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File: 166-2-25271

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

BARRY J. MCALLISTER

Grievor

and

TREASURY BOARD
(National Defence)

Employer

Before: P. Chodos, Deputy Chairperson

For the Grievor: George Holub, Public Service Alliance of Canada

For the Employer: Roger Lafrenière, Counsel

Heard at Winnipeg, Manitoba,
September 23 and 24, 1997.

Prior to his resignation effective August 31, 1992, the grievor (GS BUS 2) was one of a number of employees who had been employed at Canadian Forces Base - Portage la Prairie. Mr. McAllister submitted a grievance dated July 30, 1991, which states as follows:

> *I hereby grieve the employer's action in issuing a lay-off notice to me to allow the Federal Government to contract out the work I now perform.*
>
> *I demand that the employer cancel this lay-off notice and cease the contracting out of my work. I further demand that continuing pay and employment be provided and any loss in pay and employment be provided and any loss in pay and benefits be restored, retroactively and that I be made whole.*

On behalf of Mr. McAllister, the Public Service Alliance of Canada referred to the Board a Form 13 Reference to Adjudication dated November 12, 1993. There is no dispute that Mr. McAllister's grievance is properly before the adjudicator. However, there were a large number of other employees in identical circumstances, also represented by the PSAC, who apparently had submitted similar grievances arising out of the same circumstances as Mr. McAllister's. According to the employer, the grievances filed by the other employees (i.e. file numbers 166-2-27909 to 27940, 28020, 28029 to 28052) are not properly before the adjudicator.

On April 20, 1994 this case, as well as the grievances of the other employees in question, was scheduled to be heard at adjudication before then Chairperson Deans. Concerns were expressed that no notices of hearing had been provided to many of the grievors. Accordingly, Mr. Deans adjourned the proceedings, subject to certain conditions. The matter was again scheduled for a hearing on December 17, 1996, at which time the question of whether the other grievances were properly before the Board was again raised, as well as whether the bargaining agent had complied with the directions from Mr. Deans. This continued to be a matter of dispute between the parties, culminating in this hearing, where again a number of procedural issues were raised by the employer concerning whether the other grievances could properly be heard at adjudication.

Following extensive discussions with the parties, it was agreed that the McAllister grievance would proceed and the others would be held in abeyance pending

the outcome of the McAllister case. It was also agreed that the undersigned adjudicator would remain seized with these matters, and it was understood that the employer was not waiving any objections it may have in respect of the adjudicator's jurisdiction to address the other grievances.

The parties submitted a partial Agreed Statement of Facts, which provides as follows:

Agreed Statement of Facts

1) *On July 30, 1991, Barry McAllister, the grievor, presented a grievance at the first level of the grievance procedure.*

2) *In April 1989, the former government presented a budget. The budget announced the closure of Canadian Forces Base (CFB) Portage la Prairie in 1992. The budget also stated that DND would be examining various alternatives for the carrying out of the Canadian Forces Mandate.*

3) *On or about the same time, DND had begun discussions with Canadian Industry to determine whether the contracting out of flying training was a viable option that would result in savings to the Crown.*

4) *CFB Portage la Prairie was an Air Force Base that provided support services to a variety of units, including the 3CFFTS (3 Canadian Forces Flying Training School). 3CFFTS provided two types of training -- Primary Flying Training and Basic Helicopter Training. Also provided at CFB Portage la Prairie was the Flying Instructors School. It also had regional responsibility for the support of reserve and cadet organizations.*

5) *In June 1989, DND issued an official Solicitation of Interest to determine if sufficient interest existed in Canadian Industry for the conduct of Primary Flying Training and also invited suggestions for other ways that Industry could participate in other flying training.*

6) *In March 1990, the DMC (Defence Management Committee) approved the concept that Primary Flying Training and Continuous Flying Training would be contracted out and that Helicopter Training*

and Multi-Engine Flying Training would be contractor supported at a site to be determined by Industry.

