was also informed that Members were left justifiably wondering if CUPE has prioritized its leadership's political views over its Duty. CUPE was invited to rectify its breach of the Duty regarding the Vaccine Policy, and specific demands on how to resolve the issue were made.

24. CUPE responded by email on September 17, 2021, advising that "individual complaints will be dealt with on a case by case basis" essentially meaning that an employee would have to be disciplined or terminated under the Vaccine Policy before CUPE would consider grieving.

25. On September 22, 2021, [redacted] counsel wrote back to CUPE reiterating that 10% of Members were facing significant discipline, prolonged loss of income and benefits, or even termination of employment. CUPE was reminded of its Duty with respect to imposition of the Vaccine Policy and its application. In this correspondence, [redacted] demanded that CUPE initiating a policy grievance. CUPE simply responded that its position was that its Duty was met without communicating any details to [redacted] or other Members about anything done before or after the imposition of the Vaccine Policy. Attached as **Appendix "G"** is the email thread as between CUPE and [redacted] lawyers.

Failure to Grieve is Arbitrary and Indicative of Bad Faith Representation

26. [redacted] is compelled to be a member of CUPE by law. As a result, she has given up her individual rights that she might otherwise have had to seek remedies regarding her employment in court and on an emergent basis.

27. By operation of the *Code*, CUPE is [redacted] exclusive representative and the only entity that can challenge any intrusion on her rights by Air Canada. This is why CUPE has its legal Duty and cannot act in a manner that is arbitrary and in bad faith in its representation of [redacted] or other Members.

28. Despite requests from Members, including [redacted] CUPE has not provided any information or evidence to show it tried to fulfill Duty in relation to the Vaccine Policy. CUPE has breached its Duty by failing or refusing to ensure Air Canada negotiates with it prior to implementing the policy, and by failing or refusing to grieve the expected policy, as requested by Members.

29. CUPE's breach of its Duty denies [redacted] and other similarly situated Members their right of access to justice. CUPE's behaviour further demonstrates both the breach of the Duty and the seriousness of that breach. This requires a make-whole remedial order from the Canada Industrial Relations Board.

30. As part of its Duty, a union is required to advocate for its members to ensure that there is no unjustified intrusion on these vitally important rights under the CBA, human rights laws, privacy laws, and the *Code*.

31. CUPE has arbitrarily refused to consult with, and advocate for, affected Members, or has been absent regarding the Vaccine Policy. CUPE's refusal to communicate anything to [redacted] or other 10% of its members affected by the Vaccine Policy about what it did in response to or in advance of the Vaccine Policy raises serious concerns about CUPE acting in bad faith by working in concert with the employer as opposed to fulfilling its Duty.

32. CUPE has refused to communicate to [redacted] or its Members any information at all about its role regarding the Vaccine Policy. The response of CUPE to-date demonstrates a dismissive attitude to [redacted] and affected members' interests. In the absence of any information as to CUPE's role regarding the Vaccine Policy, it can only be inferred that CUPE did not conduct a review at all, or any review was perfunctory and cursory.

33. Since CUPE has not engaged or communicated with affected Members, including [redacted] it could not have gathered sufficient information to make a sound decision. CUPE's apparent inaction is at-minimum arbitrary and amounts to a failure to represent [redacted] and affected Members. Considering the politicized debate around policies like the Vaccine Policy, and CUPE's refusal to outline what role it has played to date, Members can only speculate on whether personal political views or conflict affected the soundness of CUPE's decisions.

34. Any of the foregoing demonstrate CUPE breached its Duty.

The Policy Should be Grieved

35. It is clear that CUPE has not represented its Members, as it has provided no substantive response or information to the Members who have requested a grievance. Any decision by CUPE not to grieve the Vaccine Policy is wholly unreasonable and results in a breach of the Duty. Grieving the Vaccine Policy at this stage, when CUPE is aware that at least 10% of the Members were not in compliance and that many requested and required CUPE's

assistance, would have been a more efficient use of resources than addressing possible individual grievances.

36. CUPE's decision not to grieve is improper, as it is arbitrary and in bad faith, including that the failure or refusal to respond shows that:

    (a) The personal feelings of the union officers have influenced the union's decision not to grieve;

    (b) CUPE has no objective or reasonable explanation for failing or refusing to grieve;

    (c) CUPE has failed to make a reasonable assessment of the case and issues raised by the Members and failed to consider whether there was a legal or factual basis for a grievance;

    (d) CUPE only superficially (if at all) reviewed the merits of a grievance, without concern for the Members' legitimate interests; and

    (e) CUPE has not engaged in rational decision-making and has disregarded competing interests of Members.

37. It is apparent, on a review of the CBA, that CUPE could not conclude that a grievance was unnecessary or that the employer otherwise had the right to impose the Vaccine Policy.

38. The CBA does not contemplate the imposition of a vaccine policy, or other health-related or medical-related policies. Nor does the CBA have any provisions which mandate health or medical procedures, prescriptions, or vaccinations on employees. Air Canada has never bargained for such a right, despite the fact that:

    (a) Air Canada has employees travelling across the globe for work;

    (b) Employees are stationed or on layover in diverse geographic locations, that may be susceptible to geo-political concerns or lack health care; and

    (c) There have been multiple epidemic outbreaks in recent history that impacted travel, including the SARS crisis which impacted the Pearson International Airport in Toronto and resulted in grievances.

39. Article 3 describes the "Reservations of Management" and includes the right to hire, suspend or discharge employees for just cause, and to change classification or lay off an employee due to lack of work "or other legitimate reasons". Article 3 also ensures that no employee is discriminated against by the Company based on a protected characteristic.

40. Air Canada has not reserved the right to implement policies which prescribe or require certain medical procedures, prescriptions, or vaccinations. Implementing such a policy, and disciplining or terminating an employee under that policy, is an improper exercise of

management rights and contrary to the CBA. There is also no such requirement or policy in place prior to the Vaccine Policy being implemented. This is a wholly unprecedented action by Air Canada.

41. The implementation of a mandatory vaccine policy is unreasonable and inconsistent with the terms of the CBA and therefore falls outside of its management reservations. Air Canada has therefore unilaterally introduced a policy which purports to necessitate the termination of Members.

42. The Vaccine Policy is inconsistent with the CBA and unreasonable. As the Vaccine Policy is invalid as being outside Air Canada's management rights to impose unilaterally, Air Canada should have negotiated with CUPE prior to its implementation. Similarly, CUPE should have expected and required Air Canada to negotiate with it.

