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File: 569-02-122

Citation: 2013 PSLRB 165

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

TREASURY BOARD
(Department of Veterans Affairs)

Employer

Indexed as
Public Service Alliance of Canada v. Treasury Board (Department of Veterans Affairs)

In the matter of a policy grievance referred to adjudication

REASONS FOR DECISION

Before: Margaret T. A. Shannon, adjudicator

For the Bargaining Agent: Amarkai Laryea, Public Service Alliance of Canada

For the Employer: Sean Kelly, counsel

Heard at Ottawa, Ontario,
October 15 and 16, 2013.

I. Policy grievance referred to adjudication

[1] The Public Service Alliance of Canada (for its Union of Veterans' Affairs Employees component; "the UVAE") filed a policy grievance pursuant to section 220 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 ("the *Act*"), alleging that Veterans Affairs Canada (VAC) violated clause 1.1.27 of Appendix D of the Program and Administrative Services collective agreement, which expires on June 20, 2014 ("the collective agreement"), when it transferred certain responsibilities both under the Veterans Independence Program (VIP) and for health-related travel (HRT) claims to Medavie Blue Cross Inc. (Medavie).

II. Summary of the evidence

[2] The UVAE represents approximately 2600 employees employed by the VAC and the Veterans Review and Appeal Board. Six hundred ninety customer service agents (CSAs), classified at the WP-02 level, are responsible for counselling veterans and their families seeking benefits under the programs administered by the VAC, including, at the material times, the VIP and the HRT program. Their role is to interpret the different Acts and regulations to determine benefit eligibility for veterans and their families.

[3] On April 4, 2012, following the March 29, 2012, budget ("the budget"), the Director General, Human Resources, VAC, wrote to the President of the Public Service Alliance of Canada to notify of upcoming workforce reductions due to the discontinuance of a function within the VIP and the HRT program. As a result of the budget and changes within the VAC and its programs, 261 CSAs were declared affected, in accordance with the workforce adjustment provisions in Appendix D of the collective agreement ("Appendix D"). A "Selection of Employees for Retention or Lay-off" (SERLO) process followed. On July 19, 2012, 38 employees received letters advising them that they were declared surplus as a result of the discontinuance of a function and that, consequently, they had been selected for layoff. On July 12, 2012, the contract for service between Medavie and Public Works and Government Services Canada (PWGSC) was amended and extended to include the payment of claims for housekeeping and grounds maintenance under the VIP and the reimbursement of claims under the HRT program.

[4] On August 2, 2012, the UVAE filed this policy grievance (Exhibit 2) alleging that the VAC had breached clause 1.1.27 of Appendix D. At issue was whether the

contracting out of certain CSA duties to Medavie in the circumstances at issue violates clause 1.1.27. The representative for the UVAE, in his opening statement, proposed that this clause brings with it a shifting burden of proof. He stated that once the UVAE establishes that the VAC is using contractors to do work previously done by indeterminate VAC employees and that, as a result, indeterminate UVAE employees are not surplus, the burden would shift to the VAC to establish that it reviewed the use of contractors, that it determined that it was not practicable for it to refrain from re-engaging Medavie and that had it refrained from re-engaging Medavie, it would not have facilitated the appointment of surplus or laid-off employees. The VAC has improperly contracted out CSA duties, resulting in a reduction of CSA positions and a violation of clause 1.1.27.

[5] Three witnesses testified on behalf of the UVAE: Margaret Christine Burdett, a CSA employed by the VAC in one of its Edmonton offices, Kim Coles, National Executive Vice-President, UVAE, and Yvan Thauvette, National President, UVAE.

[6] Ms. Burdett testified as to her duties as a CSA and submitted the current CSA job description (Exhibit 3, tab 1). She is the first point of client contact for veterans or their families seeking benefits. She carries out the initial screening to determine needs and eligibility under several veterans' programs, including the VIP, and treatment benefits, including the HRT program. She also conducts transition interviews with members of the Canadian Forces who are being released to determine whether they need any of the VAC's programs and if they are eligible. She liaises with community organizations and groups that might be able to provide veterans' services that the VAC cannot provide.

[7] Ms. Burdett described the purpose of the VIP (Exhibit 3, tab 2), which is to provide financial assistance to veterans to enable them to remain in their homes. The most commonly used elements of the VIP are the routine housekeeping and grounds maintenance benefits. Before the budget, she was responsible for ensuring that claims under the HRT program and the VIP were paid. Veterans would send in their receipts and would be reimbursed. Following the budget, the payment of such claims changed from reimbursements to a grant system, which issues cheques to qualifying veterans every six months to defray the costs of home maintenance and cleaning. This resulted in a significant reduction in the work being done by the people who paid the bills.

From Ms. Burdett's point of view, Medavie took over this role from the CSAs with the switch to the grant system.

[8] The VAC is legislated to contact veterans on a yearly basis who receive benefits. The CSAs contact each veteran by phone and review his or her circumstances and needs under the different programs. A form was developed for use in gathering this information. It was mailed by the CSAs and returned by the veterans. Clerical staff input the information from the form into a database. Following the budget and the shift to the grant system, the form mailing began to be done electronically by Canada Post. Veterans now send their responses to a central clearing house, where the forms are digitized and sent to Medavie for review by an analyst and for input into the VAC's data system. When doing so, the analyst checks a box, and a grant cheque is generated. If a veteran does not return the form, Medavie attempts to contact him or her by phone. If unsuccessful, it attempts contact by mail. Notification is sent to the appropriate VAC district office when Medavie is unable to contact a veteran. The notification is forwarded to a CSA for follow up. In addition, if the veteran notes on the form that circumstances have changed, it is sent to a CSA for follow up.

[9] The CSAs now have a significantly reduced role in the VIP. They have increased contact with veterans and spend most of their time putting out fires. There is no longer a proactive approach to determining veterans' needs. There is a lot of follow up to be done concerning the grant payments. The payments are made without explanations, and the veterans question their calculation. If a veteran says that his or her needs have changed and that more help is needed with any of the items identified on the form, Medavie automatically refers the matter to a CSA.

[10] Ms. Burdett was informed in the spring of 2012 that there would be cuts to the number of CSA positions. She received a letter notifying her that she was affected by the changes within the VAC, similar to the letter entered as Exhibit 7. The letter advised her that she had been declared affected and that there was a possibility that she would be laid off. She participated in the SERLO process, along with other affected CSAs, and competed for her own job. She stated that in her opinion, the job cuts were a direct result of the contracting out to Medavie of the VIP and the HRT program payments.

