

APPENDIX IV

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, AFL-CIO (NATCA)

AVIATION SAFETY ACTION PROGRAM (ASAP) MEMORANDUM OF UNDERSTANDING

- 1. GENERAL.** The Party is an operator of Contract Towers under contract with the Federal Aviation Administration (FAA) to provide air traffic control and support at several airports within the National Airspace System. All operations are in compliance with Federal Aviation Regulations (FARs) for local airports.
- 2. PURPOSE.** The FAA, the party and NATCA are committed to improving Air Traffic Control (ATC) system safety. Each party has determined that safety would be enhanced if there were a systematic approach for all ATC operational personnel to promptly identify and correct potential safety hazards. The primary purpose of the party Safety Action Program (ASAP) is to identify safety events and implement appropriate skill enhancement and system corrective action to reduce the opportunity for safety to be compromised. In order to facilitate safety analysis and system corrective action, all the party stakeholders join the FAA in voluntarily implementing this ASAP for the eligible party personnel, which is intended to improve flight safety through voluntary, non-punitive self-reporting, cooperative follow-up, and appropriate skill enhancement or system corrective action. This Memorandum of Understanding (MOU) describes the provisions of the program.
- 3. BENEFITS.** The program will foster a voluntary, cooperative, non-punitive Reporting Culture for the open reporting of safety problems and events. Through such reporting, all parties to this MOU will have access to valuable safety information that may not otherwise be obtainable. This information will be analyzed in order to develop skill enhancement or system corrective action to help solve safety issues and eliminate deviations from applicable ATC directives and procedures. For a report accepted under this ASAP MOU, the party will not use the information to support disciplinary action to address an event involving possible non-compliance with applicable ATC directives.
- 4. APPLICABILITY.** This ASAP applies to the party Air Traffic Control (ATCS) personnel involved with air traffic operations of the party and only to events that occur while acting in that capacity. Reports of events involving apparent non-compliance with ATC directives that are not inadvertent or involve intentional disregard for safety, criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification of official government or company documents are
- 5. DEFINITIONS.** The program disregards for safety – Knowingly introducing a substantial and unjustifiable risk into the NAS.

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6. **PROGRAM DURATION.** This is a Demonstration Program, the duration of which shall be 18 months from the date this MOU is signed by all parties. If the program is determined to be successful after a comprehensive review and evaluation, the parties intend for it to be a Continuing Program. This ASAP may be terminated at any time, for any reason, by the party, the FAA, or NATCA. The termination or modification of the program will not adversely affect anyone who acted in reliance on the terms of a program in effect at the time of that action; i.e., when a program is terminated, all reports and investigations that were in progress will be handled under the provisions of the program until they are completed.
7. **REPORTING PROCEDURES.** When an eligible individual observes a safety problem or experiences a safety-related event, he or she should note the problem or event and describe it in enough detail so that it can be evaluated by a third party.
- (a) **ASAP Report.** At an appropriate time, the employee should submit a report via the ASAP website <https://safer-fct.org> for each safety problem or event within the time limits below.
- (b) **Time Limit.** Reports that the ERC determines to be sole-source will be accepted under the ASAP, regardless of the time frame within which they are submitted, provided they otherwise meet the acceptance criteria of paragraph 12(a) of this MOU. Reports that the Event Review Committee (ERC) determines to be non-sole source must meet the same acceptance criteria, and must also be filed within one of the following two possible timeframes.
- (1) Within 24 hours after the end of the duty day for the day of occurrence, absent extraordinary circumstances. For example, if the event occurred at 1400 hours on Monday and the employee's shift for that day ends at 1900 hours, the report should be filed no later than 1900 hours on the following day (Tuesday). In order for all employees to be covered under the ASAP for any apparent non-compliance with ATC directives resulting from an event, they must submit individual reports for the same event. If the ASAP system is not available to the eligible individual at the time he or she needs to file a report, the employee must contact the ASAP hotline, within the prescribed time limit, and state an intention to file. Such report must be filed within 72 hours of notification.
- (2) Within 24 hours of having become aware of possible non-compliance with ATC directives, provided the following criteria are met: If a report is submitted later than the time period after the occurrence of an event stated in paragraph 7(b)(1) above, the ERC will review all available information to determine whether the individual knew or should have known about the possible non-compliance with ATC directives within that time period. If the ERC determines that the employee did not know or could not have known about the possible non-compliance with ATC directives until informed of it, then the report will be included in the ASAP, provided the report is submitted within 24 hours of having become aware of possible non-compliance with ATC directives, and provided that the report otherwise meets the acceptance criteria of this MOU.