43. There is no evidence that negotiations took place between Air Canada and CUPE. As a result, CUPE should have demanded further negotiation and launched a grievance when Air Canada announced the Vaccine Policy. Failing to do so is a breach of the Duty.

44. In the alternative, if Air Canada did negotiate with CUPE, then CUPE has failed to meet its Duty to its Members in failing to share details with its Members as to its negotiations, its investigation, its consideration of the merits, and its reasons for its current position. This lack of communication has prejudiced the Members.

Ramifications from CUPE's Failure to Fulfill their Duty of Fair Representation

45. [redacted] length of service, her role as a Flight Attendant, [redacted], with few to no prospects for reasonable, alternative work.

46. Considering her [redacted] years of service, [redacted] is on the cusp of the possibility of early retirement in the next [redacted] years, with associated benefits, including life-time flight benefits. As a result, [redacted] is particularly vulnerable to and disproportionately affected by the actions of both Air Canada and CUPE.

47. [redacted] currently faces the prospect of discipline and termination from her position at Air Canada, the loss of income and significant current and future perquisites and benefits.

Remedy Sought

48. A make-whole order is required to remedy CUPE's breach of its Duty (the "**Order**"). The Order should include:

    (a) A declaration that CUPE is in breach of its Duty under section 37 of the *Code*;

    (b) Direction to CUPE to pursue a grievance of the Vaccine Policy;

(c) Paying the entirety of legal costs of [redacted] for pursuing this Complaint and any related legal or constitutional challenge to any government order, enactment or pronouncement relied on by Air Canada in support of the Policy or by CUPE in justification for not consulting its membership, grieving the Policy or otherwise protecting the legal and constitutional rights of its Members;

(d) Directing CUPE appoint [redacted] to manage the Vaccine Policy grievance;

(e) Ordering that CUPE pay for the legal counsel chosen by [redacted] to provide a legal opinion on the Vaccine Policy, and grieve or otherwise challenge the Vaccine Policy based on it;

(f) Directing Air Canada to not discipline, deny compensation, terminate, or otherwise take punitive action against [redacted] and other Members negatively affected by the Air Canada Press Release Policy;

(g) Any other matter that is proven through the hearing process; and

(h) Any other matter the Canada Industrial Relation Board deems appropriate in the circumstances.

49. In consideration of the urgency and severity of the issues, and the significant implications that [redacted] faces, [redacted] also asks that the Board order interim relief to [redacted] and affected members by directing Air Canada to not discipline, deny compensation, terminate, or otherwise take punitive action against [redacted] and other members negatively affected by the Air Canada Press Release Policy.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

MEMORANDUM OF AGREEMENT

Between:

Air Canada
(the "Company")

and

Canadian Union of Public Employees,
Air Canada Component
(the "Union")

Re: Reserve Preferential Bid System Deployment

WHEREAS the parties agree to deploy the Reserve component of the Preferential Bid System ("PBS") already in place since June 2006 block month:

AND WHEREAS the parties have agreed to the Specifications of Reserve PBS and have jointly made this representation to the supplier;

AND WHEREAS the supplier has provided a Reserve component of the PBS that satisfies the jointly made representations;

AND WHEREAS the parties agree to the following modifications required to the Collective Agreement in order to implement the Reserve module of the PBS.

1. Consecutive Processing - The Reserve Blocks shall be constructed after all Regular Blocks have been constructed.

2. Reserve Duty Rotation - Reserve Days On shall continue to consist of Ready Reserve and Call-In Reserve with successive blocks having designated and alternating "R" for Ready and "C" Call-In reserve days.

3. Standing Bid - A separate Reserve Standing Bid will be required. If a Regular Reserve bid is not received by bid closure, PBS will construct a Reserve block, based on the Standing bid on record. **The following provisions of the Collective Agreement shall be amended as follows:**

    a. **B4.02.01 Note II** - An employee may submit a generalized standing bid for a Regular and/or Reserve block. If no Regular or Reserve Standing Bid is on File, PBS will assign any available Regular or Reserve Block.

    b. **B4.02.01 Note III** - An employee who submits an invalid bid or no bid at all, PBS will assign any available Regular or Reserve Block in his/her classification.

[redacted]

4. **Bidder (Employee) Interface** - Reserve bid preferences are designed to request days off or patterns of days on/off.

   a. **Types of Reserve Days Off Bids**

      i. Prefer Off Dates

      ii. Prefer Off Date Range

      iii. Prefer off Date Range Reverse

      iv. Prefer Off Day(s) of Week

      v. All or Nothing modifier for a Date Range

   b. **Pattern Bid** – An employee may bid for a pattern with between a minimum and a maximum number of days on and a number of days off. Pattern bid enables the bidder to ask for their reserve activities in a specific pattern of days on/off.

   c. **Guaranteed (Inviolate) Days Off Bid - Set Condition Bid Maximum Number of Guaranteed Days Off:**

      i. An employee may set this value with a minimum of two (2) days off and a maximum of eleven (11) guaranteed days off.

      ii. The default value is six (6) guaranteed days off

      iii. Both the default value of six (6) guaranteed days off and the maximum allowable eleven (11) guaranteed days off shall be prorated for any partial reserve month in accordance with the pro ration table included below. An employee whose request for guaranteed days off exceeds their prorated maximum allowable guaranteed days off, shall be awarded/assigned guaranteed days off based on the pro ration table.

5. **Days Off Awarding** – Pursuant to both parties joint representation to the supplier, days off will be awarded as follows:

   a. **Reserve Total Days Off** – Pursuant to Article B8.06, a Reserve Blockholder will receive thirteen (13) days off in each block month of thirty (30) to thirty-two (32) days and fourteen (14) days in each month of thirty-three (33) days. Days-off allotment shall be prorated for any partial Reserve Month in accordance with the pro ration table attached.

   b. **Guaranteed (Inviolate) Days Off** - All guaranteed Days Off shall be awarded/assigned after the legal Reserve block is created by converting regular days off into guaranteed days off.

      i. Up to three groups of guaranteed days off will be awarded.

      ii. PBS will convert days off into guaranteed days off in order of preference until the requested number of guaranteed days off is reached, unless, adding additional inviolate days off would cause the number of guaranteed days off groups to exceed three (3) groups.

iii. The preference ordering will be derived from the "Prefer Off" bids order in the employee's reserve bid. A default value of six (6) guaranteed days off will be used if an employee does not request any inviolate days off.

c. **Reserve Minimum Days Off** - Reserve blocks shall be constructed with a minimum of two (2) consecutive Reserve Days Off.