[11] Ms. Coles testified that she received notification from the Director General, Human Resources, VAC, advising the UVAE that 261 CSAs would be receiving notices

that they were affected by changes to the service delivery model used by the VAC. She was shocked by the news. She and the other members of the UVAE executive were aware that cuts were coming. Minister of Finance Flaherty had told them that the positions to be cut were backroom clerical positions. The CSAs provide front-line service delivery.

[12] She stated that Keith Hillier, Assistant Deputy Minister, Service Delivery, VAC, told the UVAE that 75 positions would be eliminated due to a discontinuance of a function and that a portion of the CSA work would be transferred to Medavie. It was confirmed in the minutes of the National Union-Management Consultation Committee meeting of April 26, 2012 (Exhibit 3, tab 4). Ms. Coles was confused as to how the VAC arrived at the numbers listed on page 2 of Exhibit 3, tab 4, when no tool or analysis was provided to break down the different CSA duties and the intensity required to complete the tasks. Mr. Thauvette and Ms. Coles subsequently met with Mr. Hillier, Charlotte Bastien, Director General, Human Resources, VAC, and other support staff from Mr. Hillier's office to review the results of the SERLO process and who had been identified for retention or layoff. Two days after this meeting, the employees received their letters declaring them surplus. Exhibit 3, tab 7, is a copy of the letter provided to the 38 CSAs whose positions were declared surplus.

[13] Ms. Coles explained that the Workforce Adjustment Committee required under Appendix D was set up after the VAC's announcement of the changes and the resulting discontinuance of a function. She stated that the bulk of the CSA positions were eliminated as a result of the changes to the VIP annual review process as a result of the change to the grant system. The VAC's assertion that there had been a discontinuance of a function was challenged by the UVAE. The bulk of the positions were eliminated because of the change to the VIP annual review process and the change to a grant system.

[14] When the UVAE found out that Medavie was to have a role in the VIP and the HRT program reimbursement processes, it requested a copy of the contract with Medavie. The original Medavie contract (Exhibit 3, tab 10) was signed in 2002 and was amended a number of times since then. There was an amendment (numbered 16) on July 27, 2012 (Exhibit 3, tab 11), which the UVAE secured through an access to information request. Ms. Coles testified that the UVAE was not consulted or involved in any of the negotiations with Medavie. She also stated that there was a direct link

between that amendment and the elimination of the CSA positions. In particular, the VAC met its obligations to make reductions under the government's "Deficit Reduction Action Plan" by amending its contract with Medavie instead of looking for ways to take work in and protect jobs. That was a violation of Appendix D. The UVAE had many conversations with Assistant Deputy Minister Hillier and tried to understand the VAC's rationale. The UVAE advocated for the VAC to change its mind but was unsuccessful. Its arguments fell on deaf ears.

[15] On cross-examination, Ms. Coles admitted that she was unaware of a subsequent amendment, amendment 17, to the Medavie contract, which dealt with Medavie's role in the VIP and specifically its role in reimbursement in the system of grants. She also acknowledged that amendment 16 has nothing to do with the VIP.

[16] The UVAE questioned whether the initiative to contracting out to Medavie met the definition of an alternate service delivery initiative. Mr. Thauvette explored that question with the VAC. The response that he received (Exhibit 3, tab 5) was that as no one was being transferred to the third party service provider, nor was a majority of the work being transferred outside the core public administration, it was not an alternative service delivery initiative.

[17] Mr. Hillier testified on behalf of the employer. He described the VAC's services as a decentralized network of services provided to veterans and their families. These services are provided through VAC employees, contractors such as Medavie and contracted medical practitioners. The CSAs are the front-line face of the VAC and are key to the delivery of its services. They provide information and advice on programs and long-term care and conduct transition interviews.

[18] The VIP is a $380 million program, of which $280 million is used to cover grounds keeping and housekeeping benefits. This portion of the program was contracted out to Medavie. The remaining $100 million worth of program work is currently being done by CSAs. In 2011, the VAC employed approximately 261 indeterminate CSAs. In 2013, there are approximately 185 indeterminate CSAs.

[19] The relationship between the VAC and Medavie goes back to 1989; the current contract was signed in 2002 and subsequently extended until July 2015. Medavie performs approximately 11 million transactions per year on behalf of the VAC, which include not only those related to the VIP but also reimbursements for prescription

drugs and medical devices, much the same as Sun Life and Great West Life provide for the rest of the public service. The contract was extended until 2015 in February and March 2012 to provide sufficient time for the completion of a request for proposal (RFP) issued to interested service providers. This RFP process predated the budget.

[20] The federal Cabinet made the decision to contract out the VIP to Medavie based on proposed cost-cutting measures prepared by the VAC in late 2012. The VAC Management Committee had tasked a group of staff to find proposals to meet the 5% to 10% reduction in operating costs demanded by the government's Deficit Action Reduction Plan. The proposal amounted to an overall reduction of 25 full-time equivalents (FTEs) at the CSA level. The additional Medavie services were secured through amendment 17 to the existing contract between Medavie and the PWGSC. There was also a fundamental change in how the veterans received payment under the VIP. They would no longer be reimbursed out-of-pocket expenses but rather would be given a grant twice yearly to cover such costs. In January 2013, the conversion to the grant system commenced. The conversion is now 75% complete. This is part of the ongoing move to modernize VAC services, mandated by Cabinet in 2010. The mandate initially required a reduction of 550 FTEs through modernization, which was increased to approximately 800 FTEs by the budget.

[21] The annual form mailing to veterans was a labour-intensive task done by the regional offices. The VAC was looking into technology with the aim of simplifying the burden for veterans. Initially, the form mailing was contracted to the PWGSC, until the budget, following which the PWGSC exited that business; hence, the memorandum of understanding with Canada Post was signed even before the 2012 Budget. Report forms from the veterans are now sent to Matane, Quebec, where they are scanned and uploaded. A notice is sent to Medavie to action the uploaded reports. The transfer of the clerical tasks related to the reports fits into the overhaul of the VAC's business processes.

[22] Mr. Hillier testified that Ms. Burdett accurately described the CSA role in the processing of the annual report forms as it existed before the March 2012 budget. Part of the CSA role was data input and conversion from the forms. This was removed from the CSA role to allow the CSAs to do the remaining part of their jobs and to follow up if changes were required. Approximately 10% of the reports are forwarded to CSAs from Medavie for action.

