

CIRB File No. _____

BEFORE:

CANADA INDUSTRIAL RELATIONS BOARD

Complaint filed pursuant to Sections 18, 50(a)(i)-(ii), 50(b), and 94(1)(a)
Canada Labour Code, R.S.C. 1985, c. L-2

BETWEEN:

AIRCRAFT MECHANICS FRATERNAL ASSOCIATION,

Union,

- and -

WESTJET, AN ALBERTA PARTNERSHIP,

Employer.

COMPLAINT

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I. INTRODUCTION

1. The Aircraft Mechanics Fraternal Association (“AMFA” or “the Union”) hereby files a Complaint against WestJet, an Alberta Partnership (“WestJet” or “the Company”) pursuant to 50(a)(i)-(ii), 50(b), and 94(1)(a) of the *Canada Labour Code*. In addition, it seeks bargaining unit clarification pursuant to Section 18 of the *Code*. AMFA requests the Board’s expedited consideration of this matter due to the impact on aviation safety arising from WestJet’s elimination of the Aircraft Maintenance Lead (“AML”) and Inspection Crew Lead (“ICL”) positions and the transfer of bargaining unit work to the newly created Operations Manager (“OM”) position. The AML and ICL positions are leadership roles within the WestJet Technical Operations (“Tech Ops”) Department, tasked with coordinating and overseeing maintenance activities. As WestJet has acknowledged, the abrupt shift of work away from those positions has caused disarray within maintenance operations and hostility among co-workers whose integrated efforts are critical to maintenance safety culture. WestJet’s attempts to reduce the scope of the bargaining unit have stalled present negotiations. AMFA requests the Board’s intervention to clarify the scope of the bargaining unit and the parties’ rights and obligations.

II. FACTUAL BACKGROUND

2. On January 30, 2023, AMFA submitted an application seeking certification of a bargaining unit of WestJet employees that included, inter alia, the “Lead AME [Aircraft Maintenance Engineer]” position.

3. On February 6, 2023, pursuant to the Board’s scheduling order, WestJet disseminated an organizational chart representing a portion of its Tech Ops Department. (Seham Affidavit ¶ 2; Seham Ex. A). The organizational chart reflected the existence of both an AML and ICL position. It did not reflect the existence of an OM position because no such position existed.

4. On February 10, 2023, WestJet submitted its Response to AMFA’s Application. The Response asserted that the appropriate bargaining unit would include both AMLs and ICLs. (Seham Affidavit ¶ 3; Seham Ex. B).

5. On February 20, 2023, in its Reply, AMFA requested certification of a bargaining unit consisting of:

All employees of WestJet, an Alberta Partnership, integral to the coordination and performance of aircraft maintenance **including** Aircraft Maintenance Engineers (“AME”), Apprentice AMEs, Aircraft Maintenance Leads (“AML”), Avionics Technicians (“AVT”), Apprentice AVTs, Inspector Crew Leads (“ICL”), Structures AMEs, Apprentice Structures AMEs, Maintenance Planners, Furnishing Technicians, Apprentice Furnishing Technicians, Maintenance Controllers, Senior Configuration Control Specialists, Fleet Engineers, Technical Instructors, Senior Technical Instructors, Technical Representatives, and Senior Technical Services Specialists, **excluding** managers, management coordinators, and GSE positions.

(Seham Affidavit ¶ 4; Seham Ex. C). The Rudge Affidavit attached to the Reply summarized some of the key functions of the AML positions, which include the communication concerning, and the coordination of, maintenance work with other TechOps groups responsible for maintenance planning. (Seham Ex. C at 19). AMLs spend the workday in planning meetings and discussions and do not generally participate in or oversee maintenance work. The Rudge Affidavit additionally summarized the key functions of the ICL position, which include the direct supervision and monitoring of aircraft maintenance work. (*Id.*) ICLs spend a majority of their time on the maintenance floor and will directly participate in maintenance work.

6. On February 23, 2023, WestJet submitted a revised organization chart reflecting the entirety of its Technical Operations Department. (Seham Affidavit ¶ 6; Seham Ex. D). Again, the organizational chart reflected the existence of both an AML and ICL position. It did not reflect the existence of an OM position.

7. The certification process entailed extensive briefing and correspondence from both parties. At no point during the certification process did WestJet indicate its intent to eliminate or create any position within its Technical Operations Department. (Seham Affidavit ¶ 6).

8. On March 30, 2023, the Board certified AMFA as the exclusive bargaining agent for a unit consisting of:

all employees of WestJet, an Alberta Partnership, integral to the coordination and performance of aircraft maintenance, including aircraft maintenance engineers (AME), apprentice AMEs, **aircraft maintenance leads (AML)**, avionics technicians (AVT), apprentice AVTs, **inspector crew leads (ICL)**, structures AMEs, apprentice structures AMEs, maintenance planners, day-of operations planners, technicians furnishing, apprentice technicians furnishing, maintenance controllers, senior specialists configuration control, fleet engineers, instructors technical, senior instructors technical, technical representatives and senior specialists technical services, excluding receiving inspectors, lead receiving inspectors, maintenance auditors, quality assurance auditors, GSE positions, management coordinators and positions above.

(Order No. 11807-U) (emphasis supplied). The Board determined that the bargaining unit shared a community interest in that the “work performed is directed towards the repair, maintenance and trade certification of aircraft.” *WestJet*, 2023 CIRB LD 4975, pg. 9.