Note: Notwithstanding the above, less than two (2) Reserve Days Off shall be permitted at the beginning and at the end of the block month in order to facilitate the completion of a legal reserve block.

6. <u>Reserve Days On Awarding</u> - Pursuant to both parties joint representation to the supplier, reserve days on will be awarded as follows:

a. **Reserve Scheduled Maximum Days On** - Reserve blocks shall be constructed with:

i. A maximum six (6) consecutive Reserve Days On in any consecutive seven (7) calendar days.

ii. A minimum of four (4) Days Off in any consecutive fourteen (14) calendar days.

b. **Reserve Minimum Days On** - Reserve blocks shall be constructed with a minimum three (3) consecutive Reserve Days On.

Note: Notwithstanding the above, less than three Reserve Days On shall be permitted at the beginning and at the end of the block month in order to facilitate the completion of a legal reserve block.

7. <u>The Collective Agreement shall be amended as follows</u>

a. **B2.08**

i. Delete note following B2.08 ***...(B2.08.01 and B2.08.02 will not come into effect until Phase II of PBS, when the waive bid becomes an available option)...***

ii. Note following B2.08.02 is amended as follows:

Only the employee awarded a Regular Block may waive the provisions of B2.08.01 and /or B2.08.02 (including overlaps Block to Block or Reserve to Block.). An employee assigned/awarded to a Reserve Block may not waive the provisions of B2.08.01 and /or B2.08.02

b. **Remove B8.07.01**

Reserve blocks will contain the following patterns of consecutive days off and will indicate inviolate days off as follows:

Pattern (1) Any combination of 7, 2, 2, 2 with the group of seven (7) shown as inviolate

Pattern (2) Any combination of 4, 4, 3, 2 with the group of four (4) shown as inviolate

[redacted]

Pattern (3) Any combination of 4, 3, 3, 3 with the group of four (4) and any one (1) of the group of three (3) shown as inviolate

c. **Remove B8.07.02**

Before the start of a block month and prior to the assignment of his/her last flight in the previous month, an employee will have the OPTION to declare one (1) additional set of days off in his/her block as inviolate. This option will be made known to the Crew Resource Centre in writing and will be honoured regardless of operational requirements

NOTE I: Once the additional set of inviolate days off has been agreed to, they may only be changed under the provision of Article B8.08

NOTE II: If an employee does not request the designation of an additional set of inviolate days off within the above time limits, s/he forfeits his/her right to do so for the remainder of that block month.

d. **B8.14**

i. Remove B8.14.01 through B8.14.04

B8.14.01 Block patterns will include the day off patterns outlined in B8.07 and will indicate the classification and positions declared for each block.

B8.14.02 Blocks will be prepared to maximize the variations of each pattern and will contain an agreed to percentage of each pattern based on local demand and coverage requirements. The percentage of each pattern will be mutually agreed to by the Crew Resource Centre and the Local President.

B8.14.03 At least five percent (5%) of the blocks will contain a set of inviolate days off at the start of the block month and five percent (5%) will contain a set of inviolate days off at the end of the block month.

NOTE: The minimum number of blocks containing a set of INVIOLATE days off at the start of a block and at the end of a block will be one of each unless the number of employees in the classification is less than five (5).

B8.14.04 To ensure some block selection options for junior employees, the total block positions declared will be not less than ten percent (10%) in excess of the reserve levels published. Such excess blocking practice will apply to each classification. If the reserve pool in any classification is ten (10) or less, then at least one (1) block more than required will be published.

ii. B8.14.05 remains. Reserve blocks will still be created with alternate sets of duty days designated as call-in reserve or ready reserve

8. Arbitrator Teplitsky retains jurisdiction regarding all the PBS implementation, application or interpretation of this Memorandum of Agreement, and/or related provisions under the current Collective Agreement.

9. The provisions of the Collective Agreement will apply to Reserves after Reserve PBS implementation; however, where the provisions of this Memorandum differ with provisions in the Collective Agreement, this Memorandum shall take precedence.

[redacted]

ATN

November 2, 2012 10:53pm

MEMORANDUM OF AGREEMENT

BETWEEN:

Canadian Union of Public Employees (CUPE);
Air Canada Component (ACCEX)
("CUPE" or the "Union")

-and-

Air Canada
and
Low Cost Carrier (Yet to be Named)
(the "Company")

LOW COST CARRIER (LCC)

Preamble

In the context of the Company's announced intention to launch a new LCC a fundamental objective of which is to be competitive with other domestically-registered LCCs providing service to both the North American and International Markets, the Company and the Union wish to establish a labour relations structure covering the Cabin Personnel employed at the LCC.

Full scope and details of the Terms and Conditions of employment governing the LCC shall be contained in a Supplementary Agreement (SA) to be attached to the Mainline Collective Agreement. This agreement shall have an expiration date of its own. In the event of a labour dispute at the Mainline or LCC, the employer will not assign work of the Mainline Cabin Personnel to LCC and vice versa.

All parties agree to the following:

1. **Union Recognition**
   The Company recognizes the **Canadian Union of Public Employees (CUPE)** as the sole Bargaining Agent for all Cabin Personnel employed at the LCC in accordance with the Certification issued by the Canadian Industrial Relations Board to **CUPE to represent all cabin personnel at Air Canada** under the provisions of the *Canada Labour Code*.

Air Canada, LCC and the Union agree not to file an application under section 18.1 of the *Canada Labour Code* related to any reconfiguration of the cabin personnel bargaining units at Air Canada or at LCC.

The parties agree that there is one (1) bargaining unit consisting of all Cabin Personnel at Air Canada, including those cabin personnel employed at LCC.

The Company will allow the Union the opportunity, at a mutually agreeable time, to meet with all LCC Cabin Personnel during their Initial training period but no later than one (1) week after the commencement of the Initial training period, to provide the details of the agreed to working conditions, salaries, etc and Collective Agreement.

Should any other party bring an application or raise the issue of the appropriateness of the bargaining units for Cabin Personnel at Air Canada or at the LCC, Air Canada and LCC will support the Union in defending the appropriateness of this bargaining unit structure in any and all forums.