[23] On March 28, 2012, there were no surplus or laid-off CSAs. The change to the VIP to a grant system and the changes to how annual questionnaires were mailed out, received and processed fundamentally changed the CSA job. With the introduction of technology into the form mailing process and the digitizing of the information, 90% of the annual renewal work was being done by Medavie. As a result, 50 CSA positions were abolished (Exhibits 5 and 6). This is a difference of 25, as noted in Exhibit 3, tab 4, at page 2. Letters advising the CSAs that they were in affected positions were sent to 261 CSAs (Exhibit 7). The letters referred to decisions changing the VIP to a grant system and to the contracting out of the equivalent of 50 FTEs worth of work to Medavie based on a fee for service basis. Exhibit 3, tab 7, is a letter similar to that sent out to employees who had not been selected for retention, advising them of the SERLO results. Thirty-seven of these letters were sent out. Fifteen CSA employees were actually laid off. The others found soft landings elsewhere with other departments, through deployments or by taking advantage of the options presented to them.

[24] The tasks related to the HRT program transferred to Medavie in February 2012 were not performed by CSAs. They had been centralized to two processing centres, where the work was done by VAC employees but not by the CSAs. This change was phased in following complaints about the service from veterans.

[25] Exhibit 8 is a cost comparison of the first six months of fiscal year 2013-2014, showing the savings experienced as a result of the contracting out to Medavie. It represents the costs of the FTEs transferred had they remained on staff versus the cost of the service provided by Medavie. The reduction of CSA positions was a direct result of the contracting out to Medavie of their functions.

[26] Only certain activities were contracted out. Therefore, this was not an alternative service delivery initiative. The goals of the budget were met in part by contracting out. Cabinet made the decision to proceed with the contracting out initiative.

III. Summary of the arguments

A. For the UVAE

[27] VIP duties were significantly reduced by the transfer of these duties to Medavie. Initially, the employer stated that only the backroom functions would be affected. All were surprised when CSA duties were reduced and positions eliminated; the number of

bargaining unit members dropped. Clause 1.1.27 of Appendix D (Exhibit 1) limits the employer's ability to contract out functions performed by members of the bargaining unit. The question to be decided is whether the contracting out to Medavie in the circumstances contravened clause 1.1.27.

[28] Clause 1.1.27 of Appendix D states as follows:

> *1.1.27 Departments or organizations shall review the use of private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees. Where practicable, departments or organizations shall refrain from re-engaging such temporary agency personnel, consultants or contractors or renewing the employments of such employees referred to above where this will facilitate the appointment of surplus employees or laid-off persons.*

[29] Clause 1.1.27 of Appendix D (Exhibit 1) must be read in conjunction with all other articles in the appendix, including the stated objectives found on page 152 of Exhibit 1, along with clauses 1.1.1, 1.1.2 and 1.1.28. The stated objectives of the appendix are as follows:

> ***Objectives***
>
> *It is the policy of the Employer to maximize employment opportunities for indeterminate employees affected by workforce adjustment situations, primarily through ensuring that, wherever possible, alternative employment opportunities are provided to them. This should not be construed as the continuation of a specific position or job but rather as continued employment.*
>
> *To this end, every indeterminate employee whose services will no longer be required because of a workforce adjustment situation and for whom the deputy head knows or can predict that employment will be available will receive a guarantee of a reasonable job offer within the Core Public Administration. Those employees for whom the deputy head cannot provide the guarantee will have access to transitional employment arrangements . . . .*

[30] The role of the employer in ensuring that these objectives are met is described in clauses 1.1.1 and 1.1.2, as follows:

> ***Part 1***
>
> ***Roles and responsibilities***

> ***1.1 Departments or organizations***
>
> *1.1.1 Since indeterminate employees who are affected by workforce adjustment situations are not themselves responsible for such situation, it is the responsibility of departments or organizations to ensure that they are treated equitably and, wherever possible, given every reasonable opportunity to continue their careers as public service employees.*
>
> *1.1.2 Departments or organizations shall carry out effective human resource planning to minimize the impact of workforce adjustment situations on indeterminate employees, on the department or organization, and on the public service.*

[31] Clause 1.1.28 of Appendix D recognizes the right of laid-off or surplus employees to be given short-term temporary work opportunities, as follows:

> *1.1.28 Nothing in the foregoing shall restrict the Employer's right to engage or appoint persons to meet short-term, non-recurring requirements. Surplus and laid-off persons shall be given priority even for these short-term work opportunities.*

[32] An alternative delivery initiative is also defined in Appendix D as follows in clause 7.1, "Definitions":

> *. . .* [A]*n* ***alternative delivery initiative*** *(*diversification des modes de prestation des services) *is the transfer of any work, undertaking or business of the Core Public Administration to any body or corporation that is a separate agency or that is outside the Core Public Administration.*

[33] The UVAE acknowledged that the employer has the right to contract out pursuant to Part VII of Appendix D; however, that right is restricted by clause 1.1.27.

[34] Under the collective agreement (Exhibit 1), the employer is defined as the Treasury Board (TB) (see *Public Service Alliance of Canada and Professional Institute of the Public Service of Canada v. Treasury Board of Canada*, 2013 PSLRB 37, at para 21). The TB is the only Government of Canada statutory committee, having been established by section 5 of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (*FAA*). Any decisions made by Cabinet must take into account the obligations of the TB as the employer. Cabinet cannot obligate the TB to violate collective agreements.

[35] Under clause 1.1.27 of Appendix D, there is a requirement for departments to review the use of private or agency employees or contractors and to refrain from re-

engaging such employees where, if practicable, doing so would facilitate the appointment of laid-off employees to perform those roles. There is an express limitation on contracting out. The contracting out in these circumstances took the form of amendments to the existing Medavie contract. Once the employer reviewed the contract, it could have refrained from making amendments, but it chose not to.

[36] The burden of proof was on the UVAE to establish that the employer is using a contractor to do work formerly done by indeterminate employees and that as a result, employees were made surplus or laid off. Once that was established, the burden would shift to the employer to prove that it met its obligations under clause 1.1.27 of Appendix D, which are that it conducted a review of the circumstances and found that it was not practicable to avoid re-engaging contractors and that even had it avoided doing so, it would not have facilitated the appointment of surplus or laid-off employees. The employer is responsible for managing the workplace. Therefore, the burden rested with it to prove that there was no other practicable solution to the problem it faced. (See *Ivaco Rolling Mills and U.S.W.A., Local 7940* (1994), 34 C.L.A.S. 85, at para 4; *Ivaco Rolling Mills v. U.S.W.A., Local 8794* (1997), 67 L.A.C. (4th) 66, at page 76; *Kranson and Sawchuk v. Canadian Food Inspection Agency*, 2009 PSLRB 76, at para 29; and *Scanlon and Christianson v. Canada Revenue Agency*, 2009 PSLRB 42, at para 50).