9. On August 10, 2023, the Board entered a final bargaining unit (Order No. 11834-U) order confirming that the Senior Fleet Engineer position came within the bargaining unit and that the bargaining unit shared a community of interest “in that the work performed is directed towards the repair, maintenance and trade certification of aircraft.” *WestJet*, 2023 CIRB LD 5096, pg. 5.

10. Since AMFA’s initial certification, WestJet has filed two judicial review applications with the Canada Court of Appeal seeking the revocation of AMFA’s bargaining rights. (Seham Affidavit ¶ 7; Seham Ex. F; Seham Ex. E). The applications, in essence, attempt to reduce the bargaining unit to the first eight (8) classifications identified in the Board’s certification orders.

AMFA maintains that these applications are frivolous and will continue to defend the Board's orders.

11. On March 31, 2023, AMFA National President Bret Oestreich provided WestJet Executive Vice-President Angela Avery with notice to bargain pursuant to Section 50 of the *Code*. The notice advised WestJet that "all terms and conditions of employment" were subject to the statutory freeze provided for under Section 50(b) of the *Code*. (Evershed Affidavit ¶ 2; Evershed Ex. A). The parties are currently negotiating an initial collective agreement. (Evershed Affidavit ¶ 3).

12. At the time of certification, the following tasks, taken from WestJet's current internal job description, represented the core functions of the AML position:

AML Core Functions

Uphold the policies and procedures defined in WestJet's approved manual that have been set out by Transport Canada and WestJet to guarantee operational compliance;

Expedite maintenance and parts requirements while coordinating with other departments, teams, and various support staff to ensure minimal impact to the schedule during irregular operations and schedule/unscheduled work;

Coordinate with MCC during scheduled, line, and AOG maintenance to ensure timely dispatch of the aircraft;

Make personnel decisions (e.g. unfit for duty) and, should a significant policy or procedure violation occur or be at risk of occurring, report concerns to the manager;

Coach and lead ICLs in all aspects of their duties and create a positive and respectful work environment

(See Evershed Affidavit ¶ 4; Evershed Ex. B)

13. On April 17, 2023, the WestJet announced the creation of the OM position for the position. (Evershed Affidavit ¶ 5; Evershed Ex. C). WestJet did not consult with the Union prior to creating or posting for the position. AMFA was first alerted to the existence of the new position when its members forwarded an internal job posting published just prior to the announcement. (See Evershed Affidavit ¶ 6; Evershed Ex. D). Union representatives were flooded with questions by members regarding the nature of the new position and its impact on maintenance operations. (Evershed Affidavit ¶ 7). WestJet’s ultimate announcement stated that “[t]he future state for the AML/ICL roles will be evaluated as we build direct and responsible managers into our day-to-day business.” (Evershed Ex. D). The job posting for the OM identified the following tasks as core functions of the OM position, which directly overlap with the core functions of the AML position:

AML Core Functions

Uphold the policies and procedures defined in WestJet’s approved manual that have been set out by Transport Canada and WestJet to guarantee operational compliance;

Expedite maintenance and parts requirements while coordinating with other departments, teams, and various support staff to ensure minimal impact to the schedule during irregular operations and schedule/unscheduled work;

Coordinate with MCC during scheduled, line, and AOG maintenance to ensure timely dispatch of the aircraft;

Make personnel decisions (e.g. unfit for duty) and, should a significant policy or procedure violation occur or be at risk of occurring, report concerns to the manager;

OM Core Functions

Ensure maintenance personnel use appropriate tools and technical manuals in the performance of their work, and facilities are maintained in a clean condition;

Expedite maintenance and parts requirements while coordinating with Maintenance Control, Technical Representatives (Tech Reps) and various support staff to ensure minimal impact on schedules during Irregular Operations (IROPS), as well as during scheduled and unscheduled work;

Coordinate and manage planned and unplanned maintenance with Planning MCC, Engineering, and Stores ensuring adequate staffing levels to prioritize job action on any aircraft/component requiring maintenance;

Make personnel decisions (e.g., unfit for duty) and, should a significant policy or procedure violation occur or be at risk of occurring,

address and mitigate the situation immediately;

Coach and lead ICLs in all aspects of their duties and create a positive and respectful work environment.

Provide daily leadership, guidance, coaching and performance development to a crew of AMEs, building an effective, positive, and respectful maintenance team.

(Evershed Ex. B; Evershed Ex. D).

14. Prior to the announcement of the OM position, AML and ICL positions at WestJet's maintenance bases were staffed as follows:

Pre-Announcement

YYZ (Toronto): 10 AMLs
20 ICLs

YYC (Calgary): 12 AMLs
22 ICLs

YEG (Edmonton): 2 AMLs
4 ICLs

YVR (Vancouver): 2 AMLs
6 ICLs

(Evershed Affidavit ¶ 8).

15. In correspondence dated April 20, 2023, AMFA objected to the creation of the new OM position on the grounds that it violated the statutory freeze requirements imposed by the *Canada Labour Code* and sought to deprive AMFA members of work falling within the Union's jurisdiction. (Evershed Affidavit ¶ 9; Evershed Ex. E).

16. Following the announcement of the OM position, WestJet began recruiting from within the Tech Ops Department to fill approximately 48 new OM positions. (Evershed Affidavit ¶ 10).