2. **Terms and Working Conditions**

a) **Crew Complement**
The crew complement for any flight operated by the LCC shall be assigned in accordance with the minimum regulatory requirements established by Transport Canada.

b) **Rates of Pay**
There shall be a five-year progression commencing with the first day of line assignment following the successful completion of training as follows:

Year	Hourly Rate
1	$22.99
2	$24.04
3	$26.15
4	$32.92
5	$36.03

c) **Restrictions Applicable to the LCC**

1. **Mandate of the LCC**
The mandate of the LCC will be limited to the market segment seeking low-cost air travel. The LCC is not intended to replace mainline routes the Company considers to be financially viable.

2. **Classes of Service**
Aircraft assigned to the LCC will be configured with an all economy and/or premium economy seat basis.

3. **Pension**
The pension plan applicable to Cabin Personnel at the LCC shall be the plan applicable to Mainline new hires.

All remaining Terms and Working Conditions for Cabin Personnel employed at the LCC shall be negotiated and form part of the SA. As well this Agreement will contain a list of Articles from the Mainline Collective Agreement that both parties agree to be common to both Agreements.

Binding Interest Arbitration Process (Initial Negotiation of SA only)

The parties agree to meet the week of November 25, 2012 to reach an agreement on the first (1st) SA. If no agreement is reached, on a particular term or working condition of employment between the Union and the Company, prior to November 28, 2012 the parties agree (on a one time only basis) to submit the outstanding issue(s) specifically referring to LCC, to Binding Interest Arbitration Process. The parties shall jointly agree on the selection of the Interest Arbitrator. If the parties are unable to agree, the selection shall be made by the Minister of Labour and will be submitted to the Minister of Labour no later than the 7th of December 2012.

In rendering his/her decision, the Arbitrator shall be guided by paragraphs 8, 9 and 10 of LOU 44 of the Mainline Agreement. In rendering his or her decision, the arbitrator shall be guided by one of the fundamental objectives of the LCC, namely, that it is to be competitive with other domestically-registered LCC's. Any item specifically mentioned in this MOA has been agreed to and is not subject to the binding interest arbitration process.

Union's Structure for Bargaining and Ratification Process

The term of the SA will be determined by the arbitrator and shall remain binding from year to year thereafter unless notification in writing to re-open the SA is served by either of the parties hereto and the other party agrees. In the event notice is given of intended change, the SA shall remain in full force and effect while negotiations are being carried on for the conclusion of a new SA.

Hereafter, the SA will be negotiated by a composition of the LCC Local Executive and the Air Canada Component President. This Committee bargains the Terms and Conditions of the LCC SA and any amendments have to be ratified by members within the LCC Local. Mainline members will not vote on the ratification of the LCC SA. LCC Local employees will not vote on the ratification of the Mainline collective agreement.

3. **Mainline Cabin Personnel Job Security**

Should a mainline Cabin Personnel choose to transfer to the LCC prior to any layoff a vacancy must be available at LCC and they shall be protected at their mainline wage rate (Benefits/Pension and mainline seniority will also be protected). Furthermore, should the transferred Cabin Personnel remain at the LCC long enough to attain a higher wage rate, as per the LCC wage grid, they shall receive that pay increase(s). When an opening becomes available at the mainline, the Mainline Cabin Personnel must return to Mainline with their full Mainline Collective Agreement rights, included but not limited to those in Article 17 of the Mainline Collective Agreement. Upon return to mainline they will be reassigned to their appropriate pay scale that corresponds to their total accumulated years of service (LCC + mainline). In addition to LOU 23, the Company will discuss a voluntary separation program for Mainline Cabin Personnel.

4. **Scope**

The outcome of the process outlined in the Binding Interest Arbitration Process herein shall not provide a benefit less than that provided to ACPA referenced in the scope definition contained in L74.01.04; L74.01.05; and L74.01.07 of the ACPA collective agreement.

Signed this 2nd day of November, 2012 in Toronto, ON

[redacted]

(Back Cover Page)

APPENDIX "B"

AC PRESS RELEASE POLICY

News Releases

News Releases

Air Canada Introduces Mandatory COVID-19 Vaccination Policy for All Employees and New Hires

Requirement designed to protect the health and safety of employees, customers

MONTREAL, Aug. 25, 2021 /CNW Telbec/ - Air Canada today said it has introduced a new health and safety policy to further protect employees and customers that makes it mandatory for all employees of the airline to be fully vaccinated against COVID-19 and to report their vaccination status as of October 30, 2021. In addition, the airline is making full vaccination a condition of employment for any individual hired by the company.

Since the beginning of the pandemic Air Canada has been a leader in the adoption of science-based measures in response to COVID-19. This has included the airline being among the first to require pre-boarding temperature screening of customers, obligatory onboard mask-wearing policies and the use of testing. The decision to require all employees of Air Canada mainline, Air Canada Rouge and Air Canada Vacations to be fully vaccinated and report their vaccination status is another initiative to ensure the safety and well-being of all employees and customers.

Under the mandatory vaccination policy, testing will not be offered as an alternative. While Air Canada will fulfill its duties to accommodate employees who for valid reasons, such as medical conditions, cannot be vaccinated, failure to be fully vaccinated by October 30, 2021 will have consequences up to and including unpaid leave or termination, except for those who qualify for accommodation. Air Canada's policy is also in accord with a recent announcement by the Government of Canada requiring employees in the federally regulated air, rail, and marine transportation sectors to be vaccinated by the end of October 2021.

Air Canada remains committed to the continued development and application of new safety measures and processes as they become available that are effective and convenient for customers. Such measures are vital to the safe restart of the air transport industry which, apart from enabling Canadians to travel freely, is also an essential driver of economic activity in Canada. For more information on Air Canada's programs and policies to safeguard customers and employees from COVID-19, please visit Air Canada's Travel Ready Hub at www.aircanada.com.

About Air Canada

Air Canada is Canada's largest domestic and international airline and, in 2019, was among the top 20 largest airlines in the world. It is Canada's flag carrier and a founding member of Star Alliance, the world's most comprehensive air transportation network.

Air Canada is the only international network carrier in North America to receive a Four-Star ranking according to independent U.K. research firm Skytrax. In 2020, Air Canada was named Global Traveler's Best Airline in North America for the second straight year. In January 2021, Air Canada received APEX's Diamond Status Certification for the Air Canada CleanCare+ biosafety program for managing COVID-19, the only airline in Canada to attain the highest APEX ranking. Air Canada has also committed to a net zero emissions goal from all global operations by 2050. For more information, please visit: aircanada.com/media, follow Air Canada on Twitter and LinkedIn, and join Air Canada on Facebook.