If the employee knew or should have known about the possible non-compliance with ATC directives, then the report will not be included in ASAP.

- (c) Non-reporting employees covered under this MOU. If an ASAP report identifies another covered employee in an event involving possible non-compliance with applicable ATC directives and that employee has not submitted a report, the ERC will determine on a case-by-case basis whether that employee knew or reasonably should have known about the possible non-compliance with applicable ATC directives. If the ERC determines that the employee did not know or could not have known about the apparent possible non-compliance with applicable ATC directives, and the original report otherwise qualifies for inclusion under ASAP, the ERC will offer the non-reporting employee the opportunity to submit his/her own ASAP report. If the non-reporting employee submits his/her own report within 24 hours of notification from the ERC, that report will be afforded the same consideration under ASAP as that accorded the report from the original reporting employee, provided the other ASAP acceptance criteria are met. However, if the non-reporting employee fails to submit his/her own report within 24 hours of notifications from the ERC, the possible non-compliance with applicable ATC directives by that employee may be referred to an appropriate company office for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement authorities, if warranted.
- (d) Non-reporting employees not covered under this ASAP MOU. If an ASAP report identifies another employee who is not covered under this MOU, and the report indicates that the employee may have been involved in possible non-compliance with applicable ATC directives, the ERC will determine on a case-by-case basis whether it would be appropriate to offer that employee the opportunity to submit an ASAP report. If the ERC determines that it is appropriate, the ERC will provide that employee with information about ASAP and invite the employee to submit an ASAP report. If the employee submits an ASAP report within 24 hours of notification from the ERC, that report will be covered under the ASAP, provided all other ASAP acceptance criteria are met. If the employee fails to submit a ASAP report within 24 hours of notification from the ERC, the possible non-compliance with applicable ATC directives by that employee will be referred to an appropriate company office for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement authorities, if warranted.
8. **POINTS OF CONTACT.** The ERC will be comprised of one the party management representative, one party employee Union representative selected by the Union, and one FAA delegate assigned as the ASAP oversight representative. The parties Operations Manager is responsible for the ASAP program administration. An party management representative will be designated as the ERC Chairman. The parties may utilize designated alternates to provide relief from operations and scheduling conflicts. The party will designate one person who will serve as the ASAP Analyst. The party operations manager will not serve as a member of the ERC.

9. **ASAP SYSTEM/ANALYST.** The ASAP system will capture the date and time that the report was submitted. The report will be entered on the agenda for the next ERC meeting. The ERC will determine whether a report is submitted in a timely manner or whether extraordinary circumstances precluded timely submission. To confirm that a report has been received, the ASAP system will send a notification of receipt to each submitter who submits a report. The ASAP system will track each event, the analysis of those events, and the status of recommended corrective actions. The ASAP Analyst will serve as the focal point for information about, and inquiries concerning the status of, ASAP reports, and for the coordination and tracking of ERC recommendations. The ASAP Analyst will not serve as a member of the ERC.

10. **EVENT REVIEW COMMITTEE.** The ERC will review and analyze reports submitted by employees under the program, identify actual or potential safety problems from the information contained in the reports, and may propose corrective action or refer the issue to the appropriate party office with recommended corrective action(s). The ERC will provide feedback to the individual who submitted the report regarding the status of the report.

(a) The ERC will conduct a 12-month review of the ASAP database with emphasis on determining whether corrective actions have been effective in preventing or reducing the recurrence of safety-related events of a similar nature. That review will include recommendations for corrective action for recurring events indicative of adverse safety trends. The 12-month review is in addition to any other reviews conducted by the parties to this MOU.