17. On September 14, 2023, AMFA Airline Representative Ian Evershed again communicated the Union's objection to WestJet's imminent implementation of the OM position. The letter

observed that the new OM positions were being filled with former AMLs and ICLs without backfill of the vacated positions. (Evershed Affidavit ¶ 11; Evershed Ex. F). WestJet’s failure to backfill threatened the continued existence of the AML and ICL positions and, as a result, the scope of bargaining unit work.

18. On September 25, 2023, WestJet implemented the OM position, as OMs began to perform their assigned functions at WestJet’s maintenance bases. (Evershed Affidavit ¶ 12).

19. As a result of the internal recruiting and failure to backfill, WestJet’s reduced its staffing of AML positions by over 50%, with additional reductions among the ICL position:

<u>Pre-Announcement</u>		<u>Post-Implementation</u>	
YYZ (Toronto):	10 AMLs 20 ICLs	YYZ (Toronto):	7 AMLs 19 ICLs
YYC (Calgary):	12 AMLs 22 ICLs	YYC (Calgary):	7 AMLs 19 ICLs
YEG (Edmonton):	2 AMLs 4 ICLs	YEG (Edmonton):	0 AMLs 0 ICLs
YVR (Vancouver):	2 AMLs 6 ICLs	YVR (Vancouver):	0 AMLs 5 ICLs

(Evershed Affidavit ¶ 8).

20. In response to AMFA’s objections, WestJet took the position that the OM program predated the status quo freeze applicable under Section 50 of the *Code* and promised to provide documentation in support of this position. This documentation was transmitted to AMFA, via emails dated October 3 and October 10, 2023, by WestJet Corporate Counsel – Labour Relations Alex Hunt. (Evershed Affidavit ¶¶ 13-14; Evershed Ex. G; Evershed Ex. H). In his October 3 email, Attorney Hunt advised that WestJet had initially planned to eliminate both the AML and ICL positions and replace those positions with the OM position. The reorganization had been

“**moderated**” in that WestJet had “**decided not to proceed with elimination of the Lead roles.**” (Evershed Ex. G).

21. The parties attempted to resolve the dispute at the bargaining table. During a collective bargaining session conducted in Toronto on November 7, 2023, AMFA representatives advised WestJet that its actions had created an operational crisis characterized by “disarray” within the maintenance department adversely affecting aircraft repair. AMFA representatives also advised that WestJet’s actions had sown dissension within the department with maintenance employees perceiving former AMLs and ICLs, who had accepted OM positions, as scabs who have betrayed the bargaining unit and cut off their fellow workers from economic opportunities. WestJet negotiators acknowledged the gravity of the situation and pledged to present a proposal the following day for the purpose of averting CIRB charges and litigation. (Evershed Affidavit ¶ 15).

22. On November 8, 2023, WestJet submitted a contract proposal identifying seventeen (17) positions and setting out the core job functions for each position. The proposal provided for the complete elimination of both the AML and ICL job classifications and the creation of a new Operational Lead (OL) position that WestJet described as exercising “ICL-plus” functions. It described the following OL core job functions:

Operational Lead (OL) - In addition to fulfilling the duties of an AME, this position is responsible for supporting Employees in technical matters, including specifically the frontline direction and supervision of other Employees in the Group 1 classification. This position is the first escalation point for technical issues discovered during routine maintenance and repair. The OL assigns tasks and ensures implementation of the daily work plan. This position canvasses for overtime and approves time off requests in accordance with procedures established by the Company. The OL liaises with internal stakeholders and external vendors as required and ensures quality standards and regulatory compliance are met. This position is also responsible for upholding and abiding by all associated safety requirements and performing any other duties required by the Company related to the foregoing.

(Evershed Affidavit ¶ 16; Evershed Exhibit I).

23. The proposal, if adopted, would codify the shifting of job functions within the AML and ICL job classifications. Critically, the proposal eliminates the AML's role in coordinating the WestJet maintenance schedule and its participation in personnel decisions. What had been a high-level administrative position tasked with strategic oversight, will be returned to the maintenance floor to oversee and assist in routine maintenance.

24. The WestJet contract proposal additionally failed to include five (5) positions in the Tech Ops Department that are integral to the performance and coordination of maintenance work and that perform work directed towards the repair, maintenance, and trade certification of aircraft: Base Planner, Reliability Lead, Power Plant Engineer, Senior Power Plant Engineer, Technical Representative Lead.

25. Those positions perform the following core job functions:

Base Planner – Generates, monitors, and updates maintenance work packages utilizing internal tools to ensure all scheduled maintenance activities are performed in accordance with the approved Maintenance Schedule Approval. Responsible for all required parts, workforce, tooling and equipment for specified scheduled maintenance visits. Communicate and distribute work packages to maintenance bases. Develop workscopes for Heavy Maintenance and projects for both internal and external service providers.

Reliability Lead – Manages and supports maintenance operations and major/minor projects pertaining to the Part Number Master in the CMTS. Develops and maintains the maintenance department database, analyze data, identify findings and adverse trends, determine root cause and system/component failure and initiate corrective action. Justifies maintenance program revision and modification using appropriate data analysis.

Power Plant Engineer – Recommends actions in order to maintain compliance with maintenance bulletins, letters, manuals. Create internal system controls to track maintenance compliance. Develop and oversee engine maintenance schedule and budget. Develop workscope for scheduled and unscheduled maintenance. Provide engine change notifications and coordinate off/on wing repair activities.