Sign up for Air Canada news: aircanada.com

Media Resources:
Photos
Videos
B-Roll
Articles

SOURCE Air Canada

For further information: Contacts: media@aircanada.ca; Internet: aircanada.com/media

[redacted]

[redacted]

[redacted]

From: Corporate Safety <corporate_safety@aircanada.ca>
Sent: Thursday, September 9, 2021 12:42 PM
Subject: Vaccination status not reported / Statut de vaccination non déclaré

LA VERSION FRANÇAISE SUIT CI-DESSOUS

Sept. 9, 2021

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

APPENDIX "E"

AUGUST 30, 2021 EMAIL REQUEST BY EMPLOYEES TO CUPE

[redacted]

----- Forwarded Message -----
From: Wesley Lesosky <w.lesosky@accomponent.ca>
To: [redacted]
Cc: mhancock@cupe.ca
Sent: Mon, 30 Aug 2021 21:37:21 -0600 (MDT)
Subject: Re: It Is YOUR DUTY!

Thank you [redacted] for your email.

I will review when I am back later in the week.

Wesley Lesosky
President

Air Canada Component of CUPE
25
Belfield Road
Etobicoke,
ON
M9W 1E8
Tel (416)
798-3399 **Ext** 248
E-Mail w.lesosky@accomponent.ca
www.accomponent.ca

On Aug 30, 2021, at 8:35 PM, [redacted] wrote:

VIA ELECTRONIC MAIL

August 30, 2021

Wesley Lesosky

Component President / Président de la composante

Air Canada Component of CUPE

25 Belfield Rd.

Etobicoke, On M9W 1E8

Re: ***Air Canada's Mandatory Vaccination Policy for all Employees***

Dear Wesley:

We are a group of concerned flight attendants who write regarding Air Canada's August 25th, 2021 announcement requiring all employees be fully vaccinated, except under the company's Duty to Accommodate obligations. We are concerned the mandatory policy will result in the termination of many flight attendants, who have good faith concerns given their individual, religious and health circumstances.

As you know, Air Canada is required to engage in good faith discussions with the Union regarding implementing the vaccine policy. In turn, the Union must engage in good faith discussions with its membership. As part of this duty of good faith and fair dealing, we respectfully request additional information regarding the mandatory vaccine policy.

First, please provide the scientific evidence and "science-based decisions" relied on to implement the mandatory vaccine policy, regardless of member's individual circumstances. We question whether Air Canada and the Union have appropriately considered those members who already had previous SARS-CoV-2 infections. A recent scientific study from Israel demonstrated natural immunity offers considerably more of a shield—up to 13 times more protection—against the Delta variant than two doses of the Pfizer-BioNTech vaccine. Exhibit 1. As you know, many of our membership already have been exposed to SARS-CoV-2 and fully recovered. We question whether these people should be required to be vaccinated or face termination. This is especially true for those employees—those on leave or work from home—who do not interact with other employees or the public.

Second, the data shows no difference in spreading SARS-CoV-2 between vaccinated and unvaccinated individuals. (CDC, 2021). A recent position paper by The Israeli Public Emergency Council for the Covid 19 Crisis (2011) (Exhibit 2) states:

> *There is no scientific evidence whatsoever supporting the claim that non-vaccinated individuals are risking the public's health in any way more than vaccinated people or that their lack of being vaccinated is a factor that facilitates the continuation of the pandemic or that causes a threat of collapse to the healthcare system. Vaccination should be treated as a primary means for providing personal protection against severe illness or death, especially for persons at high risk*.

It appears this important new information was neither considered by the company nor by our Union leadership.

Third, we question the need for a mandatory vaccine policy at this time. Standard media outlets such as the Jerusalem Post or Bloomberg News provide that “scientists don’t have answers.” Governmental authorities have changed like the wind on their recommendations.
As just one example, we were first told masks were not needed and of no help in preventing the virus spread. The CDC then changed their position, requiring masks. Another example is the government promised the Pfizer vaccines was 91% effective against the
disease. Now, we know these statements are incorrect. The “immunity” from the Pfizer vaccine wanes over time. Indeed, authorities now claim the public should receive a “booster” or third vaccine.

Fourth, please provide the supporting Health & Safety and Risk Assessment data for our various membership groups (i.e., what kind of a ‘threat’ is a person on leave or laid off status, what kind of ‘threat’ is a person who has already had COVID-19, etc.).

Fifth, please detail the specific steps the Union is taking to represent
all members. We are aware that many of our fellow members support vaccinations, vaccine passports and vaccine mandates, however, this does not preclude our union leadership to also advocate for the freedom of choice for its other members.

Finally, we have compiled a list of frequently asked questions (FAQ) we would like our CUPE Union leadership to answer regarding the mandatory vaccine policy. We believe the members deserve this information so they can make an informed decision. Please
see attached document.

We look forward to your response regarding these important issues.

Sincerely,

[redacted]

[redacted]

More to come…

<Q and A.docx>

Thank you,

Alex

From: [redacted]

Sent: Tuesday, August 31, 2021 1:08 AM
To: Alex Habib <a.habib@accomponent.ca>
Cc: Theresa Mitchell <t.mitchell@accomponent.ca>
Subject: Fwd: It Is YOUR DUTY!

Alex,

Unfortunately, this cannot wait. Please address this during our Component President's absence as members are directed to contact you

----- Forwarded Message -----

From: [redacted]

To: w.lesosky <w.lesosky@accomponent.ca>

Cc: mhancock@cupe.ca

Sent: Mon, 30 Aug 2021 21:35:37 -0600 (MDT)

Subject: It Is YOUR DUTY!

VIA ELECTRONIC MAIL

August 30, 2021

Wesley Lesosky

Component President / Président de la composante

Air Canada Component of CUPE

25 Belfield Rd.

Etobicoke, On M9W 1E8

Re:
Air Canada's Mandatory Vaccination Policy for all Employees

Dear Wesley:

We are a group of concerned flight attendants who write regarding Air Canada's August 25th, 2021 announcement requiring all employees be fully vaccinated, except under the company's Duty to Accommodate obligations. We are concerned the mandatory policy will result in the termination of many flight attendants, who have good faith concerns given their individual, religious
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Vaccination should be treated as a primary means for providing personal protection against severe illness or death, especially for persons at high risk.

