IN THE MATTER OF AN ARBITRATION

BETWEEN:

DOMINION DIAMOND EKATI ULC

Employer

-and-

PUBLIC SERVICE ALLIANCE OF CANADA AND ITS COMPONENT THE UNION OF NORTHERN WORKERS LOCAL X3050

Union

Re: Job Posting Requirements
(Case #15-P-01764)

AWARD

BEFORE:	Tom Jolliffe, Q.C.
FOR THE EMPLOYER:	Drew Demerse
FOR THE UNION:	Rebecca Thompson
HEARING DATE:	December 11, 2017
HEARING LOCATION:	Yellowknife, Northwest Territories

DATE AWARD ISSUED:
January 9, 2018

My File:
53,036

The Dominion Diamond Ekati ULC operates a surface and underground diamond mine located approximately 300 kilometres northeast of Yellowknife. The Public Service Alliance of Canada through its component The Union of Northern Workers, Local X3050, has filed a policy grievance which raises the single issue of whether the collective agreement requires the Employer to post a vacated position, once it has determined that the work associated therewith needs to be done thereby arguably establishing a fillable vacancy at that point, or can it choose to hire a contractor to perform the work in preference to bargaining unit employees without first going through the posting procedure. Can it rely on management rights and the contracting-out language of Article 26.01 at that point without first turning to the job posting language of Article 27.01?

The pertinent language of the collective agreement under which this policy grievance was filed reads as follows:

> **26.01 Prior to contracting out any work that directly results in a layoff of Bargaining Unit members, the Employer will notify the Union and provide the Union with the opportunity to present any proposals as an alternative. Such discussions will not delay the tendering of contracts. As of the date of this Agreement it is not the intention of the Employer to contract out any work that directly results in the layoff of Bargaining Unit members.**
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> ....
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> **27.01 When the Employer elects to create and fill a new position, or to fill a vacancy in an existing position, within the Bargaining Unit, the Employer shall post a notice of the position on the Union notice board for a period of twenty-one (21) days prior to the closing date. This requirement shall apply to part-time, and full-time positions. The job posting shall state the job position, range of pay, shift and required qualifications of the job. An employee who wishes to apply for a position so posted shall do so in writing on or before the closing date as advertised on the posting.**

It can also be observed that **Article 25** dealing with severance, layoff and recall in its various subparagraphs starts with the lead-in language: **"In the event of a reduction in the size of the workforce, the following will apply....."**. The contract language goes on to describe the principles associated with reduction in the workforce at Ekati, including taking into account the various described competing rights of the affected bargaining unit employees and the "factors" to be considered in choosing one over another to be laid off.

However, it is not alleged there was an immediate layoff of any identifiable employee(s) occasioned by the contracting out decision which this grievance addresses. The facts centre on a situation of general description where an employee(s) resigns, or the employment relationship is otherwise terminated such as retirement, or there has been a transfer into another position. It is a matter of the Employer at that point sometimes choosing for its business reasons not to post a vacancy within the bargaining unit but instead deciding to contract out the work. Accordingly, there was no evidence from the Union concerning any specific positions.

The Union asserts that contracting out jobs without first posting the available work within the bargaining unit is a form of layoff and constitutes an attempt to erode the bargaining unit, there presumably being a size reduction potential with each contracting-out manoeuvre. The Employer takes the Union's position to be an assault on its management rights under **Article 4.01** to operate and manage its business **"unless specifically restricted by a provision within this Agreement..."** and also relies on the express wording of **Article 26.01.** It points out that currently the use

of contractors has not resulted in any layoffs of any bargaining unit employees. It contends that the Union is attempting to gain some work protection not found in the collective agreement, some form of prohibition against contracting out work not supported by any express contractual requirements. It also submits that while there has been no issue of any ambiguity existing in the contract language raised by the Union, however, were such to be the case, any evidence in that regard would favour the Employer's position. It relies on the contracting-out language having lasted through several rounds of collective bargaining in its current form despite the Union's negotiating stance to change it to something more restrictive. The Employer has contracted out some jobs in the past.