Senior Power Plant Engineer – Develop Engineering Build Specification(s) for assigned products. Review engine maintenance findings and identify adverse trends.

Technical Representative Lead – Expedites maintenance and part requirements while coordinating with other departments and teams to ensure minimal impact to the schedule

during Heavy Maintenance. Ensures that the various teams involved in daily operations are informed of any maintenance concerns and understand the options that are available. Responsible for coaching, mentoring, and management of Maintenance, Operation, and Repair (MRO) performance concerns. Coordinate and update Aircraft Movement to/from MRO with Tech Ops Planning and Operations to ensure successful Entry Into Service and minimize operational impact from delays out of check.

(Evershed Affidavit ¶ 17).

26. On November 9, 2023, AMFA negotiators advised WestJet that the Company's classification proposal was not satisfactory and was analogous to a "peace treaty" with an aggressor nation in which the victimized country would be required to cede twenty (20) percent of its territory to its invader. AMFA negotiators advised that they would prepare a counterproposal in keeping with the original CIRB certification. (Evershed Affidavit ¶ 18).

27. In a November 10, 2023 email, WestJet Senior Manager, Labour Relations, Virginia Swindall acknowledged that hostility among aircraft employees related to creation of the OM position had become a "serious and emerging concern." (Evershed Affidavit ¶ 19; Evershed Ex. J).

28. On November 21, 2023, in response to WestJet's November 8, 2023 proposal, AMFA presented a counterproposal with the following elements:

- Full restoration (base, positions and headcount) of the bargaining unit to status quo as of the date of AMFA's initial certification;
- Immediate and continuing upgrade of reduced AML/ICL positions as follows: YYZ – 3 AML 1 ICL, YYC 6 AML 1 ICL, YEG 1 AML 2 ICL, YVR 2 AML 1 ICL;
- Backfill lost headcount of 20 FTEs (in addition to current AME postings internal and external) with priority given to those employees currently on the recall list;
- Acknowledgment that the following classifications perform work directed towards the repair, maintenance and trade certification of WestJet aircraft and fall within the AMFA bargaining unit – Base Planner, Reliability Lead,

Power Plant Engineer, Senior Power Plant Engineer, and Technical Representative Lead.

(Evershed Affidavit ¶ 20; Evershed Ex. K). In the same communication, AMFA advised WestJet that a continued insistence on a narrower bargaining unit scope than that conferred in the Board's certification order would violate Section 50 of the *Canada Labour Code*. (*Id.*)

29. On November 22, 2023, in response to AMFA's November 21, 2023, WestJet lead negotiator Virginia Swindall asserted that "bargaining unit scope is not properly a bargaining issue," despite having made a proposal that would reduce the scope of the bargaining unit certified by the Board. With respect to the five (5) classifications identified in AMFA's counterproposal, Ms. Swindall stated that the Company "will not agree to the addition of these positions into this bargaining unit" and threatened unfair labour practice charges against AMFA should it seek negotiate on behalf of these positions. (Evershed Affidavit ¶ 21; Evershed Ex. L).

30. On November 25, 2023, AMFA requested a formal counterproposal that would "preserve the scope of bargaining unit work as of the time of certification" or an indication from WestJet that no such counterproposal was forthcoming. (Evershed Affidavit ¶ 22; Evershed Ex. M). In answer, Ms. Swindall refused to make the requested counterproposal. (Evershed Affidavit ¶ 23; Evershed Ex. N).

II. UNFAIR LABOUR PRACTICE CHARGES

A. Section 50(a) Violations

31. In the course of the bargaining process, WestJet has insisted on a proposal that would transfer the work of the AML to a management position that it claims is outside of the bargaining unit and commenced the elimination of the AML position. It has rejected an AMFA proposal requesting that the work jurisdiction of the bargaining unit be returned to the status quo as of certification. WestJet has denied that AMFA represents five (5) positions within the Technical

Operations Department even though those positions meet the clear definition of the bargaining unit and share a community of interest with other bargaining unit positions. It has rejected AMFA's attempts to bargain on behalf of those employees.

32. An Employer's attempt to impose, through bargaining, a unit scope that is narrower than the scope of the scope of the unit authorized by the Board constitutes bad faith and violates Section 50(a) of the *Code*. As explained by the Board in *Société Radio-Canada*, 2000 CIRB 68:

[51] The Board's jurisdiction in terms of the composition of bargaining units is now well established. In *British Columbia Telephone Company* (1977), 22 di 507; [1977] 2 Can LRBR 404; and 77 CLLC 16,108 (CLRB no. 99), the Board had to take into account, among other issues, the effect of certification in the context of collective bargaining. It ruled that once a union is certified as the bargaining agent, pursuant to an order:

... the employer is no longer free to recognize or refuse to recognize the trade union as the bargaining agent for the group described in the order. When a collective agreement is entered into, section 154 [now section 56] of the Code provides that it is binding not only on the bargaining agent and the employer but also on "every employee in the bargaining unit". ...

(pages 521; 416; and 665)

[52] In the same decision, the Board points out that the problem is not extending the scope of the bargaining unit, but rather the situation that arises when the collective agreement expressly targets a smaller group than the one described in the certification order. In this situation, and as described by the Board on page 522, employees who are members of the bargaining unit find themselves deprived of the benefits of the collective agreement, and of their right to be represented by the bargaining agent of their choice, for the purposes of collective bargaining with their employer. If the bargaining agent were to agree to a smaller unit, such an agreement would be contrary to its duty of fair representation.