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Third, we question the need for a mandatory vaccine policy at this time. Standard media outlets such as the Jerusalem Post or Bloomberg News provide that "scientists don't have answers." Governmental authorities have changed like the wind on their recommendations. As just one example, we were first told masks were not needed and of no help in preventing the virus spread. The CDC then changed their position, requiring masks. Another example is the government promised the Pfizer vaccines was 91% effective against the disease. Now, we know these statements are incorrect. The "immunity" from the Pfizer vaccine wanes over time. Indeed, authorities now claim the public should receive a "booster" or third vaccine.

Fourth, please provide the supporting Health & Safety and Risk Assessment data for our various membership groups (i.e., what kind of a 'threat' is a person on leave or laid off status, what kind of 'threat' is a person who has already had COVID-19, etc.).

Fifth, please detail the specific steps the Union is taking to represent *all* members. We are aware that many of our fellow members support vaccinations, vaccine passports and vaccine mandates, however, this does not preclude our union leadership to also advocate for the freedom of choice for its other members.

Finally, we have compiled a list of frequently asked questions (FAQ) we would like our CUPE Union leadership to answer regarding the mandatory vaccine policy. We believe the members deserve this information so they can make an informed decision. Please see attached document.

We look forward to your response regarding these important issues.

Sincerely,

[redacted]

[redacted]

More to come…

APPENDIX "F"

COUNSEL'S LETTER TO CUPE DATED SEPTEMBER 14, 2021

Direct Line: (403)571-1544
Email: hawkesr@jssbarristers.ca
Assistant - Jennifer Samaco (403)571-4319
File No: 15384-001

BY EMAIL (contact@accomponent.ca)

September 14, 2021

Canadian Union of Public Employees, Airline
Division, Air Canada Component
25 Belfield Road
Etobicoke, Ontario M9W 1E8

Attention: Wesley Lesosky, President

Dear Sir:

Re: CUPE's Failure to Represent Air Canada Flight Attendants Fairly

We, along with our co-counsel Matthew Macdonald, represent [redacted] who is an Air Canada employee and a union member of CUPE.

[redacted] has been denied her right to fair representation by CUPE, like many bargaining unit members, due to CUPE's inaction or, worse, cooperation with Air Canada's plans to force members to undergo compulsory medical treatments even though they are unnecessary or discriminatory for certain individuals. We write on [redacted] behalf to demand CUPE meet its duty to [redacted] and others, and initiate a grievance process against Air Canada.

As you are aware, Air Canada recently announced an apparent policy requiring the mandatory vaccination of all CUPE members. The announcement was publicized in email and a press release and the measures were described as follows:

> The decision to require all employees of Air Canada mainline, Air Canada Rouge and Air Canada Vacations to be fully vaccinated and report their vaccination status …
>
> Under the mandatory vaccination policy, testing will not be offered as an alternative… failure to be fully vaccinated by October 30, 2021 will have consequences up to and including unpaid leave or termination… [1]

[1] As publicized at: https://aircanada.mediaroom.com/2021-08-25-Air-Canada-Introduces-Mandatory-COVID-19-Vaccination-Policy-for-All-Employees-and-New-Hires

(the "**AC Press Release Policy**")

There was no circulation of the substantive or detailed policy among members, nor sufficient consultation with flight attendants about the impact on their health, safety, privacy, and employment rights. A union would normally advocate for its members to ensure that there was no unjustified intrusion on these vitally important rights. CUPE has arbitrarily or discriminatorily refused to consult with, and advocate for, its members, or has otherwise been absent in this matter.

It is surprising that CUPE would permit such an intrusion at all, but specifically through the AC Press Release Policy. Given the apparent abdication, there may also be issues of bad faith representation by cooperating with Air Canada in this conduct. Whatever the reason, CUPE has facilitated Air Canada's efforts to violate members' health, safety, privacy, and employment rights. This is antithetical to CUPE's statutorily mandated role under the *Canada Labour Code*, RSC 1985, c L-2 (the "***Code***").

Many CUPE members now face discipline up to termination if they do not comply with the AC Press Release Policy. Many have legitimate reasons why they cannot comply with the AC Press Release Policy, including [redacted] has recovered from COVID-19 and has medical confirmation which indicates that her natural immunity is a sufficient proxy for vaccination. Others have medical conditions where they might not be able be vaccinated or might not want to compromise pre-existing, complicated medical conditions with the mandatory vaccination. Others may have strongly held and legitimate religious or conscience views on the topic. Finally, others might have legitimate concerns about an employer collecting such personal and sensitive health information without reasonable justifications or necessity. The AC Press Release Policy unreasonably intrudes on these CUPE members' rights, is contrary to the collective bargaining agreement, and it appears CUPE has made no effort to refine, improve, review, or grieve the AC Press Release Policy. CUPE members are left justifiably wondering if CUPE has prioritized its leadership's political views over its obligation to its members.

[redacted] is compelled to be a member of CUPE by operation of law. As a result of being forced into CUPE membership, she has also been forced to give up individual rights that she might otherwise have had in court and on an emergent basis. By operation of the *Code*, CUPE is her exclusive representative and the only entity that can challenge any intrusion on her rights by Air Canada. Since [redacted] and other employees have had their rights to go to court removed by their membership in CUPE, the law requires that CUPE "not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of" [redacted] or other members of CUPE (*Code,* s 37). This imposes a duty of fair representation on CUPE to [redacted] and other bargaining unit members (the "**Duty**").

CUPE's apparent breach of the Duty is further illustrated by the jurisprudence deciding the extent of this legal requirement. The requirement to investigate grievable matters and reasonably pursue them is a key element of CUPE's Duty. Given that a bargaining unit member does not have an absolute right to have a grievance referred to arbitration, CUPE must show that:

1. CUPE did not merely conduct a perfunctory or cursory review of the matter. The review must be thorough.

2. CUPE gathered sufficient information to arrive at a sound decision.

3. CUPE demonstrates that there are no personality conflicts, bad relations, or other matters that could affect the soundness of its decision.

   (See *Lamolinair*, 2009 CIRB 463)

Specific breaches by unions of the Duty have been found when there is:

- Inaction that is arbitrary and amounts to a failure to represent the employee(s).
  - *Haley (No. 2),* [1981] 2 Can LRBR 121
- Failure to inquire sufficiently into a situation that amounts to a failure to represent the employee(s).
  - *Blanchet*, 2008 CIRB 467, application for judicial review dismissed, by the Federal *Court* of Appeal in *Blanchet v International Association of Machinists and Aerospace Workers, Local 712*, 2009 FCA 103
- A "non-caring attitude" is demonstrated by the union towards the employee(s)' interests.
  - *Beaulieu (Re)*, 2011 CIRB 570, [2011] CIRBD No 3

CUPE has not met any of these obligations based on our review of the case with various bargaining unit members. It is unlikely, based on CUPE's actions to date, that the Canadian Industrial Relations Board would find CUPE compliant with its statutorily mandated Duty regarding the AC Press Release Policy.