(b) The ERC will also be responsible for preparing a final report on the demonstration program at its conclusion. If an application for a renewal of the continuing program is anticipated, the ERC will prepare and submit a report with the application to the FAA 60 days in advance of the termination date of the demonstration program.

11. **ERC PROCESS.**

(a) The ERC will meet as necessary to review and analyze reports that will be listed on an agenda submitted by the ASAP Analyst. The ERC will determine the time of the meeting. The ERC will meet telephonically on a monthly basis, or more/less frequently as determined by the number and severity of reports that have accumulated or the need to acquire time-critical information. Unscheduled meetings may be called as required. If the ERC determines that a face to face meeting is necessary it may be held at a location agreeable to the parties.

(b) The ERC will make all decisions involving ASAP issues based on consensus. Consensus of the ERC means the voluntary agreement of all representatives of the ERC. It does not require that all members believe a particular decision or recommendation is the most desirable solution, but that the result falls within each member's range of acceptable solutions for that event in the best interest of safety. In order for this concept to work effectively, each ERC representative shall be empowered to make decisions within the context of the ERC discussions on a given report.

The ERC representatives will strive to reach consensus on whether a reported event is covered under the program, how that event should be addressed, and the corrective action that should be taken as a result of the report. For example, the ERC should strive to reach a consensus on the recommended corrective action to address a safety problem, such as an operating deficiency or non-compliance with an ATC directive reported under ASAP. The corrective action process would include working the safety issue(s) with the appropriate offices within the party and the FAA that have the expertise and responsibility for the safety area of concern.

Recognizing that the FAA holds statutory authority to enforce the necessary rules and regulations, it is understood that the FAA retains all legal rights and responsibilities contained in Title 49, United States Code, FAAO 2150.3 and the applicable FAA contract with the party in the event there is not a consensus of the ERC on decisions concerning a report involving an apparent violation(s) and/or a qualification issue. The FAA will not use the content of the ASAP report in any subsequent enforcement action against the Company or employee, except as described in paragraph 12(a) (3) of this MOU.

- (c) It is anticipated that several types of reports will be submitted to the ERC: safety-related reports that appear to involve possible non-compliance with FAA and/or the party manuals, procedures and/or policies; reports that are of a general safety concern, but do not appear to involve possible non-compliance with FAA and/or the party manuals, procedures and/or policies; and any other reports of an administrative or operational nature. All safety-related reports shall be fully evaluated and, to the extent appropriate, investigated.
- (1) The ERC will forward non-safety reports to the appropriate party department for information and, if possible, resolution.
 - (2) For reports related to safety, including reports involving possible non-compliance with FAA, and/or the party manuals, procedures and/or policies, the ERC will analyze the report and gather additional information concerning the matter described in the report, as necessary.
- (ci) The ERC should also make corrective action recommendations for systemic issues. For example, such corrective action might include changes to procedures, or modifications to the training curriculum for employees. Any recommended changes that affect the party will be forwarded through the ASAP Analyst to the appropriate the party facility or manager for consideration, comment, and/or implementation as appropriate. the party, NATCA, and the FAA will work together to develop appropriate corrective action for systemic issues. The ASAP Analyst will track the implementation of the recommended corrective action and report on associated progress as part of the regular ERC meetings. Any recommended corrective action for a systemic issue that is not implemented as recommended should be recorded along with the reason.

- (e) ERC Recommendation: Any corrective action recommended by the ERC for a report accepted under ASAP must be completed to the satisfaction of all members of the ERC, or the event will be referred to the Company member of the ERC for further action, as appropriate.
- (f) Use of the ASAP Report: Neither the ASAP narrative report nor the content of the ASAP narrative will be used to initiate or support any FAA action or company disciplinary action, except as provided in paragraph 12(a)(3) of this MOU. The FAA may conduct independent investigations of an event(s) disclosed in any report, and the party may initiate an investigation of an event(s) disclosed in a non sole-source report.