[37] The evidence is that the Medavie contract began in 1989 and was subsequently renewed, in 2002. Since then, there have been a series of amendments to the 2002 agreement. Medavie is a third-party service provider, which makes it a contractor within the terms of clause 1.1.27 of Appendix D. The work now being done by Medavie had previously been done by the CSAs employed by the VAC. The work changed with the implementation of a grant system for payments under the VIP. As a result, the CSAs' workload was reduced. Therefore, Medavie is doing work previously done by CSAs. Indeterminate employees were made surplus as a result.

[38] The contracting out to Medavie was the direct cause of the reduction of CSA positions, according to both Mr. Hillier and Ms. Coles. The minutes of the National Union-Management Consultation Committee meeting of April 26, 2012 (Exhibit 3, tab 4, at page 2), made the direct link as follows:

> *Management explained that the entire CSA function was not being abolished, and that only certain functions of the job was* [*sic*] *being removed. These functions include:*
>
> – *The bulk mailing of materials for VIP reassessment to PWGSC – 15 positions.*
> – *The government decided to change VIP contribution to a grant, resulting in less paper processing – 8 positions*
> – *The outsourcing of VIP annual reviews for follow-up to Medavie Blue Cross- 50 positions.*

[39] In April 2012, letters went out to the affected CSAs, indicating that there had been a discontinuance of a function. On July 19, 2013, approximately 38 CSAs received surplus letters (Exhibit 3, tab 7).

[40] The employer had the burden of demonstrating that it was not practicable to refrain from re-engaging Medavie, via an amendment to the 2002 contract, to conduct the work previously performed by the CSAs. Mr. Hillier claimed Cabinet confidence when asked if the employer considered non-contracting-out options and refused to provide an answer to the question. This goes to the heart of what is practicable. The Public Service Labour Relations Board ("the Board") should draw a negative inference from his refusal to answer (see *Babcock v. Canada (Attorney General),* [2002] 3 SCR 3, at para 36) and conclude that the employer has not met its burden of proving that it was not practicable to do anything other than contract out to Medavie.

[41] There is a direct relationship between the work transferred and the reduction of CSA positions. Refraining from amending the contract with Medavie would have allowed the CSA employees to keep their jobs. As a result of the signing of amendment 17 to the Medavie contract, there were surplus employees at the VAC. The employer was obligated to prove that it was not practicable to organize the work so as to provide these employees with the opportunity to retain their employment.

[42] Issues arising out of the downsizing of the public service in 1984 were dealt with in the case of *Public Service Alliance of Canada v. Treasury Board,* PSSRB File No. 169-2-473 (19900313). In that case, pursuant to the federal budget of May 1985, there was a reduction of 15 000 person-years in the public service. Revenue Canada, Customs and Excise, reduced person-years by transferring some of its data processing functions to the private sector. The union in that case grieved that the employer had violated the "Workforce Adjustment Policy" in the relevant collective agreement. The former Public Service Staff Relations Board (PSSRB) ruled that contracting out fell

within the language of the Workforce Adjustment Policy (see page 31 of that decision). An application for judicial review of the PSSRB's decision was dismissed. At page 7 of the Federal Court of Appeal's decision (*Attorney General of Canada v. Public Service Alliance of Canada,* [1991] 1 F.C. 428 (C.A.)), the Court states as follows:

> *The entire thrust of the Workforce Adjustment Policy is that, in a work force adjustment situation, indeterminate employees whose services would no longer be required would, as far as practicable, be redeployed and, if necessary, retrained. The Policy does not prohibit contracting out but it does contemplate that, to facilitate redeployment of "Affected", "Surplus" or "Laid-off" personnel, the employer will,* inter alia*, review and terminate its use of contracted services. That requirement is utterly inconsistent with an intention to permit the creation of "affected", "surplus" or "laid-off" personnel by contracting out the very jobs that they have been doing. By definition, a "Work Force Adjustment" occurs when management decides that one or more indeterminate employees will no longer be required because of "lack of work" or "a discontinuance of a function". It cannot, in my view, be said that the services of an employee whose job has been contracted out are not required because of lack of work or the discontinuance of a function. That employee is not required only because the job has been contracted out. The work remains to be done and the function continues. . . .*

[43] The Federal Court of Appeal's decision was appealed to the Supreme Court of Canada (see *Canada (Attorney General) v. Public Service Alliance of Canada,* [1993] 1 S.C.R. 941 . The appeal was dismissed and the PSSRB's order confirmed. At page 972 of the decision, the Supreme Court stated as follows:

> *. . . At the very least contracting out must be scrutinized according to the Policy. It is equally clear that there are some restrictions attached to a decision to use contract services. I agree with the decision of the Board that the intent of the Policy is that indeterminate employees can rely on the termination of contracting out in order to protect their jobs. It certainly cannot be said that the Board's interpretation was patently unreasonable.*

[44] At page 975 of the same decision, the Supreme Court continued as follows:

> *What must be remembered is that in this case the Policy imposes an obligation on the employer in the event of contracting out. This obligation was correctly articulated by the Board:*

> *The employer had an obligation under the Policy to review and when possible terminate contracting out arrangements in order to ensure the continued employment of indeterminate employees within the Public Service. [Emphasis added.]*

[45] The language of clause 5.1.2 of the collective agreement in place at the time of the PSSRB's decision is similar to clause 1.1.27 of Appendix D (Exhibit 1). It was the failure of the employer in that case to comply with the duties and obligations contained in the collective agreement that was the crux of the PSSRB's decision (see *Flieger v. New Brunswick,* [1993] 2 S.C.R. 651, at 666). The question to be decided by this Board is not whether there has been a discontinuance of a function but rather whether the employer violated clause 1.1.27 in amending the contract with Medavie, resulting in the elimination of CSA positions.

[46] The UVAE seeks an order declaring that the employer is in breach of clause 1.1.27 of Appendix D (Exhibit 1), ordering the employer to refrain from re-engaging contractors and ordering the employer to provide reasonable job offers to those affected by the transfer of CSA duties to Medavie. Consistent with *Hydro One Networks Inc. v. Canadian Union of Skilled Workers* (2011), 207 L.A.C. (4th) 243, and *Canadian Freightways v. Western Canada Council of Teamsters* (2013), 231 L.A.C. (4th) 103, the UVAE seeks an award of damages as the Board deems fit.