CUPE's Duty is further informed by the relevant federal privacy legislation. Under the federal *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 ("***PIPEDA***"), an organization can only collect, use, and disclose, information in the employment setting when it is necessary to do so (section 7.3). The AC Press Release Policy has not demonstrated the necessity to do so, and CUPE's failure to act is facilitating the breach of its members legal rights in this regard.

CUPE's breach of its Duty is further demonstrated by contrasting it with the conduct of other unions in meeting their Duty with respect to mandatory vaccinations. Unions representing similar workers have advocated against mandatory vaccinations, or the collection of this sensitive medical information. In Toronto, the Amalgamated Transit Union Local 113 (the "**ATU 113**") has challenged the Toronto Transit Commissions ("**TTC**") mandatory vaccination and reporting policy

(the "**TTC Policy**") as an "unfair and unjust intrusion into the lives of" its members.[2] ATU 113 has not allowed its political views to interfere with its Duty to its members. ATU 113 has advocated for legitimate education on the safety and of benefit of vaccinations but defends against the employer breaching its members rights by the TTC Policy. The TTC Policy, unlike the AC Press Release Policy, does not threaten discipline or termination as the AC Press Release does. It is very concerning that CUPE, in the face of the even more intrusive and offensive AC Press Release Policy, will not even take a similar position that the ATU 113 has with respect to the TTC Policy that apparently does not threat discipline and termination.

CUPE Must Start Representing its Members Fairly

Based on our review of the matter and the nature of its Duty as articulated by the relevant jurisprudence, CUPE has not met its obligations under the *Code* to represent its members fairly. We write on [redacted] behalf to demand that CUPE take immediate action to remedy this situation or else its members will be forced to file a complaint with the Canadian Industrial Relations Board in accordance with sections 97-99 of the *Code*. If forced to make a complaint, the CUPE members will seek a make whole order:

1. Declaring that CUPE is in breach of its Duty under section 37;

2. Ordering it to pursue a grievance of the AC Press Release Policy;

3. Paying the entirety of legal costs to date of the members for pursuing the complaint;

4. Ordering that CUPE appoint bargaining unit members opposed to and affected by the AC Press Release Policy to manage the grievance of it; and

5. Ordering that CUPE pay for the legal counsel chosen by the bargaining unit members opposed to and affected by the AC Press Release Policy.

To avoid this outcome, CUPE must take steps immediately to meet its Duty to its members. Within 7 days, CUPE must:

1. Initiate a grievance of the AC Press Release Policy, or any policy enacted pursuant to it (the "**Policy Grievance**");

2. Place [redacted] on the Grievance Committee for the Policy Grievance to ensure the proper management of it and representation of affected members;

3. Produce records of the actions CUPE has taken in response to the AC Press Release Policy to ensure it respects its members various their health, safety, privacy, and employment rights; and

[2] Details taken from reported at: https://www.thestar.com/news/gta/2021/09/07/ttcs-largest-union-urges-members-not-to-divulge-vaccination-status-calls-mandate-an-unjust-intrusion.html

4. Continue to report to its members who are negatively affected by the AC Press Release Policy on a weekly basis of the actions taken in furtherance of the Policy Grievance.

We look forward to your confirmation that you are taking the above steps within one (1) week of the date of this letter, failing which we will have no choice but to pursue the above-referenced complaint with the Canadian Industrial Relations Board.

Yours truly,

Jensen Shawa Solomon Duguid Hawkes LLP

Robert J. Hawkes QC

RH:jjs

cc: Matthew Macdonald (matthew@matthewmacdonaldlaw.ca)
Erin Baker (bakere@jssbarristers.ca)
Sarah Miller (millers@jssbarristers.ca)

APPENDIX "G"

EMAIL THREAD BETWEEN COUNSEL AND CUPE FROM SEPTEMBER 14-28, 2021

Matthew Macdonald

From: Matthew Macdonald
Sent: September 27, 2021 10:14 PM
To: Alex Habib; hawkesr@jssbarristers.ca
Cc: Theresa Mitchell; Kevin Tyrrell; Wesley Lesosky; bakere@jssbarristers.ca; millers@jssbarristers.ca
Subject: RE: September 14 2021 letter to CUPE re Mandatory Vaccination Policy

Tracking:

Recipient	Delivery
Alex Habib	
hawkesr@jssbarristers.ca	
Theresa Mitchell	
Kevin Tyrrell	
Wesley Lesosky	
bakere@jssbarristers.ca	
millers@jssbarristers.ca	
Matthew Macdonald	Delivered: 2021-09-27 10:14 PM

Dear Mr. Habib:

Thank you for your reply and your confirmation of the CUPE contact for the DFR Complaint.

CUPE has refused to provide any information to Ms [redacted] and the affected Members as to anything it has done with respect to the imposition of the AC Press Release Policy. The non-response comes after [redacted] letter date August 30, 2021, and two substantive communications from her counsel dated September 14 and 22, 2021. All three communications raised matters which have been ignored in either an arbitrary, discriminatory, or possibly bad faith manner. [redacted] and the 10% of the affected CUPE Members facing significant discipline, loss of up to 6 months wages, or termination as a result of the AC Press Release Policy can only speculate as to the extent of the lack of CUPE's representation, and the motives for it lack of representation or possible cooperation with the employer against CUPE Members. This complete non-communication by CUPE to its affected Members further supports the DFR Complaint and will be cited in it.

We will forward a courtesy copy of the DFR Complaint after its submission to Mr. Lesosky.

Sincerely,

MM

Matthew Macdonald, LLB
Matthew Macdonald Law, Barrister and Solicitor
Matthew@MatthewMacdonaldLaw.ca

From: Alex Habib <a.habib@accomponent.ca>
Sent: September 23, 2021 8:39 AM
To: Matthew Macdonald <Matthew@matthewmacdonaldlaw.ca>; hawkesr@jssbarristers.ca
Cc: Theresa Mitchell <t.mitchell@accomponent.ca>; Kevin Tyrrell <ktyrrell@cupe.ca>; Wesley Lesosky

<w.lesosky@accomponent.ca>; bakere@jssbarristers.ca; millers@jssbarristers.ca
Subject: RE: September 14 2021 letter to CUPE re Mandatory Vaccination Policy

Dear Mr. MacDonald,

I acknowledge receipt of reply email below.