12. ENFORCEMENT AND COMPANY ACTION.

- (a) Criteria for Acceptance – The following criteria must be met in order for a report to be covered under ASAP:
 - (1) The employee must submit the report in accordance with the time limits specified under paragraph 7(b) of this MOU;
 - (2) Any possible non-compliance with applicable ATC directives disclosed in the report must be inadvertent and must not involve intentional disregard for safety; and,
 - (3) The reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification. Reports involving those events will be referred to an appropriate FAA and the party office for further handling. The FAA and the party may use the content of such reports for any enforcement purposes and will refer such reports to law enforcement agencies, if appropriate. The party may use the content of such reports for appropriate company action. If upon completion of subsequent investigation it is determined that the event did not involve any of the aforementioned activities, then the report will be referred back to the ERC for a determination of acceptability under ASAP. Reports referred back under these circumstances will be accepted under ASAP provided they otherwise meet the acceptance criteria contained herein.
- (b) Sole Source Reports – A report is considered a sole source report when all evidence of the event is discovered by or otherwise predicated on the report. Apparent violations disclosed in ASAP reports that are covered under the program and are sole source reports will be addressed with an ERC response with suggested corrective action, if applicable. It is possible to have more than one sole source report for the same event.
- (c) Reports Involving Qualification Issues – ASAP reports covered under the program that demonstrate a lack, or raise a question of a lack, of qualification of a submitter will be addressed with Skill Enhancement Training, if such action is appropriate and recommended by the ERC.

- (d) Excluded from ASAP – Reported events involving possible non-compliance with applicable ATC directives that are excluded from ASAP will be referred by the ERC to appropriate office(s) within the FAA and the party for any additional investigation, re-examination and/or enforcement action, as appropriate.
 - (e) Corrective Action – When appropriate, the ERC will recommend corrective action for an employee who submitted an accepted ASAP report. All employee corrective action will address issues uncovered by the event reported. All corrective action involving the training of employee(s) will be considered as training to proficiency. Such employee training will be designed in a manner to assist the employee to correct any deficiencies identified through his/her ASAP report or investigation. Employees initially covered under ASAP will be excluded from the program and not entitled to any incentive if they fail to complete the recommended corrective action in a manner satisfactory to all members of the ERC. Failure of an employee to complete the recommended corrective action in a manner satisfactory to all members of the ERC may result in the reopening of the case and referral of the matter for appropriate action.
 - (f) Systemic Corrective Action – Failure of the Company to complete the ERC recommended system corrective action in a manner satisfactory to all members of the ERC may result in the reopening of the case and referral of the matter to the appropriate FAA organization for appropriate action.
 - (g) Repeated Instances of Non-compliance – Reports involving the same or similar possible non-compliance with applicable ATC directives as were previously addressed under ASAP may be accepted into the program at the discretion of the ERC. Those accepted must otherwise satisfy the acceptance criteria in section 12(a). The ERC will consider on a case-by-case basis the corrective action appropriate for such reports.
 - (h) Closed Cases – A closed ASAP case may be reopened and appropriate action taken if evidence is discovered later that establishes that the violation should have been excluded from the program.
13. **EMPLOYEE FEEDBACK.** The ASAP Analyst will provide regular feedback to the employees in a manner acceptable to the ERC. This may include a synopsis of the reports received from submitters at least quarterly via the appropriate communication method. The reports may be prepared with aggregate or summary information, and must include information regarding actions taken in response to ASAP reports. The synopsis reports will be redacted to ensure that neither the facility nor the submitter of individual reports can be identified. In addition, each employee who submits a report accepted under ASAP will receive individual feedback on the final disposition of the report.
14. **INFORMATION AND TRAINING.** The details of the ASAP will be made available to all eligible employees and their supervisors. Each eligible employee will receive information on the program and instructions on how to submit reports. All eligible new-hire employees will receive training on the program and instructions on how to

submit reports during their initial training. As necessary, recurring training will be made available to eligible employees.