7) *In April 1990, a Market Survey based on (6) above, was issued to Industry to determine who was interested and where they thought it could be conducted. This can be termed a second Solicitation of Interest.*

8) *An entity called Southport Aerospace Centre Incorporated (SACI) was incorporated under the Canada Corporation Act in February 1990. The primary objectives of the Centre are outlined in its Constitution and By-laws.*

9) *DND and Southport entered into an interim Memorandum of Agreement dated May 1992 which contained details of the transfer and the interim arrangements.*

10) *DND agreed to sell the real property and infrastructure of CFB Portage la Prairie to Southport for the price of $1.00 with the final transfer occurring on 1 Sept 1992.*

11) *In November 1990, Cabinet identified Southport Aerospace Centre as the specific site for the Contracted Flying Training and Support Project (CFTS). At that time, the site was occupied by CFB Portage la Prairie.*

12) *On 1 February 1991, DND issued a Statement of Work (SOW) and Specifications and Standards (SAS).*

13) *In March 1991, DND issued a draft contract to its identified bidders, as part of its Request for Proposals (RFP). The closing date for bids was 15 June 1991. The draft contract (tender) was based on the previously issued (1 February 1991) SOW and SAS.*

14) *On 1 June 1991, the grievor, Mr. McAllister, was declared surplus and provided with a 12 month notice period.*

15) *Canadair MAD, a division of Bombardier, bid on the contract. In its proposal, it identified 9 companies, including Frontec Logistics and Versa Services, which had signed exclusive agreements with Canadair for the provision of services identified in the RFP.*

16) On 12 April 1991, SACI issued a Tender for Operation and Maintenance of Physical Plant and Groundside Surfaces, with a closing date 10 May 1991.

17) Frontec Logistics, one of the companies identified in the Canadair bid, bid on the SACI contract.

18) On 19 September 1991, Canadair was awarded the contract for the CFTS project. This was recorded as TB 817134.

19) On 20 September 1991, an Order-in-Council, #1991-1798, authorized the sale of the physical property at the CFB Portage la Prairie to SACI, with an effective date of 1 September 1992.

20) In November 1991, Frontec Logistics was awarded the SACI contract for operation and Maintenance of Physical Plant and Groundside Surfaces.

21) On 1 June 1992, Mr. McAllister resigned from the Public Service with an effective date of 31 August 1992 as reflected in Annex A.

22) The grievor as a result received the benefits as listed in the attached Annex B.

Dated this 23rd day of September 1997.

In addition, it was agreed that the evidence of a Lt. Col. Ian Milani, as summarized in the *Kitson* adjudication decision (Board file 166-2-25328), at page 8 through page 11 should be considered as being incorporated into the Agreed Statement of Facts. This portion of the decision states the following:

> *Lt. Col. Ian Milani presently holds the position of Project Director for the Canadian Aerospace Project. In 1991 he was the Deputy Team Leader for the Flying Training Study Team, which was an organization looking at options for commercial involvement in the military flying training system. He subsequently developped the statement of work and specifications for the tender or request for proposal (RFP) and ultimately made the selection of the technically compliant bidders. The witness was the author of most of the statement of work and the coordinator of the remainder of the process, including being involved in the review in depth of the proposals of bidders.*
>
> *Prior to the closure of the Base, there were three types of flying training taking place there: there was Primary*

Flying Training, Basic Helicopter Training and Flight Instructor Training. The first two formed part of what was known as 3CFFTS. The third training group trained instructors for primary training, helicopter training and jet training.

There was a bid ultimately accepted from Bombardier-Canadair Military Aircraft Division (MAD). Canadair contracted to provide on site to Southport (formerly the Base), primary flight training and one specialist instructor for ground school for helicopter and multi-engine training. Seventy percent of the Flight Instructor Training School was moved from Portage la Prairie to Moosejaw, Saskatchewan, and 15% was disbanded because the military was no longer involved in primary flight training -- it was being done by Canadair. The remaining 15%, that is, the training of helicopter instructors, was absorbed into 3CFFTS. Prior to the Base closure all training was being done by military personnel. After the Base closure and Canadair started to do the work they had agreed to do by contract, the only DND personnel which remained on at Southport was a fifty-one person unit called 3CFFTS, which provided flying instruction for helicopter training and for multi-engine training. It trained its own instructors and it had a quality responsibility for primary flying training, that is, it had a responsibility to ensure the quality of the flight training being given by Canadair. Of the fifty-one, forty-four were qualified flying instructors. The remaining seven provided administrative support and medical administrative support. The sole civilian in that fifty-one person unit was the witness' secretary. On site at Southport also was a civilian supply technician belonging to CFB Winnipeg.