33. In *Société Radio-Canada*, the Board was seized with a Section 50(a) complaint filed by a union representing radio and television producers. The complaint alleged that the employer had made bargaining proposals that would have limited the work jurisdiction of the producers' bargaining unit, including a provision contemplating that non-bargaining unit employees could

perform producer functions. *Société Radio-Canada*, 2000 CIRB 68 [18] [27] [74]. The union had opposed and rejected all such proposals.

34. Sustaining the complaint, the Board found:

[56] In the instant case, the employer's proposals have the effect of reducing the effectiveness of the union's representation by enabling members of another bargaining unit to do the work of the members of the certified unit, because the assignment of production functions to members of other units directly infringes on the work that had, until then, been reserved for producers. . . .

[58] The Board is of the opinion that weakening the workforce (cross-unit exchanges) goes directly to the issue of the appropriateness of the unit, **which is exclusively within the Board's jurisdiction, pursuant to section 24(1) of the Code.**

35. The Board determined that, on several occasions, the union had clearly indicated that it would not discuss a substantive reduction of the bargaining unit's work jurisdiction. Nevertheless, the employer had insisted on negotiating over the scope of the union's certification. The employer's insistence was "even more reprehensible" given that the union had advised that the proposed amendments to its jurisdiction were illegal. *Société Radio-Canada*, 2000 CIRB 68 [75].

36. In the instant case, WestJet has insisted on a proposal that would transfer out of the bargaining unit work that, until the implementation of the OM position, had been performed by AMLs. It has attempted to limit the scope of AMFA's Board-certified unit and has subverted the Board's exclusive jurisdiction to determine the appropriate bargaining unit.

37. WestJet has also failed to acknowledge that AMFA represents the Base Planner, Reliability Lead, Power Plant Engineer, Senior Power Plant Engineer, Technical Representative Lead positions. As addressed in Section III below, it is undisputed that the five (5) positions perform work that is integral to the coordination and performance of aircraft maintenance at WestJet. They fall within the plain definition of the bargaining unit set forth in the Board's certification order. The positions additionally share a community of interest with other employees in the bargaining

unit in that their work is directed towards the repair, maintenance and trade certification of aircraft. WestJet's refusal to acknowledge that the identified positions fall within the bargaining unit constitutes bad faith bargaining and violates Section 50(a) of the *Code*.

B. Section 94(1)(a) Violations

38. Section 94(1)(a) of the *Canada Labour Code* prohibits actions that interfere with the formation or administration of a trade union or the representation of employees by a trade union. WestJet's attempts to eliminate bargaining unit work and narrow the scope of the unit violate Section 94(1)(a). The Board has summarized the test applied to Section 94(1)(a) charges related to the transferring of bargaining unit work out of the unit as follows:

It is therefore incumbent upon the Board in applying section 94(1)(a) of the Code to ask two questions, and a negative answer to either one will be indicative of a violation of the section if there has been employer participation in or interference with the administration of a trade union.

The first question is whether there has been antiunion animus. The second, if there is not, is whether the interests of the employer in all the circumstances justify the interference with bargaining unit rights that has occurred.

Canada Pacific Railway Company, 2015 CIRB 775 [28], quoting *Verpeteen Cartage Ltd.*, 2004 CIRB 270.

39. To determine the existence of anti-union animus,¹ the Board has considered whether “the employer undertook a concerted strategy aimed at directing the work of the bargaining unit to its non-unionized operations” and whether the employer was “guarded” with respect to the undertaken changes. *Verpeteen Cartage Ltd.*, 2004 CIRB 270 [148].

40. WestJet has adopted a concerted strategy aimed at curtailing the work performed by the AMFA bargaining unit. In the months following AMFA's certification, WestJet created the OM

¹ AMFA notes that violations of Sections 50 and 94(1)(a) do not require a showing of anti-union animus.

position with core job functions nearly identical to those of the bargaining unit AML position. The implementation of forty-eight (48) brand new OM positions with job responsibilities that overlap those of the AML has led directly to the reduction of AML positions and a reduction of the work performed by the remaining AMLs. By attaching the word “Manager” to the new position, WestJet has sought to insulate the position from inclusion in the bargaining unit. As addressed in Section III below, WestJet’s shell-and-pea game cannot erode the scope of the certified bargaining unit. Despite Attorney Hunt’s October 3, 2023 assertion that WestJet does not intend to eliminate the AML or ICL position, since April 2023, WestJet has pursued a policy of de facto elimination. It has reduced AML headcount by over 50% with additional reductions among the ICL position. The work of the now-vacant positions is now largely performed by OMs that WestJet treats as outside of the bargaining unit.

41. The above actions must be viewed against the backdrop of the WestJet’s litigation strategy, threatened against AMFA and pursued in the Federal Court of Appeal. In response to omissions from an initial contract proposal, AMFA requested that WestJet acknowledge that five (5) identified positions were integral to the coordination and performance of aircraft and, thus, fell within the bargaining unit definition. WestJet, in return, threatened AMFA with Board charges should AMFA continue to assert its right to bargain for employees in those positions. (Evershed Ex. L). The Company’s two judicial review applications attempt first to revoke AMFA’s certification and then supplant the bargaining unit definition with a narrower one preferred by the Company. (Seham Exs. E, F). WestJet has pursued a broad campaign to limit AMFA’s representational capacity, with the creation of the OM position and the failure to backfill vacated AML/ICL positions representing just one component.