The Air Canada Component of CUPE feels that we have fulfilled our obligations under the Duty of Fair Representation. A DFR Complaint can be forwarded to our Component President, Wesley Lesosky who is copied on this email and shares a mailing address with me.

Regards,
Alex Habib

ALEX HABIB (he, him, his)

Component Secretary-Treasurer
Air Canada Component of CUPE

25 Belfield Road, Etobicoke, ON, M9W 1E8
416-798-3399 ext.227
a.habib@accomponent.ca

From: Matthew Macdonald <Matthew@matthewmacdonaldlaw.ca>
Sent: Wednesday, September 22, 2021 12:02 PM
To: Alex Habib <a.habib@accomponent.ca>; hawkesr@jssbarristers.ca
Cc: Theresa Mitchell <t.mitchell@accomponent.ca>; Kevin Tyrrell <ktyrrell@cupe.ca>; Wesley Lesosky <w.lesosky@accomponent.ca>; bakere@jssbarristers.ca; millers@jssbarristers.ca
Subject: RE: September 14 2021 letter to CUPE re Mandatory Vaccination Policy

Dear Mr. Habib:

I acknowledge your initial response below, dated September 17, 2021, and am writing with this follow up. All capitalized terms have the meaning ascribed in our correspondence of September 14, 2021 (the "Member's Demand"), a copy of which is attached to this email.

Your initial response failed to respond to the serious issues raised by [redacted] about CUPE's breach of its Duty to represent Members related to the imposition of the AC Press Release Policy. Your interim response focused completely on how CUPE *may* decide to defend Members when Air Canada imposes discipline or termination under the AC Press Release Policy. It further indicated that you "will be responding" on behalf of the president of CUPE, and therefore we expected a detailed response regarding how CUPE met its Duty in the lead up to and imposing the AC Press Release Policy. Today [Yesterday?] was the deadline for responding to our Member's Demand. We have still not received a substantive response by CUPE about our concerns detailed in the Member's Demand.

Failing to address any concern about imposing the AC Press Release Policy further demonstrates how CUPE breached the *Code*, and specifically the Duty. Since we wrote our Member's Demand, we understand that over 10% of the

Members have been notified by the employer they are in breach of the AC Press Release Policy, and as a result are facing significant discipline, prolonged loss of income and benefits, or even termination of employment. With such a large group of Members being affected by CUPE's apparent breach of its Duty, the Union's failure to substantively respond is very concerning.

To avoid any unnecessary confusion about whether a substantive response related to CUPE's breach of its Duty with respect to the imposing of the AC Press Release Policy, we are providing a minor extension to our Member's Demand. We will be filing a complaint with the Canada Industrial Relations Board (the "DFR Complaint") on the basis and for the remedy outlined in the Member's Demand unless by **Noon (MST) Friday September 24, 2021** CUPE:

1. Initiates a grievance of the AC Press Release Policy, or any policy enacted pursuant to it (the "Policy Grievance");
2. Places [redacted] on the Grievance Committee for the Policy Grievance to ensure the proper management of it and representation of affected members;
3. Produces records of the actions CUPE has taken in response to the AC Press Release Policy to ensure it respects its members various their health, safety, privacy, and employment rights; and
4. Continues to report to its members who are negatively affected by the AC Press Release Policy on a weekly basis of the actions taken in furtherance of the Policy Grievance.

I look forward to your confirmation of the same, or alternatively the courtesy of providing us the contact for individuals you designate to respond to the DFR Complaint.

Sincerely,

MM

Matthew Macdonald, LLB
Matthew Macdonald Law, Barrister and Solicitor
Matthew@MatthewMacdonaldLaw.ca

From: Alex Habib <a.habib@accomponent.ca>
Sent: September 17, 2021 7:39 AM
To: hawkesr@jssbarristers.ca
Cc: Theresa Mitchell <t.mitchell@accomponent.ca>; Kevin Tyrrell <ktyrrell@cupe.ca>; Wesley Lesosky <w.lesosky@accomponent.ca>; Matthew Macdonald <Matthew@matthewmacdonaldlaw.ca>; bakere@jssbarristers.ca; millers@jssbarristers.ca
Subject: RE: September 14 2021 letter to CUPE re Mandatory Vaccination Policy

Dear Mr. Hawkes,

Thank you for your letter. I will be responding on behalf of the Air Canada Component, as the Component President Wesley Lesosky is currently on vacation.

Following the government of Canada's announcement that it would make COVID-19 vaccines mandatory for Air Canada employees, Air Canada announced its COVID-19 vaccination policy. Air Canada has stated that it will accommodate in accordance with the *Canadian Human Rights Act.*

If your client cannot be vaccinated due to a disability or another prohibited ground of discrimination, she may seek an accommodation. Normally such requests require supporting documentation. If accommodation is not

provided, she may contact the Union for assistance and request a grievance be filed. Similarly, if your client is disciplined or placed on a leave of absence, she may contact the Union for assistance and request a grievance be filed.

Individual complaints will be dealt with on a case by case basis. The Union will file grievances where appropriate, based on the facts and the law at the time.

Sincerely,
Alex Habib

ALEX HABIB (he, him, his)

Component Secretary-Treasurer
Air Canada Component of CUPE

25 Belfield Road, Etobicoke, ON, M9W 1E8
416-798-3399 ext.227
a.habib@accomponent.ca

From: Robert Hawkes QC <hawkesr@jssbarristers.ca>
Sent: Tuesday, September 14, 2021 6:59 PM
To: Contact (ACC) <contact@accomponent.ca>
Cc: Matthew Macdonald Law <Matthew@matthewmacdonaldlaw.ca>; Erin J. Baker <bakere@jssbarristers.ca>; Sarah Miller <millers@jssbarristers.ca>
Subject: September 14 2021 letter to CUPE re Mandatory Vaccination Policy

Please see the attached.

Robert Hawkes QC
Partner
Direct: 403 571 1544
Bio: Robert Hawkes QC

Jensen Shawa Solomon Duguid Hawkes LLP

T 403 571 1520 F 403 571 1528 800, 304 - 8 Avenue SW, Calgary, Alberta T2P 1C2 www.jssbarristers.ca