The witness stated that exhibit E-7 is the draft contract with Canadair. Exhibit E-8 contains the instructions to the bidder. Exhibits E-7 and E-8 together form Volume 1 of the Request for Proposal (RFP). Volume 2 contains the statement of work and standards. The work expected of the contractor is summarized at paragraph 11 of E-7 and the bidder is asked to state its price for the contract. DND, in E-7 and E-8, was asking the bidders to provide all aspects of primary flying training and to provide or arrange for all aspects of continuation flying training; to provide a specified sortie rate on each of the helicopter and multi-engine aircraft fleets and to ensure the effective operation of the aerodrome and the training and feeding of the flight training students.

Through the witness was produced another map of the Base, as exhibit E-17. The witness identified on this map those buildings occupied by the contractor, Canadair, to fulfil its obligations under the contract. Following the date of the

sale of the Base to Southport, on 1 September, 1992, DND no longer had ownership of the building occupied by the contractor, Canadair. DND was provided with facilities in these buildings and access to some portions of those buildings.

The Canadian Forces Organization Order 2.16, filed as exhibit E-18, provides the "Role" of the Base, at paragraph No. 5. Its role is to provide support services to all units and elements listed in Annex B to the Order. Annex B is a list of elements of the Canadian Forces to whom those services are to be provided. Such services include transportation, supplies and ration support.

The population of the Base just prior to its closure was of approximately 500 military personnel and there were just under 200 civilians working at the Base, together with spouses and children. After the closure of the Base, some small portions of the population of the Base stayed on. About 15 helicopter instructors stayed on and the remaining military personnel were posted and, of the civilian employees, some moved to other jobs, some became employed by Canadair or by one of the sub-contractors, some went to the Base in Winnipeg, some moved with their military spouses.

In cross-examination the witness agreed that the contractor, Canadair, for the most part trained its own instructors to give primary flight training of the students, who are all military officers and officer cadets. These students are being trained by Canadair for DND. DND no longer trains primary flying instructors because it no longer gives primary flight training. DND entered into a contract with Canadair to have the latter provide the instruction in primary flying. Some of the instructors hired by Canadair were military personnel who required no training to be instructors and others were civilian instructors who required training.

The military still needed pilots trained after the Base closure and decided to have this training done by a contractor. The instructors for the jet aircraft were moved to Moosejaw. Primary flight training is now done at Southport. The students being trained are military personnel and the instructors providing the training are employees of Canadair. For the Basic Helicopter training and the multi-engine training, the students are all military personnel and their instructors are all non-military personnel working for Canadair. With respect to flying training, Canadair provides primary flying training at Southport and the continuation flying training is also done by Canadair but not at Southport

but rather at a number of flying clubs under contract with Canadair.

The witness was referred to exhibit E-7, the draft contract with Canadair. Section 11 sets out a summary of the work to be performed by Canadair, including ensuring that air field services are satisfactory. The witness agreed that under exhibit E-18 3CFFTS and FIS (flying instructor school) received the bulk of services provided by the Base.

The witness stated that he examined all the bids which were submitted. He added that had it been more expensive to have the work done by others, DND would not have contracted out the work. It would have been done another way. Had the contract with Canadair been cancelled, the Base would not have been re-opened.