42. WestJet has acted disingenuously regarding the creation of the OM position and the connected reduction in headcount. The Company's contention is that it conceived of a reorganization of its TechOps Department months before AMFA's initial application. Yet, at no point during the application process did WestJet advise AMFA of any planned changes. WestJet's proposed bargaining unit included both the AML and ICL positions. (Seham Ex. B). The organizational charts that it provided during the course of the certification process continued to depict both positions and omitted any reference to a new OM position. (Seham Exs. A, D). WestJet did not provide advanced notice to AMFA prior to publishing OM job postings. AMFA learned of the position from its own members and had to answer their questions without first discussing the issue with the Company. (Evershed Affidavit ¶¶ 6–7; Evershed Ex. D).

43. WestJet, over the past several months, has taken varying and conflicting positions with respect to the continued existence of the AML and ICL roles. Attorney Hunt's October 3, 2023 email states that WestJet initially planned to eliminate both positions, but that the Company subsequently decided that it would not eliminate either. (Evershed Ex. G). WestJet's April 17, 2023 announcement of the OM position advises that "[t]he future state for the AML/ICL roles will be evaluated as we build direct and responsible managers into our day-to-day business." (Evershed Ex. C, pg. 3). Yet, even before the OM position start date on September 25, 2023, WestJet had taken employees from AML/ICL positions with no attempt to backfill. (Evershed Affidavit ¶¶ 8, 11; Evershed Ex. F). The natural result of the failure to backfill is the complete elimination of both the AML and ICL positions. WestJet's recent classifications proposal would eliminate both positions and create a new OL position, with the core functions of the AML permanently transferred to the OM position. (Evershed Ex. I). With WestJet's position constantly changing,

AMFA cannot engage in meaningful discussions regarding the future organization of the TechOps Department.

44. Even should the Board not find that WestJet has acted with anti-union animus, the Company can identify no compelling interest that overcomes the statutory right of its employees to effective union representation. The planning documents provided by WestJet evidence a Company objective to have more employees styled as managers notwithstanding their performance of work that WestJet, during the certification process, acknowledged to be bargaining unit work. The Company's implementation of this objective has violated its employees' ability to seek collective representation and join effective bargaining units.

45. Under the Board's jurisprudence, WestJet's desire to have management positions perform bargaining unit work does not justify its interference with the AMFA bargaining unit. In *Canada Pacific Railway Company*, 2015 CIRB 755 [15] the union alleged that the following incidents constituted unfair labour practices under Section 94(1)(a) of the *Code*:

- a. Cases in which managers operated trains when bargaining unit personnel were ready and available to do the work;
- b. Cases in which bargaining unit personnel were scheduled to work and were replaced by management personnel in training;
- c. Cases in which bargaining unit personnel have been asked to train management personnel;
- d. Cases in which management personnel performed work ancillary to the operation of trains . . . a number of which were formerly performed by bargaining unit personnel in Utility positions that the employer ha[d] ... abolished.

The Board acknowledged the employer's interests in having managers perform the identified tasks, but concluded that each alleged event constituted a presumptive violation of Section 94(1). It clarified that managers could perform a token amount of work previously performed by an

abolished position, but that should the work increase, the employer would be required to re-establish the abolished position. *Canada Pacific Railway Company*, 2015 CIRB 755 [31].

46. Here, as in *Canada Pacific Railway Company*, WestJet OM's have begun to perform the core functions of the AML position. Vacancies created by the OM recruitment program have not been backfilled. In certain bases, particularly YEG (Edmonton) and YVR (Vancouver), OMs have completely replaced multiple full-time AML positions. (Evershed Dec. ¶ 8). WestJet has identified no legitimate business interest that outweighs the rights of bargaining unit employees. AMFA requests that the abolished AML and ICL positions be backfilled and re-established.

C. Section 50(b) Violations

47. WestJet's unilateral implementation of the OM program on September 25, 2023, and the connected reduction of bargaining unit work violates Section 50(b) of the *Code*. The Board has offered the following explanation regarding the purpose of the Section 50(b) freeze provision:

There are two basic reasons for the freeze provision It is firstly to ensure that, at the commencement of collective bargaining, the employer does not by its actions diminish, in the minds of the employees, the attempts by the bargaining agent to secure a collective agreement with the employer by modifying terms and conditions of employment beyond what is normal. Any modifications beyond the norm would be viewed, subtly or otherwise, as a demonstration by the employer of its power and, as a corollary, show up any weaknesses in the union. Secondly, it is to ensure that, at the commencement of collective bargaining, both parties work from a solid and known, base as opposed to a movable base in order to effectively negotiate a collective agreement.

Hamlet of Kugaaruk, 2010 CIRB 554 [14], quoting *Purolator Courier Ltd.* (1987), 71 di 189 [200–201]; and 87 CLLC 16,053 [14,417–14,418] (CLRB no. 653).

48. The scope of the freeze provisions is broad and covers any right or privilege of the employees in the bargaining unit whether or not that right or privilege is articulated in a collective agreement. *Northern Air Solutions, Inc.*, 2016 CIRB 811 [129]. It protects the scope of the

bargaining unit's work during period of collective bargaining. *D.H.L. International Express Limited*, 2001 CIRB 129, affirmed in *D.H.L. International Express Limited*, 2002 CIRB 159.

