



Order No.: 11653-U

## IN THE MATTER OF THE

*Canada Labour Code*

- and -

Unifor,

applicant,

- and -

Skylink Express Inc.,  
Mississauga, Ontario,

employer.

**WHEREAS** the Canada Industrial Relations Board (the Board) has received an application for certification pursuant to section 24(1) of the *Canada Labour Code* (the *Code*) from the applicant seeking certification as bargaining agent for a unit of employees of Skylink Express Inc. comprising:

All pilots employed by SkyLink Express Inc. excluding chief pilot and persons above the rank of chief pilot.

**AND WHEREAS** the applicant filed an amended application seeking certification as bargaining agent for a unit of employees comprising:

All pilots employed by SkyLink Express Inc. excluding the assistant chief pilot and persons above the rank of assistant chief pilot.

**AND WHEREAS** the employer is opposed to the proposed amended bargaining unit description and submits that the position of assistant chief pilot should be included in the bargaining unit on the basis that it is not a managerial position;

**AND WHEREAS** the applicant is opposed to the inclusion of the position of assistant chief pilot in the bargaining unit on the basis that the incumbent performs managerial functions;

**AND WHEREAS** the Board requested more information with respect to the duties of the assistant chief pilot, and the employer provided a statutory declaration regarding these duties;

**AND WHEREAS**, following investigation and consideration of the submissions of the parties concerned, the Board has determined, on the basis of the uncontested statutory declaration with respect to the duties of the assistant chief pilot, that the incumbent in the position does not perform managerial functions and that it is therefore appropriate to include the position of assistant chief pilot in the bargaining unit;

**AND WHEREAS** the employer seeks to add three additional employees to the list of eligible employees on the basis that they were offered employment on or prior to the date of the application;

**AND WHEREAS** the applicant objects to the inclusion of these three people on the basis that they were not employees of the employer on the date of the application;

**AND WHEREAS** section 3 of the *Code* clearly states that the definition of an employee is a person “employed by” the employer:

**3 (1)** In this Part,

...

**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.

**AND WHEREAS**, following investigation and consideration of the submissions of the parties concerned and the Board’s case law in which it states that “the key feature of being an employee is the receipt of wages or salary in exchange for work done” (see *Siddiqui*, 2015 CIRB 769), the Board has determined that while these individuals may have received and accepted offers of employment at the time of the application, they had not commenced employment at the time of this application and had no connection whatsoever to the bargaining unit, and, as a result, they were not employees as of the date of the application and must be excluded from the list;

**AND WHEREAS** the Board has found the applicant to be a trade union within the meaning of the *Code*, has determined the unit described hereunder to be appropriate for collective bargaining and is satisfied that a majority of the employees of the employer in the unit wish to have the applicant trade union represent them as their bargaining agent.

**NOW, THEREFORE**, it is ordered by the Canada Industrial Relations Board that Unifor be, and it is hereby certified to be, the bargaining agent for a unit comprising:

all pilots employed by Skylink Express Inc., **excluding** managers,  
the chief pilot and persons above the rank of chief pilot.

**ISSUED** at Ottawa, this 23rd day of November, 2021, by the Canada Industrial Relations Board.

Roland A. Hackl  
Vice-Chairperson

**Reference: File No. 035052-C**