15. **REVISION CONTROL.** Revisions to this MOU shall be documented using standard revision control methodology. Any modifications of this MOU must be accepted by all parties to the agreement

16. **RECORDKEEPING.** All documents and records regarding this program will be kept by the ASAP Analyst and made available to the other parties of this agreement at their request. All records and documents relating to this program will be appropriately kept in a manner that ensures compliance with 14 CFR, FAA directives, and all applicable law. The party and the FAA will maintain whatever records they deem necessary to meet their needs.

17. **SIGNATORIES.** All parties to this ASAP are entering into this agreement voluntarily.

NATCA ASAP IMPLEMENTATION AGREEMENT

**ARTICLE I
PROGRAM IMPLEMENTATION & TRAINING**

Section 1. Prior to implementing the ASAP program, shall train all employees on how the automated reporting system is set up, tracked, stored, and generally operates. Training shall be developed and conducted collaboratively with NATCA. the party

Section 2. The party shall conduct regular new employee and new manager training on how the the party ASAP program operates and the respective duties of the participants. This training will be developed collaboratively with NATCA.

Section 3. The party shall ensure that all new members of the ERC have the ability to attend FAA provided ERC training.

Section 4. NATCA and the party shall jointly review and make recommendations for changing the ASAP reporting form and database prior to implementation.

Section 5. Members of the ASAP team, ERC ASAP Analyst and all visitors shall be required to sign non-disclosure agreements, and maintain strict confidentiality in regards to all information that they receive on account of their duties as members of the ERC.

Section 6. The Party shall provide all information reasonably related to an incident (via the ASAP Analyst) that has been submitted to the ASAP Program, if requested by the ERC.

Section 7. The NATCA ERC Representative shall be on paid time while conducting ERC duties within the facility. Such duties shall include but not be limited to preparing for meetings, serving on the ERC, post ERC meeting follow-up, and any associated travel.

Section 8. The Party shall pay for all approved travel required for the NATCA ERC Representative to perform his or her duties.

**ARTICLE II
EMPLOYEE PROTECTION**

Section 1. The Party shall, when operationally feasible, provide employees choosing to file an ASAP report time and a location to file a report.

Section 2. The ATM shall normally provide the ERC all relevant information or SET recommendations within 3 administrative days of notifying the employee of the event. A review of an employee's performance during an occurrence is not disciplinary in nature. Such a review is necessary to consider whether additional action is appropriate. Supporting information must accompany any recommended corrective action.

NOTE- The ERC is interested in any additional information that the facility management, union representative, and submitter can provide that would help the ERC understand not only what happened during a safety event, but also why the event happened. If the facility intends to propose SET, they must supply the information relied upon to make that recommendation; for example, such as relevant portions of the employee's performance history, involvement in similar types of events, any ongoing training, and other performance directly related to this type of event. A joint proposal from facility management and the union representative provides the most useable feedback for the ERC.

Section 3. the party shall not take any action to decertify or discipline an employee for events covered by an accepted ASAP report.

Section 4. the party shall not use the exclusion of an ASAP report and/or associated messages by the ERC as a basis for discipline.

Section 5. the party shall consider a submitted ASAP report as accepted unless the ERC confirms otherwise.

Section 6. the party shall, as appropriate, return the affected employee to operational duty on some, none, or all positions while awaiting the ERC decision.

Section 7. When requested by a Party to this agreement, the ERC may meet to address a report or issue that requires immediate attention.

Section 8. When an employee is removed from operational status:

- He/she is not forced into a leave or non-pay status while awaiting the ERC decision;
- Employee's regular schedule and days off may only be changed if necessary to accomplish the training process as recommended by the ERC.
- the party will request immediate attention to this issue by the ERC.

Section 9. the party shall provide employees adequate time and resources to accomplish SET in a timely manner as recommended by the ERC for any accepted ASAP report.

Section 10. the party shall keep confidential, to the extent feasible, information requested by, and all SET recommended by the ERC.

Section 11. the party shall record ASAP SET as Type 4 training on FAA Form 3120-1 under "Major Subject Areas". The form will simply state "ASAP Training".

Section 12. The ATM shall give feedback to the ERC on training completion and/or qualification issues.