49. The Board has found that the statutory freeze provisions of the *Code* impose a “business as before” during periods of collective bargaining. *D.H.L. International Express Limited*, 2001 CIRB 129, affirmed in *D.H.L. International Express Limited*, 2002 CIRB 159. As the Board explained in *Canadian Helicopters Limited*, 2018 CIRB 899:

[97] . . . [I]n this inquiry, the Board will look at the overall circumstances of the employer's operations (*BHP Billiton Diamonds Inc.*, 2006 CIRB 353, at paragraph 37) (*BHP Billiton*), and consider whether the change is one that is a customary or established practice such that it constitutes in itself a term or condition of employment (see *BHP Billiton, supra*, at paragraph 49). In such circumstances, the employer will be permitted to alter terms and conditions of employment without union or Board consent.

[98] In this inquiry, the Board will be influenced by the fact that an employer made attempts to advise, consult or inform the union of the process it was undertaking to implement a change (see *BHP Billiton, supra*, at paragraph 50). **Where an employer's actions are planned or formulated, decided and communicated to employees, and effectively implemented prior to the filing of the application for certification**, these actions will not be subject to the statutory freeze provisions, even if the actual start date follows the filing of the application (see *BHP Billiton, supra*, at paragraph 54).

50. While evidence of anti-union animus is not required in order to show a breach of the freeze provisions of the *Code*, the Board considers such evidence when evaluating whether the actions of the employer were consistent with the “business as before” approach. *Hamlet of Kugaaruk*, 2010 CIRB 554 [17].

51. WestJet has argued that its unilateral actions do not constitute a violation of Section 50(b) because it had contemplated implementing an OM classification, for the purpose of eliminating leading functions from the bargaining unit, in the weeks [or months] prior to AMFA's certification. However, such contemplations were half-baked, never implemented, and never communicated to bargaining unit members prior to the Board's certification. WestJet's varying communications

with respect to nature and role of the OM position confirm that there was no plan implemented prior to certification, or that any such plan was abandoned, and is thus irrelevant to the Section 50(b) analysis.

52. Additionally, the requirement that condoned “business as before” activity be both implemented and communicated to bargaining unit employees prior to freeze period is consistent with the purpose of the Section 50(b) provision. Employees must view, with natural suspicion, any changes made during the freeze period that were not previously implemented or announced. Where the employer does not communicate to its employees in a frank and candid manner, the necessary conclusion is that the employer’s unilateral changes are designed gain bargaining leverage and diminish the power of the union prior to negotiations. Moreover, as discussed in Section B above, an employer’s pre-certification conception to remove positions from the bargaining unit can **never** justify the employer’s interference with the CIRB’s exclusive jurisdiction the scope of the appropriate unit.

53. AMFA has been forced into the very position that Section 50(b) seeks to eliminate. With its proposal to create a new OL position that replaces both AML and ICLs, WestJet has asked AMFA to place its imprimatur on what has already occurred – WestJet’s unilateral elimination of both positions. As AMFA stated in the course of bargaining, this is akin to a “peace treaty” in which an occupied country would be required to cede twenty (20) percent of its territory to the occupier. (Evershed Affidavit ¶ 18). AMFA faces the prospect of trading other bargaining objectives to preserve the rights that the bargaining unit had at the time of certification. Indeed, AMFA’s counter to WestJet’s initial classifications proposal demands only a return to status quo. This bargaining imbalance was precipitated by WestJet’s unilateral and unannounced actions and violates Section 50(b) of *Code*.

III. UNIT CLARIFICATION

54. AMFA requests that the Board enter an order confirming that the OM position, if it continues to exist, falls within the scope of the AMFA bargaining unit.

55. In *TVA Group Inc.*, 2012 CIRB 665, the Board summarized its jurisprudence on the interpretation of “all employee” bargaining units:

[90] In *Vidéotron Télécom Ltée (LD 909)*, *supra*, a majority of the panel found that the positions at issue were included in the bargaining unit. It stated the following:

... we must explain the intended scope of a bargaining certificate issued by the Board in the case of a “universal” bargaining unit description, that is, a unit consisting of “all employees.” Such a bargaining unit is not frozen as of the date of the certification order. It is designed to evolve over time and should include all the positions and job titles, unless the facts warrant their exclusion. This approach ensures that the certification continues to apply to “all employees,” without necessitating an amendment each time the employer creates a new position or job title.

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....

[93] In another decision issued by it in 2006, in *Northwestel Mobility Inc.*, 2006 CIRB 346, the Board had to rule on the inclusion or exclusion of positions related to retail operations. The employer argued that these positions had never been meant to be included in the bargaining unit and that the positions had been created after the certification order had been issued. After examining the union’s bargaining certificate, in which the bargaining unit description read in part “all employees of Northwestel Inc., **excluding**,” the Board indicated the following:

[7] The description is unequivocally an all-employee bargaining unit. The Board has consistently held that an all-employee bargaining unit means just that it includes all employees unless excluded by the terms of the certification order. **Accordingly, any new classification or position is included in the bargaining unit, unless the parties agree to its exclusion or the Board agrees to modify the scope of the bargaining unit to exclude it (see Northwestel Inc., December 13, 1999 (CIRB LD 158)).**

...

[9] The Board is not quite sure what is meant by the employer’s submission that the “spirit of the 2002 certification” should survive as a basis for excluding all managerial positions from the bargaining unit. The certificate

under review indicates **specific** exclusions, which commonly means that only the positions expressly named are excluded.