The parties submitted on consent a number of documents (Exhibits 2, 3, 4, 5, 6 and 11). In addition, one witness, Ms. Hildur Aitkenhead, was called to testify by the grievor. Ms. Aitkenhead had been employed at CFB Portage la Prairie as the Base Civilian Personnel Officer from 1985 until August 1992. In that capacity it was her responsibility to advise and provide guidance to management and employees with respect to, among other things, the lay-off of personnel. Ms. Aitkenhead testified that the April 1989 budget announcement respecting the closure of the Base came as a total shock to her and other employees at the Base. She noted that, prior to the announcement, there was an internal document circulating at the Base which had recommended increasing the number of personnel at CFB Portage la Prairie. In July 1989, a local Member of Parliament had announced that operations would continue at Portage la Prairie. However, six or seven months later all employees were invited to a meeting on the Base where they were introduced to Canadair and Aerospace personnel, and it was announced that Southport and Canadair were taking over the facility.

In June 1991 employees were given a two-page notice of surplus status with a Public Service Commission application form; they were also given a summary of the 1988 Work Force Adjustment Policy which was then in effect, although employees had been advised that a new one was coming. Ms. Aitkenhead in fact became aware of a draft of the Work Force Adjustment Directive a few days before December 15, 1991, when it was faxed from Air Command Headquarters. Ms. Aitkenhead observed that there were many issues that had to be explored and that there was no clear direction.

The treatment of employees was constantly in flux. She noted that employees were told all the way through that the cessation of operations at CFB Portage la Prairie was being considered as a Base closure. This required dealing with matters such as retention payments, relocation payments, and retirement pay. In addition, efforts were made to find alternative employment for those employees who indicated that they were mobile; persons who were relocated received no benefits under the Work Force Adjustment Directive. Some employees were retained based on operational need, that is, in order to maintain the Base while it was being examined by potential bidders. No one locally had the authority to make decisions with respect to retention payments; these decisions were made by the Assistant Deputy Minister, Personnel. Ms. Aitkenhead was not aware of any one obtaining any benefits under the contracting out part of the Work Force Adjustment Policy. The employees received retention payments and separation payments under the Work Force Adjustment Directive; however, no one received a "turnkey" payment, nor was anyone paid a salary in lieu of surplus notice.

Ms. Aitkenhead recalled that on one occasion she showed the Directive to a Ms. Heather Wagner, a Personnel Officer employed with Frontec; she showed her the clause which provides that public servants should be given priority. She observed that Ms. Wagner was taken aback by this information. This is the only contact that she had with any of the new employers at the Base. She was aware that Frontec did hold interviews, and that 17 employees were hired by that company.

In cross-examination, Ms. Aitkenhead identified a number of documents, including a letter dated June 1, 1991 to Mr. McAllister referred to as "NOTICE OF SURPLUS STATUS - ESSENTIAL POSITION", as well as another letter of the same date, which is headed "NOTICE OF SURPLUS STATUS"; this letter goes on to state that:

> *The purpose of this letter is to notify you that, due to the scheduled closure of Canadian Forces Base Portage la Prairie, your services will become surplus to departmental requirements. In accordance with the departmental policy on Workforce Adjustment, you have been granted status as a surplus employee, effective 1 June 1991, for a period of 12 months.*
>
> (Exhibit 8)

Ms. Aitkenhead also identified Exhibit 10, a document entitled "REQUESTS FOR RETENTION PAYMENT"; she noted that Mr. McAllister was one of several employees whose request for retention payment was approved by Headquarters. She agreed that the Base Commander had left and was not replaced nor was her position as Civilian Personnel Officer filled when she left in August 1992, however, her function may have been performed by someone employed at SACI. It was her information that the military personnel who were at CFB Portage la Prairie are now considered part of Canadian Forces Base Winnipeg. She had met with employees to discuss the various options, some had resigned in order to receive a retention payment, others relocated, and others retired; none of the employees who filed grievances were laid off.

In re-examination Ms. Aitkenhead noted that the reference in Exhibit 8 to "... *departmental policy on Workforce Adjustment,*" refers to the civilian personnel administrative order in effect at the same time as the Work Force Adjustment Policy.