B. For the employer

[47] The employer has an unlimited right to contract out services, subject to any prohibitions in the collective agreement. The limitations described in clause 1.1.27 of Appendix D (Exhibit 1) are not triggered in the circumstances of this case given that Medavie is not a "contractor" within the meaning of this clause, that the outsourcing to Medavie was neither a "re-engagement" or a "renewal" of the same existing fixed-term contract within the meaning of the clause, and that there were no surplus employees or laid-off persons available before the outsourcing. Alternatively, the undisputed evidence presented at this hearing demonstrated that it was not practicable to appoint any surplus employees or laid-off persons instead of contracting out.

[48] In 2011, Medavie provided several federal institutions (including the VAC) with claim processing and benefit authorization services. On March 29, 2012, in the budget, the government announced that the VAC would simplify claims and benefit processing for veterans. The VIP would be fundamentally changed in the manner in which the VAC

would administer it, moving from a reimbursement system to a grant system. The former VIP, administered by the CSAs, would be outsourced to Medavie. As a result, 50 CSA positions were abolished, and a significant savings was realized by the government. Two hundred and sixty-one CSAs were identified as affected employees, 38 of whom were selected for layoff.

[49] The onus was on the UVAE to clearly demonstrate on the balance of probabilities that the employer violated clause 1.1.27 of Appendix D. The UVAE had the burden of demonstrating each of the five elements listed in clause 1.1.27, as follows:

i. there were existing "private temporary agency personnel," "consultants," "employees appointed for a specified period" or "other non-indeterminate employees";

ii. the employer failed to "review" the use of the existing fixed-term contracts;

iii. the employer "re-engaged" or "renewed" the existing fixed-terms contracts;

iv. the work performed by the private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees would have facilitated the appointment of surplus employees or laid-off person;

v. it was "practicable" to appoint "surplus employees" or "laid-off persons." (See *Canadian Association of Professional Employees v. Treasury Board (Department of Human Resources and Skills Development),* 2013 PSLRB 100, at para 19 to 21 and para 26; and *F. H. v. McDougall*, 2009 SCC 53, at para 46 to 49.)

[50] Sections 7 and 11.1 of the *FAA* grant the employer broad, unlimited power to set the general administrative policy for the federal public service, organize the federal public service, and determine and control the personnel management of the federal public service. Paragraph 7(1)(*b*) of the *FAA* grants the employer the exclusive authority on all matters relating to ". . . the organization of the federal public administration or any portion thereof, and the determination and control of establishments therein . . . ." In exercising any management function under the *FAA*, including contracting out services, the employer may do anything that is not specifically or by inference prohibited by statute or the collective agreement. (See *P.S.A.C. v. Canada (Canadian Grain Commission)* (1986), 5 F.T.R. 51, at the

"Conclusion" and in the last paragraph of the section entitled "Is Off-Pay Status in Breach of a Public Statute; *Peck v. Parks Canada*, 2009 FC 686, at para 33; and *Li v. Canada (Minister of Citizenship and Immigration),* 2011 FCA 110, at para 26). Specifically, the employer has the right to contract out services pursuant to the *FAA*, subject to any limitations in the collective agreement (see *Canada (Attorney General) v. Public Service Alliance of Canada* at para 56 and 57).

[51] In order to determine what limitations may be imposed by the collective agreement, an adjudicator must examine the ordinary meaning of the words used by the parties and refrain from modifying terms or conditions that are clear. The adjudicator must also take into account the entire collective agreement. The fact that a provision may seem unfair is not a reason to ignore it if it is otherwise clear (see *Chafe et. al. v. Treasury Board (Department of Fisheries and Oceans),* 2010 PSLRB 112, at para 50 and 51, and *Wamboldt v. Canada Revenue Agency,* 2013 PSLRB 55, at para 25 to 28).

[52] Any obligation under clause 1.1.27 of Appendix D is triggered only if the employer considers re-engaging a number of fixed-term contracts, including existing contractors. The list of words used in the same sentence as "contractors," read in conjunction with clause 1.1.28, strongly suggests that the word "contractor" is limited to a person who is hired as an independent contractor to meet short-term, non-recurring requirements, as opposed to a long-term outsourcing initiative relating to the majority of the work of a key departmental program or service.

[53] The *Canadian Oxford Dictionary*, *Second Edition*, defines "contractor" as a person who undertakes a contract or enters into a contract. The use of the word "contractor" in clause 1.1.27 of Appendix D should be read in the context of the others words listed in the same clause: "private temporary agency personnel," "consultants," "employees appointed for a specified period (terms)" and "all other non-indeterminate employees." Those words share the common feature of being temporary methods used by employers to meet short-term non-recurring staffing and workload requirements. The *ejusdem generis* principle of construction, which states that specified examples limit the category described to like items, should be applied to this situation. The intention of the parties, in using the word "contractor," must have been to limit the meaning of "contractor" to independent contractor agreements used for short-term non-recurring requirements (see *University of British Columbia v. Canadian Union of*

Public Employees, Local 2950 (2005), 138 L.A.C. (4th) 358, at para 18, and E.E. Palmer and Ronald Snyder, *Collective Agreement Arbitration in Canada (4th edition)* (Markham: LexisNexis Canada Inc., 2009), at 31).

[54] Clause 1.1.28 of Appendix D clearly confirms this interpretation: "Nothing is the foregoing shall restrict the Employer's right to engage or appoint persons to meet short-term non-recurring requirements. Surplus and laid-off persons shall be given priority even for these short-term work opportunities."

[55] In the case at hand, the outsourcing in dispute does not constitute the use of a "contractor" within the meaning of clause 1.1.27 of Appendix D as it is not an agreement with an independent contractor used to meet short-term non-recurring requirements. Rather, it is a long-term outsourcing of the majority of the key elements of the VIP. Accordingly, the UVAE has failed to demonstrate that this outsourcing initiative triggers any obligation under clause 1.1.27. Even had the UVAE demonstrated that the initiative triggered the obligations under clause 1.1.27, any obligation would be limited to the re-engagement or renewal of the same existing fixed-term contractor agreement. The use of "re-engage" and "renew" in the same clause clearly suggests that the employer's obligation is limited to existing fixed-term contracts as opposed to limiting the employer's right to enter into a new contract or expand the scope of an existing one.

[56] Appendix D (Exhibit 1) defines surplus employees as employees who have formally been declared surplus. A laid-off employee is a person who has been formally laid off. The intent behind precluding the re-engagement or renewal of a contractor is to provide an opportunity for those affected by the contracting out to continue to work.