Section 13. the party shall respond to all information requests from the ERC/analyst and accomplish corrective action

Section 14. Local documentation may be retained regarding incidents about which reports were accepted into ASAP. Incidents with an accepted ASAP report may not be referenced or used to support any disciplinary or decertification action and may be used as part of the rationale for SET only if that training is approved by the ERC

Section 15. Personal records, notes, or diaries maintained by a supervisor with regard to his/her employees' involvement in incidents associated with an accepted ASAP report are restricted from use as a basis to support the following:

- A performance evaluation of less than fully successful, including initiation of an Opportunity to Demonstrate Performance.
- Denial of a promotion
- Disciplinary or adverse actions
- Decertification.

Damien Maree
Labor Relations Attorney
National Air Traffic Controllers Association, AFL-CIO

APPENDIX V

Appendix A

NATCA/RVA JOB SHARE REQUEST FORM

To: _____
Air Traffic Manager Date

We, the undersigned, request to participate in the party Job Share Program. We understand that Job Share positions are voluntary arrangements between two (2) or more employees to divide a full time (80-hours-per-pay-period) position, and that Job Shaiers must be equally qualified employees.

We intend to share the position of _____, at _____
Job Title Name of Facility

We understand that it is our responsibility to determine how scheduled hours are to be divided for each 80-hour-per-pay-period schedule, and to notify the Air Traffic Manager.

We understand that a reduced work schedule due to a job share arrangement does not reduce minimum monthly currency requirements.

We also recognize that Job Sharing arrangements may be subject to FAA approval, and may be terminated at any time by the Agency.

As employees in a Job Share arrangement, we accept that we will no longer have a right to full-time positions with the party. A Job Share employee will only be allowed to return to full-time status if a full-time vacant position exists at the facility.

Signed:

Approved: ATM _____ AM _____ VP ATS _____
Date: _____ Date: _____ Date: _____

RECEIPT OF JOB SHARE AGREEMENT

I, _____, have been briefed by the party on my rights and
(Print Name)

responsibilities as a Job Share employee, including working hours, layoffs, leave accruals and benefit monies. I have also been given a copy of the Job Share MOU in effect between NATCA and the party, Inc. I enter into this Job Share arrangement voluntarily, and recognize that by doing so, I am accepting the following terms and conditions of employment:

1. I recognize that a reduced work schedule due to my Job Share arrangement does not reduce my minimum monthly currency requirement.
2. Exchange of previously posted shift assignments between Job Share employees requires advance approval of the Air Traffic Manager.
3. To the extent practicable, I will provide the party with thirty (30) days notice, prior to resigning my Job Share position.
4. I understand that if one or more of my Job Share partners leaves the arrangement, is unable to maintain the agreed upon schedule, or goes on extended leave, I will be responsible to cover his/her hours unless and until a replacement can be found. Additionally, I may be required to work full time if there is a vacancy at the facility until a replacement can be found.
5. I am aware that I will receive a full year of service credit for each calendar year worked for the purposes of computing service for vacation leave accrual rate and seniority. Additionally, I shall accrue leave for each year of service in accordance with Article 34 of my Collective Bargaining Agreement (CBA), on a pro-rated basis.
6. I understand that the FAA reserves the right to withhold approval of, or terminate Job Sharing in any the party facility. In the event the FAA terminates Job Sharing at my facility, I realize that I will only be offered a full-time position if there is a vacancy available within the facility, otherwise I will be subject to the layoff and recall procedure under Article 12 of the CBA.
7. I accept that in the event of a layoff, the provisions for layoffs in the CBA will be adhered to, and I will be considered to have seniority as established in the CBA. I understand that during a layoff I might have to accept full-time employment to continue working. Additionally, while on layoff I may have recall rights to a full-time position only if I am willing to work the required full-time schedule of hours.

Appendix B

8. I recognize that in accordance with the Job Share MOU, my acceptance of a Job Share position does not carry with it the right to cancel my participation in the arrangement and return to full-time status, unless a full-time vacant position exists within the facility.

Facility

Name (Print)

Job Title

Signature

Date