On behalf of the grievor, Mr. Holub submitted that the issue in this case is what are the applicable provisions in respect of surplus status following the grievor's receipt of the notice of surplus status in June 1991. Mr. Holub noted that the Work Force Adjustment Policy, which came into force in April 1988, would have a normal three year cycle, that is, it would expire in April 1991. The situation at the time of the notice of surplus status in June 1991 was in flux; a new version of the Work Force Adjustment policy was the subject of negotiations in that year; Mr. Holub noted Ms. Aitkenhead's testimony that a draft copy of the 1991 Directive was in existence and in circulation prior to December 1991. Mr. Holub also noted that the grievance does not contain a specific reference as to which provisions are applicable. He maintained that the December 1991 Directive provided for retroactive applicability.

Mr. Holub also referred to a letter from the President of the Public Service Alliance dated January 21, 1992, which states that the NJC Administrative Committee agreed "*that the intent of the Work Force Adjustment Directive, was to enable any employee, who was surplus on or after the coming into force of the new agreement, to enjoy the protection of the employment security and other provisions of the new directive regardless of the date upon which the employee received the surplus notification.*" This is also in accord with the NJC Bulletin issued in January 1992.

Mr. Holub noted that in fact the department had taken the position that the new directive applied to the grievors.

The grievor's representative maintained that in reality what happened at CFB Portage la Prairie constituted a contracting out and not a sale of the operations. In this respect, Mr. Holub maintained that paragraph 18 of the Agreed Statement of Facts in effect acknowledges that there was a contracting out. Mr. Holub submitted that what had occurred was the disposition of flying training to SACI. Mr. Holub further submitted that the finding in the *Kitson* decision (supra) that there was no contracting out is in error. Furthermore, the *Kitson* decision (supra) did not deal with the Work Force Adjustment Directive of 1991, and therefore any entitlements under that directive were not addressed. He noted that paragraph 5.1.1 of the WFA Policy basically prohibited contracting out and therefore any corrective action under that provision was aimed at rescinding the contract. However, the Directive does not prohibit contracting out but rather provides protection to affected employees, and it is this provision which should be given effect here.

Counsel for the employer agreed that the employer had extended the protections of the Directive to the grievor; however, he submitted that the issue raised by the grievance is necessarily whether the employer had breached the Workforce Adjustment Policy of 1988, which was in force at the time of the grievance. Mr. Lafrenière contended that one cannot contest the misapplication of a directive that was not in existence at the time of the grievance; in accordance with *Burchill* v. *Attorney General of Canada* [1981] 1 F.C. 109 the grievor cannot change the subject of the grievance. What is being grieved here is the surplus notice issued under the old Policy.

Mr. Lafrenière also submitted that the substantive issue in this case is whether a contracting out had occurred. Counsel for the employer maintained that the facts in this matter are identical to the facts before the adjudicator in the *Kitson* case (supra). Mr. Lafrenière invited a comparison of paragraph 5.1.2 of the 1988 Work Force Adjustment Policy, which was addressed in *Kitson* (supra), and paragraph 8.1.2 of the Work Force Adjustment Directive which, he maintains, is even less ambiguous than the Work Force Adjustment Policy; paragraph 8.1.2 of the Directive clearly states that Part VIII applies only when there is a direct contracting out of positions which

employees have encumbered. Here the employees were faced with a "work force adjustment" situation as defined at page 8 of the Directive. In fact, the grievor received all the benefits that accrue as a result of a work force adjustment, other than those specified in Part VIII.

Mr. Holub replied that Exhibits 2 and 3 make it clear that not only military instruction with respect to flying training was contracted out, but the support functions as well. Mr. Holub also maintained that paragraph 8.1.2 of the Directive was not intended to narrow the definition of contracting out beyond operations actually being performed.

Reasons for Decision

Mr. McAllister's grievance raises the question as to what benefits he was entitled to as a result of the events following the announced closure of Canadian Forces Base Portage la Prairie in 1989. Those events were also the subject matter of an adjudication decision in the *Kitson* case (supra); however, it is the contention of the grievor that that case only addressed the employee's rights pursuant to the Work Force Adjustment Policy which came into effect on April 1988; the grievor's representative maintains that it is the successor document, namely the Work Force Adjustment Directive of December 1991, which has application to the grievor. This is disputed by counsel for the employer, who maintained that one must look to the agreement which was in force at the time that the grievance was submitted. For the purposes of this decision I am prepared to assume that the Workforce Adjustment Directive, which became effective December 15, 1991, is applicable to the grievor.