[57] All the words in clause 1.1.27 of Appendix D must be given some meaning to avoid redundancy. Each word is to be given its normal meaning and interpreted in context with all other words used (see *Collective Agreement Arbitration in Canada*, at 29 and 30; and *Stevens et al. v. Treasury Board (Solicitor General Canada - Correctional Service),* 2004 PSSRB 34, at para 21). Had the parties intended to preclude contracting out in the construction of clause 1.1.27, they would have included specific language to that effect; however, they did not. To the contrary, the parties specifically negotiated language that significantly differs from that considered by the Supreme Court of Canada in *Canada (Attorney General) v. Public Service Alliance of Canada*. The

substantial modification to the language related to contractors must mean that the parties intended to distinguish the interpretation of clause 1.1.27 from clause 5.1, considered by the Supreme Court of Canada in its decision.

[58] The UVAE's interpretation is contrary to the well-established principle that any limitation to the employer's right to organize and direct its workforce, including contracting out, must be expressly set out in a statute or the collective agreement. The narrow limitations described in clause 1.1.27 of Appendix D are not triggered by the circumstances of this case, given that nothing was outsourced to a contractor within the meaning of this clause and that there was no re-engagement or renewal of an existing fixed-term contract as a result. Even if there had been, there were no existing surplus employees or laid-off persons to consider before it was decided to proceed with amendment 17 to the Medavie contract. Consequently, the limitations are not such as to prevent the employer from redesigning the VIP and contracting out elements of it to Medavie. Moreover, to accept the UVAE's interpretation would have the effect of amending the collective agreement, contrary to the express prohibition in section 229 of the *Act*.

[59] Any obligation under clause 1.1.27 of Appendix D is triggered only if there are existing surplus employees or laid-off persons. It does not preclude the employer from engaging contractors in their absence. The second sentence of the clause mandates that the employer must refrain, where practicable, from re-engaging or renewing existing fixed-term contracts if doing so would facilitate the appointment of surplus employees or laid-off persons. This language qualifies the scope of the employer's obligation to review existing fixed-term contracts. Any obligation to facilitate the appointment of employees or laid-off persons is limited to people who have already been declared surplus or laid off, as opposed to those who may be as a result of the contracting out. The absence of any reference to affected employees is a strong indicator supporting an interpretation that limits the application of clause 1.1.27 to situations in which there are employees on the surplus list or who have been laid off. In the case at hand, the undisputed evidence is that there were no existing surplus employees or laid-off persons. In the absence of this triggering element, the UVAE has failed to demonstrate that the employer breached clause 1.1.27.

[60] Clause 1.1.27 of Appendix D only requires the employer to refrain from re-engaging or renewing existing fixed-term contracts where practicable if by doing so it

would facilitate the appointment of surplus employees or laid-off persons. The term "practicable" does not mean the same as "possible." The phrase "where practicable" is intended to allow the employer reasonable scope for judgement based on business and economic considerations (see *The Council of Postal Unions v. Treasury Board (Department of the Post Office)* (19750315), unreported, and *Brannick v. Treasury Board (Post Office Department)* (19810313), unreported). The evidence clearly established that it was not practicable to appoint any surplus employees or laid-off persons based on the significant savings anticipated. The employer has demonstrated that in the first six months of the contracting out to Medavie, it saved $1 283 000 (Exhibit 8). That is a savings of over 62% of the costs related to the VIP outsourcing to Medavie instead of using CSAs.

[61] The UVAE had to prove on a balance of probabilities all five elements in clause 1.1.27 of Appendix D, including the practicability element. The balance of probabilities test requires that there be all five elements identified in article 1.1.27 (see *F. H. v. McDougall*, at para 46). Accordingly, the UVAE has failed to meet its burden of proof under clause 1.1.27, and the grievance should be dismissed.

IV. Reasons

[62] The UVAE has argued that the employer violated clause 1.1.27 of Appendix D (Exhibit 1) when it contracted out key functions of the VIP, resulting in the elimination of CSA positions and ultimately the layoff of 38 VAC employees at the CSA level. The UVAE argued that the amendment of the existing Medavie contract for services to include the CSA duties related to the VIP amounted to a re-engagement of a contractor, which is prohibited under clause 1.1.27, as it would have prevented the creation of surplus employees or laid-off employees.

[63] The employer, on the other hand, argued that Medavie is not a contractor within the meaning of clause 1.1.27 of Appendix D and that there has been no re-engagement or rehiring of Medavie as a result of the employer's reorganization of the VIP. Furthermore, it was not practicable for the employer to continue to operate the VIP as it had been in light of the government's Deficit Reduction Action Plan, which required departments to eliminate 10% of their operating costs, and the budget, which announced the streamlining of services to veterans.

[64] Each party argued that the other has not met the burden of proof required to establish that it met its obligations under clauses 1.1.27 and 1.1.28 of Appendix D. The UVAE argued that the burden of proof shifted to the employer to establish that there has been no violation of the collective agreement once the UVAE established that the employer is using contractors to perform work previously done by indeterminate employees and that as a result, indeterminate employees have been made surplus or laid off. Once that was established, the employer had to demonstrate that a review was conducted and that it was not practicable to refrain from re-engaging contractors to perform the work. The employer argued that the burden of proof did not shift and that it was up to the UVAE to prove, on the balance of probabilities, all elements identified in clause 1.1.27 to be successful before this Board.

[65] Clause 1.1.27 of Appendix D (Exhibit 1) states as follows:

> *1.1.27 Departments or organizations shall review the use of private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees. Where practicable, departments or organizations shall refrain from re-engaging such temporary agency personnel, consultants or contractors or renewing the employment of such employees referred to above where this will facilitate the appointment of surplus employees or laid-off persons.*

[66] An analysis of that clause raises the five following questions, which must be answered to make a determination of whether there has been a violation of the clause:

1. Did the department conduct a review of the use of private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees?

2. Was there a re-engagement of private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees?

3. If there was re-engagement or rehiring of Medavie, contrary to clause 1.1. 27 does the collective agreement require the existence of laid-off persons or surplus personnel at the time of the contracting out of the VIP to Medavie? If so, were there existing laid-off persons at the time of the contracting out of the VIP to Medavie?

4. If so, could the work performed by the private temporary agency personnel, consultants, contractors, employees appointed for a

> specified period (terms) and all other non-indeterminate employees have facilitated the appointment of surplus employees or laid-off persons?
>
> 5. Was it practicable for the employer to refrain from re-engaging private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees to perform the work?