56. The exclusion of employees who perform “management functions” from the bargaining unit stems from section 3 of the *Code*, in which “employee” is defined as follows:

3 (1) ...

employee means any person employed by an employer and includes a dependent contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations.

The Board has established certain guiding principles and criteria to assist in its determination of whether a position performs “management functions” under Part I (Industrial Relations) of the *Code*. It places particular emphasis on evidence relating to the authority to hire, terminate, promote and discipline employees. *Voyageur Aviation Corp.*, 2021 CIRB 998 [22].

57. Per the job description provided by the Company, the OM position has no independent ability to hire, terminate, promote, or discipline employees. (Evershed Ex. G, pg 2). While the OM may engage in hiring activity, it does not have final hiring authority. While it may make daily personnel decisions, it is not empowered to terminate or discipline employees. It may conduct performance appraisals, but does not ultimately decide promotions. It is AMFA’s understanding that, to date, no OM has hired, terminated, promoted, or disciplined another Tech Ops employee. Crucially, the OM position shares the same core job functions as the AML position, undisputedly within the bargaining unit. The “manager” label given to this new position is immaterial and cannot result in the exclusion of the OM position from the AMFA bargaining unit. *See Voyageur Aviation Corp.*, 2021 CIRB 998 [24] (“[T]he Board generally looks beyond job titles . . .”). It is a fig-leaf attempt to cover the naked replication of the AML function with a different job title.

58. AMFA additionally requests that the Board confirm that the Base Planner, Reliability Lead, Power Plant Engineer, Senior Power Plant Engineer, and Technical Representative Lead positions fall within the scope of the AMFA bargaining unit.

59. The identified positions perform work that is integral to the coordination and performance of aircraft maintenance at WestJet. They share a community of interest with other employees in the bargaining unit in that their work is directed towards the repair, maintenance and trade certification of aircraft. (Evershed Affidavit ¶ 17). Excluding the identified positions from the unit would produce absurd and illogical results – with positions that work side-by-side afforded different representational rights. Under the Company’s construction of the unit, Technical Representatives would be included in the bargaining unit, but Technical Representative Leads would not be included. The Company cannot defend such a result. Because of the relatively few employees within these positions, their exclusion from the present bargaining will effectively thwart their statutory right to organize.

60. With respect to the construction of the present bargaining unit, AMFA notes that a unit may be simultaneously defined both by the nature of the unit’s work and by employee position titles. For example, prior to the merger between Canadian Airlines (CAIL) and Air Canada, the CAIL maintenance department was included in a unit defined as:

all employees of Canadian Airlines International Ltd. performing maintenance / technical services, stores and cargo functions, ramp services, commissary and catering functions, and cleaning / grooming functions, repairwriters, planners, expeditors, and inspectors / crew chiefs, as recognized by the applicable provisions in the collective agreement, excluding any employees already covered by a certification order;

(BU # 5741-U). The unit identifies both job functions (e.g., maintenance / technical services) and individual positions (e.g., planners, expeditors, and inspectors) that perform those functions. In the post-merger bargaining unit review process, the Board combined Air Canada and CAIL

bargaining units into a “technical, maintenance, and operational support” unit, covering classifications that had not been specifically enumerated in prior orders. *See Air Canada, 2005 CIRB 320*. It did not omit CAIL maintenance positions because they were not specifically identified in the predecessor bargaining unit.

61. In a more recent example, the Board certified the following bargaining unit at Sunwing Airlines Inc.:

all employees of Sunwing Airlines Inc. at the Toronto-Lester B. Pearson International Airport carrying out aircraft maintenance and ground support functions, including aircraft maintenance engineer (AME) supervisors, interior technicians and ground support technicians, **excluding** administrative employees, clerical employees and those above the rank of supervisor.

(Order No. 11309-U). As confirmed in a joint submission by WestJet and Sunwing in Board File No. 8671-343, the bargaining unit includes positions not enumerated in the unit description, such as the AME and AME with ACA positions, but that perform the job functions identified in the description. (Seham Affidavit ¶ 8; Seham Ex. G). WestJet is now a party to that certification order, *see Sunwing 2023 CIRB 1100 [73]*, and is apparently content to offer conflicting interpretations of the WestJet and Sunwing maintenance bargaining unit orders.

62. The Board here should apply the plain meaning of the bargaining unit definition and confirm the inclusion of the five (5) identified positions. The absence of the position titles from the Board’s unit definition does not prevent their ultimate inclusion in the unit.

IV. ORDER SOUGHT

63. For the foregoing reasons, AMFA seeks an Order from the Board directing WestJet:

- a. To backfill all AML and ICL positions that existed as of March 30, 2023.
- b. To cease and desist directing that non-bargaining unit personnel perform any of the work previously performed by the AML/ICL positions;

- c. To pay AMFA dues at the rate two hours per month for all AML/ICL positions that existed on March 30, 2023, that were not backfilled, until such time as they positions are filled.
- d. To confirm that the OM position falls within the AMFA bargaining unit.
- e. To confirm that the Planner, Reliability Lead, Power Plant Engineer, Senior Power Plant Engineer, and Technical Representative Lead positions fall within the AMFA bargaining unit.
- f. To henceforth bargain in good faith with AMFA.

Respectfully Submitted,

This 11th day of December, 2023

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