The relevant provisions of the Work Force Adjustment Directive are the following:

> ***Definitions***
>
> . . .
>
> ***Contracting out.*** *For the purposes of this directive, contracting out occurs where a departmental operation is transferred from the Public Service to a private sector organization as a result of a contract entered into by Her Majesty and the private sector organization. Where an operation is transferred under these circumstances, the*

operation is deemed, for the purposes of this directive, to be discontinued, resulting in a work force adjustment situation;

. . .

Part VIII

Special provisions regarding contracting out

[N.B. These special provisions only apply to contracting out]

8.1 ***General***

8.1.1 While departments may contract out the work of Public Service employees, they shall do so in accordance with this directive.

8.1.2 The provisions of this section apply only to those departmental employees encumbering positions the duties of which are to be contracted out by that department. Where an employee is declared surplus as an indirect result of a contracting out decision, whether made by his or her own deputy head or that of another department or agency, it is deemed that a discontinuance of that employee's function has occurred, and only Part I to VII (inclusive) of this directive are applicable.

8.2 ***Disclosure***

8.2.1 As soon as the senior management of a department has decided to examine the viability of a contracting out option with regard to a departmental operation, the relevant bargaining agent(s) shall be advised.

8.2.2 Where departments undertake cost-benefit analyses with regard to consideration of a contracting out option, such analyses shall be done consistent with professional principles and practices and according to standards acceptable to the Treasury Board.

8.2.3 As soon as possible after tenders have been received and analyzed, the Department shall disclose to the relevant bargaining agent(s) the reasons behind the decision to go ahead with contracting out, including any cost benefit or feasibility studies that may have been undertaken, with the exception of those parts which may fall under the exemption provisions of the Access to Information Act concerning third party information.

> *8.3* ***Notice***
>
> *8.3.1 Employees whose jobs are to be contracted out shall be provided with twelve months' surplus notice.*
>
> *8.4* ***Guaranteed job offer***
>
> *8.4.1 Employees declared surplus as a result of contracting out are guaranteed an offer of appointment on an indeterminate basis to another position in the Public Service within their headquarters area, either at their current level or with salary protection, where necessary.*

There is no doubt that the application of Part VIII of the Work Force Adjustment Directive is contingent upon the conclusion that there is a "contracting out" of the duties which were performed by incumbents of the positions in question. The question of whether there was in fact a contracting out situation following upon the announced closure of CFB Portage la Prairie was directly addressed by Board Member Brown in the *Kitson* decision (supra). Thus, Mr. Brown states that:

> *The employer agrees that it would not be allowed under the Policy to contract out the grievor's functions and then declare the grievor to be surplus to requirements.*
>
> *The question then becomes whether the grievor became surplus as a result of a contracting out of services. In the affirmative, the employer should be found to have acted in contravention of the Policy.* (p.26)

Board Member Brown came to the following conclusion (at p. 28):

> *I believe that had Southport merely conducted ordinary business on the former Base, including leasing buildings and facilities it could not possibly be found that the "transaction" was a contracting out. However, concurrently with this transaction, the employer admittedly contracted out the principal function of the base, that is, pilot flight training to a private sector corporation, Canadair, which in turn leased from Southport some of its buildings and facilities on the Base to conduct such training. The grievor is not claiming that his surplus status was created directly as a result of this last contracting out but as a result of the what he dubbs the so-called sale of the Base to Southport.*
>
> *Although, there exists interesting facets to this "package" of "sale" and "contracting out" I do not believe that they have any bearing on the determination of whether the "sale" by the government to Southport was a true sale and not*