[67] It is trite law to state that he or she who alleges must provide proof. On rare occasions, the burden of proof will shift to the other party, such as in strict liability cases; however, in contract interpretation cases, the burden of proof is on the grievor to prove on the balance of probabilities that his or her interpretation is appropriate. This requires sufficiently clear and cogent evidence of the elements required to prove a violation of a collective agreement (see *F. H. v. McDougall*, at para 46). In this case, the UVAE had to demonstrate that the employer violated the collective agreement. The employer argued that there were five criteria to consider as to whether or not that clause of the collective agreement had been violated and submits that the bargaining agent must fail because it has not established that the employer re-engaged contractors, that there were laid-off persons or surplus employees who could have been appointed to do the work done by the contractors, that the employer failed to conduct a review of its use of contractors before re-engaging a contractor, and that it was practicable to re-engage laid-off persons or surplus employees rather than re-engage a contractor.

[68] While the burden of proof remains with the grievor, there may occur a situation in which the evidentiary onus requires that the employer provide reasons for its decision. The evidentiary burden then shifts to the employer, although the onus of proof never changes (see *Scanlon and Christianson*, at para 50). Once the breach of the collective agreement has been established by the grievor on a *prima facie* basis, the evidentiary burden shifts to the employer to explain why – in the language of the collective agreement - it was not practicable for it to refrain from re-engaging private temporary agency personnel, consultants, contractors, employees appointed for a specified term and all other non-indeterminate employees to perform the work (see *Kranson and Sawchuk*, at para 29).

[69] The first question that needs to be addressed is whether Medavie is a contractor within the meaning of clause 1.1.27 of Appendix D. Part of determining what is meant by the word “contractor” includes looking at its role in the sentence in which it is used

and to determine its meaning based on its role and the other words used in conjunction with it. Every word must be given some meaning, to avoid redundancy, as stated as follows at page 29 of *Collective Agreement Arbitration in Canada*:

> *It is recognized canon of construction that in interpreting documents they should be construed so as to give effect to every word, and a word should not be disregarded if some reasonable meaning can be given to it. It has further been held that it is a good general rule that one who reads a legal document, whether public or private, should not be prompt to ascribed --should not without necessity or some sound reason impute-- to its language tautology or superfluity.*

[70] In clause 1.1.27 of Appendix D, the parties have identified a list of people who will be eliminated from the workplace when to do so would facilitate the appointment of surplus employees or laid-off persons: private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees.

[71] The UVAE would have me equate the word "contractor" with a contract for service pursuant to the thinking of the Supreme Court of Canada in *Canada (Attorney General) v. Public Service Alliance of Canada*; however, as pointed out by counsel for the employer, the language considered in that series of cases differs from that in play in this case. Clause 5.1 of the collective agreement considered in that series of cases specifically provided that departments shall ". . . review their use of employees appointed for specified periods (term employees) and their use of contracted services and should terminate them where such action would facilitate the REDEPLOYMENT of AFFECTED EMPLOYEES, SURPLUS EMPLOYEES OR LAID-OFF PERSONS. . ." (emphasis added).

[72] Clause 1.1.27 of Appendix D is worded differently and I find that the distinctions in wording are significant. The wording in clause 1.1. 27 contains no such language requiring the termination of contracted services. It requires the employer to review the use of private temporary agency personnel, consultants, contractors, employees appointed for a specified period and all other non-indeterminate employees. While the list of external contracts does refer to contractors the inclusion of this word in the list provided should be read to mean contractors in the workplace. A contractor is a person who undertakes a contract (see *Canadian Oxford Dictionary, Second Edition*). This definition provides little assistance in this circumstance without

also looking at the other words used in conjunction with it. The *ejusdem generis* rule states that specified examples limit the category described to like items, so the use of "contractors" in clause 1.1.27 is limited by the other categories of staff that are to be eliminated from the workplace if to do so would facilitate the appointment of surplus employees or laid-off persons. All the categories refer to individuals and not to contracts for service. Therefore, the UVAE has failed to establish the first criteria required to be successful in its application.

[73] As argued by the respondent, clause 1.1.28 of Appendix D confirms this interpretation, referring to the fact that surplus and laid-off persons should be given priority even for short-term work opportunities.

[74] Even if I give the word "contractors" a very broad meaning to include Medavie as a legal entity and therefore a person, the UVAE would still be required to meet the requirements of the other threshold questions. The UVAE would be required to establish that there had been a re-engagement or rehiring of Medavie, contrary to clause 1.1.27, to conduct work that could have been used to reappoint surplus employees or laid-off persons. Medavie has been contracted by the PWGSC to provide services on behalf of the Government of Canada related to the processing of medical claims since 2002. This has included to some extent services to be provided to the VAC. The duties transferred to Medavie, which continued to pertain to processing claims, were consistent with those already contracted for and in my opinion amounted to an amendment to an existing contract and not a re-engagement or rehiring of Medavie. The bargaining agent fails in this regard as well.

[75] The third criterion, the existence of laid-off persons or surplus personnel, has been clearly answered by the uncontradicted evidence of all the witnesses. There were none at the time of the contracting out of the VIP to Medavie. The UVAE would have me read into the collective agreement that the employer is prohibited from rehiring or re-engaging a contractor if it would result in the creation of surplus employees or laid-off persons. As discussed below in my reasons, the wording of the provision is clear. I am prohibited by section 229 of the *Act* from rendering a decision that would have the effect of amending the collective agreement and cannot give effect to the UVAE's suggestion.

[76] The Objectives of Appendix D strongly support the view that the clause is directed to a consideration of laid-off persons or surplus personnel who were in

existence at the time of the contracting out of the VIP to Medavie. The purpose of the Workforce Adjustment Directive is to assist indeterminate employees "whose services are no longer required because of a workforce adjustment situation" and to ensure, "wherever possible, alternative employment opportunities are provided to them." The objectives go on to say that this should not be construed as the continuation of a specific position or job but rather as continued employment." In addition, as noted by the respondent, the definition of surplus employees in Appendix D refers to surplus and laid-off employees in the past tense. Those definitions read as follows:

…

> *Laid-off person (personne mise en disponibilité)-is a person who has been laid-off pursuant to subsection 64(1) of the PSEA and who still retains an appointment priority under subsection 41(4) and section 64 of the PSEA.*
>
> …
>
> *Surplus employee (employé-e excédentaire)-is an indeterminate employee who has been formally declared surplus, in writing by his or her deputy head.*