> *a contracting out by another name. The closing of the Base had been decided on some time in advance of the "sale". The timing would hinge on the ability to find a private sector firm to carry out the very necessary pilot flight training . . .*
>
> *In the cirumstances, the employer in proceeding as it did by divesting itself of its property, that is, the Base to Southport, did not act in contravention of the provisions of the Work Force Adjustment Policy at section 5.1.2 when it declared the grievor to be a surplus employee on 1 June 1991. It cannot be said that the transaction was not a true "sale" -- the ownership of the Base was transferred to Southport "lock, stock and barrel" for a consideration, which was paid to the vendor.*

This decision was the subject of an application for review to the Federal Court (*Kitson v. Attorney General of Canada,* File No. T-391-95, unreported judgement dated March 19, 1996). In dismissing the application, the court stated:

> *Despite the able argument of counsel for the applicant, I have concluded that the adjudicator committed no error of law and made findings which were reasonably supported by the evidence. In particular, I cannot accept the submission of counsel for the applicant that the adjudicator made a reviewable error by asking and answering the wrong question. A review of the lengthy and detailed decision of the adjudicator, in its totality, confirms that the adjudicator properly considered whether the respondent breached the provisions of the Workforce Adjustment Policy by declaring the applicant to be a surplus employee as a result of the contracting out of services...*

I agree with Mr. Lafrenière that the facts in the *Kitson* case are on all fours with the case before me. It is in fact the same event, occurring at the same time, and at the same place, involving the same employer, as well as the same private sector organizations. The only distinguishing feature is that Mr. Brown was considering whether there was a contracting out situation under the Work Force Adjustment Policy. However, in my view, this does not affect the relevance of his conclusion for the instant case. The definition of "contracting out" found in the Directive (supra) is quite generic in nature; for example, it is similar to the definition of "contracting out" found in *Canadian Labour Terms,* 8th ed., 1984, CCH Canadian Limited where the term is defined as follows:

> *Practice of an employer whereby work to be performed is assigned to an outside contractor and not assigned to the employees in the bargaining unit.*
>
> (see also *Labour Law Terms*, J. Sack and E. Poskanzer, 1984, Lancaster House; and *Roberts' Dictionary of Industrial Relations*, 4th ed., Bureau of National Affairs.)

I must also agree with the submissions of counsel for the employer that it behooves a Board Member not to come to conclusions which are contrary to an earlier adjudication decision, in the absence of compelling reasons to do so. The reasons for this principle are readily apparent. Without such a rule, the parties would have absolutely no certainty as to what their rights and obligations are in any given case. Such uncertainty can only undermine good labour relations, and is antithetical to the objectives and mandate of this Board. Virtually no evidence has been presented in this case which might serve to demonstrate that Mr. Brown's conclusion was in error; there is nothing in the testimony of Ms. Aitkenhead which would raise doubts about the correctness of the *Kitson* decision. Indeed, Ms. Aitkenhead noted that *"employees were told all the way through that the cessation of operations at CFB Portage Laprairie was being considered as a Base closure"* (*supra*, p. 8). Accordingly, I see no reason to differ from the conclusion of Mr. Brown that the announced closure of Canadian Forces Base Portage la Prairie, and the subsequent sale of the property to SACI did not constitute a contracting out as that term is used and understood, either in the Work Force Adjustment Policy, or in the Work Force Adjustment Directive of December 1991.

Furthermore, it is clear from paragraph 8.1.2 of the Directive that Part VIII of the WFAD was intended to have very limited application. Thus, that provision states that it applies "... *only to those departmental employees encumbering positions the duties of which are to be contracted out by that department*". The provision goes on to state that: "*Where an employee is declared surplus as an <u>indirect result</u>* (underlining added) *of a contracting out decision ...*" Part VIII does not apply. If anything, therefore, the ambit of contracting out in Part VIII of the Work Force Adjustment Directive is even more restrictive than under the earlier Work Force Adjustment Policy.

Accordingly, this grievance is denied. At the request of the parties, I shall remain seized of the other outstanding grievances in the event that these grievances are required to be addressed notwithstanding this decision.

P. Chodos,
Deputy Chairperson.

OTTAWA, November 19, 1997.