[77] The grievor relied on *Canada (Attorney General) v. Public Service Alliance of Canada,* to support its interpretation of the contract in such a way that the consideration of surplus and laid off employees would go beyond those who were already been declared surplus or laid off. As mentioned earlier in my reasons, the wording of the clause under examination was quite distinct from the wording in the present decision. The clause in question in *Canada (Attorney General) v. Public Service Alliance of Canada* was more broadly worded than the clause at issue here, stating as follows (See page 25 of *Public Service Alliance of Canada v. Treasury Board* (File no. 169-2-473 at page 25):

> *The Department shall:*
>
> …
>
> *5.1.2. review their use of employees appointed for specified periods (term employees) and their use of contracted services and should terminate them where such action would facilitate the redeployment of affected employees, surplus employees or laid-off persons:*

[78] The wording in the present case is narrower in scope and also gives the department or organization specific guidance as to when it can re-engage contracts of specified terms. It reads as follows:

> *Departments or organizations shall review the use of private temporary agency personnel, consultants, contractors, employees appointed for a specified period (terms) and all other non-indeterminate employees. Where practicable, departments or organizations shall refrain from re-engaging such temporary agency personnel, consultants or contracts or renewing the employment of such employees referred to above where this will facilitate the appointment of surplus employees or laid-off persons.*

[79] As noted earlier in my reasons, in accordance with the principle of *ejusdem generis*, the current wording of the collective agreement is more limited in scope. The wording in the present case is also quite distinct from the wording in the *Canada (Attorney General) v. Public Service Alliance of Canada* decision because it provides the departments or organizations with additional scope. Wording is added that states that, where practicable, the department or organization is obligated to "refrain from re-engaging" such temporary agency personnel, consultants or contracts or renewing the employment of such employees. While there is an obligation on the department, it is not absolute and the wording provides the department or organization with the basis upon which it should exercise such restraint by beginning the sentence with the term "where practicable" and conversely, that wording also suggests that there are situations where it may not refrain from doing so. In addition, the wording at the end of the sentence states that the employer will refrain from re-engaging such personnel, "to facilitate the appointment of surplus or laid-off persons." This wording clearly presumes the pre-existence of surplus employees or laid-off persons in making these considerations.

[80] There was no evidence led by either party that the work contracted out to Medavie was work that the CSAs could have done. The grievor argues that there is a direct relationship between the work transferred and the reduction of CSA positions and that refraining from amending the contract with Medavie would have allowed the CSA employees to keep their jobs. This submission misses the important strategic change that had taken place. Why then was it contracted out to a third-party service provider? It was done because it was no longer practicable in the employer's mind to continue to have the work performed in-house. The fact of the matter is that the jobs

of the CSAs were changed due to the transformation to a grant system and due as well to the changes to how annual questionnaires were mailed out, received and processed. This meant that the CSAs would be engaged in follow up that might be flagged after canvassing whether there was a change in circumstances. As Ms. Burdett testified, the CSAs role was significantly reduced because, rather than determine veterans' needs, there role focussed more on any follow up concerning the grant payment and changes to the payment. It is also important to note that the role of canvassing, which had been part of the role in claims processing in the past, had also changed even before the 2012 Budget. The limitation in this case was whether it was practicable for the employer to refrain from contracting out these services in favour of maintaining the number of CSAs in its employ. The UVAE did not provide any proof of whether it would have been practicable, relying instead on a shifting of the burden of proof to the employer to prove that it was not practicable to do so. Given my findings above, I do not find that the employer was limited from contracting out these services. However, even if there was a limitation, I find that the employer provided evidence that demonstrated that it was not practicable to refrain from contracting out. The employer led evidence that following the Deficit Reduction Action Plan and the budget, Parliament ordered the amendment of the VIP to better serve veterans. The employer also established the considerable savings the VAC realized as a result of the contracting out. The employer argued that that established that it was not practicable to continue with the CSAs performing the work.

[81] Practicable does not mean possible. (See *Brannick*, at 8). What is practicable must be construed to mean practical, business-wise or economically practical, as well as physically practical. (See *The Council of Postal Unions*, at 25). Clearly, in the current economic climate the Government of Canada has determined that spending in the public service must be reduced and that steps must be taken to ensure the overall reduction of costs. The overall savings realized by the employer as a result of the contracting out to Medavie was economically practical as well as business-wise, albeit with unfortunate results.

[82] The UVAE asked that I draw a negative inference from Mr. Hiller's refusal to answer the question as to whether there were any other options considered to ensure that the employer realized its mandated 10% reduction in departmental costs that would not have resulted in the elimination of CSA positions. Mr. Hillier declined to answer the question, citing Cabinet confidence. I do not draw a negative inference from

this one answer, or failure to answer, as he testified that a committee had been struck under the Deficit Reduction Action Plan to identify a number of means by which the VAC could realize savings, which were then submitted to Cabinet for its consideration. This is not a situation such as that in *PSAC v. Canada*, where the employer set out to reduce the number of indeterminate employees and contracted out the identical jobs being performed by the employees in order to do so. (*PSAC v. Canada*, FCA, at page 7; *The Attorney General of Canada v. PSAC*, [1993] 1 SCR 941 at para 67). This is a situation where a strategic decision was made to move to a system that utilized grants rather than claims authorization that changed the very nature of the work done by the employees (the CSAs) in the VIP program and also resulted in a reduction of the work to be done.

[83] To summarize, this grievance must fail as there were no contractors within the meaning of clause 1.1.27 of Appendix D. As noted in the employer's submissions, section 7 and 11.1 of the *FAA* grants the employer broad power to set the general administrative policy for the federal public service, organize the federal public service, and determine and control the personnel management of the federal public service. Paragraph 7(1)(b) of the *FAA* grants the employer the exclusive authority on all matters relating to "…the organization of the federal public administration or any portion thereof, and the determination and control of establishments therein…". I agree with its submission that in exercising this function, including contracting out services, the employer may do anything that is not specifically or by inference prohibited by statute or the collective agreement. (See for example *P.S.A.C. v. Canada (Canadian Grain Commission*), *Li v. Canada (Minister of Citizenship and Immigration; Flieger v. New Brunswick*, at page 666; *Canada v. PSAC* at page 969.) The limitation on this power within the collective agreement was not violated in this case.

[84] As I have discussed above, the employer did not re-engage or rehire a contractor to do work which could have been used to appoint surplus employees or laid-off persons. There were no surplus employees or laid-off persons at the time of the amendment of the Medavie contract. It was not practicable in the current economic climate to continue to employ CSAs to do the work contracted out to Medavie.

[85] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[86] This grievance is dismissed.

December 20, 2013.

Margaret T. A. Shannon,
adjudicator