The only witness to testify in this matter, Gaeleen MacPherson, leads the Employer's human resources department. By her description given in testimony, the Employer for some time has been "struggling" with the rate of absenteeism at the Ekati mining site, encountering as many as 15 – 20 no-shows subsequent to completing their days off, having at least a 200 person crew assigned for each rotation. The Employer acknowledges having contracted with an outside manpower supplier to provide relief workers to ensure that crews are fully staffed. Ms. MacPherson also testified that bargaining unit employees have been transitioning into surface operations from underground, some 10 positions having transferred to the surface without layoff. Its underground operations at the mine are currently scheduled to cease altogether in 2018 and already have been substantially cut back. As yet there has been no date announced for mining operations to commence on a new "pipe" which work will

be underground. The Employer has been using contract workers provided by an outside supplier as a stopgap measure to "fill the vacated roles" as the transfers unfold. It has also been contracting for some time with a local Yellowknife vehicle dealership to supply shuttle drivers at the mine site.

Ms. MacPherson testified concerning the November 10, 2014 joint union/management committee meeting where the Local president raised the issue of shuttle drivers at the mine site not being Ekati employees, suggesting that they should be part of the bargaining unit. Further there were some underground positions being filled by a contractor at that time. Ms. MacPherson pointed to her explanation contained in the minutes, being that management could contract out any work on site deemed for business reasons necessary regardless of whether the positions had fallen within the bargaining unit. She explained that with the underground work slowing down the company preferred not to hire bargaining unit employees which would eventually be made redundant. She stated in that meeting, as captured in the notes: "the current roles are being filled by (outside contractor) because the previous incumbents, who were (Ekati) employees, have successfully transitioned to surface roles" i.e. no layoffs occurring to that point, nor since by her understanding.

The contracting-out issue was again taken up by the Union in the joint union/management committee meeting held on January 5, 2015 where the Union was informed that contract negotiations were underway with respect to the shuttle drivers' contract, anticipated to be shortly finalized, and also confirming that the underground manpower would not be altered in the immediate future although the outside

contractor was currently filling some positions.

The contracting-out issue was again taken up with management in the joint union/management committee meeting held on November 24, 2015 where Ms. MacPherson confirmed her understanding that there were about 70 positions vacant at that time across its three NWT mining projects, and that management was attempting to scale back the number of contractors being used, but as set out in the minutes: "in order to make significant strides in doing this, there also needs to be an improvement in attendance at work". She also stated that HR was working with department heads to analyse the contractor headcount and make determinations on potential areas where positions could be filled with permanent employees. However some of its calculations were admittedly dependent on employees on LTD coming back to work as it was not backfilling those positions with other permanent employees. The Union indicated it wanted to have the Employer consider developing a labour pool from the current contractors on site as "a good fit for regular full-time roles at some point", meaning to be employed within the bargaining unit, possibly in relief positions.

Ms. MacPherson testified that for the Employer to consider using bargaining employees to completely cover what it views as ongoing excessive absenteeism associated with there regularly being 15 – 20 workers absent from returning to the mine on rotation, a mix of culpable and non-culpable absences, it would mean having their coworkers stay longer at the mine past the end of their rotation or calling people into work on their off time to work RDOs – either way an expensive proposition. She acknowledged that as matters presently stand there has been no scaling back of the

contracting-out activities.

During cross-examination the Employer's staffing numbers were put to Ms. MacPherson indicating that on May 6, 2017 there were 467 "active" bargaining unit employees at the Ekati mining operations and an additional 34 "on leave". By October 20, 2017 there were 459 "active" bargaining unit employees with an additional 30 described as being "on leave ". Being in the nature of summary information, by her description, she was not able to describe how the attrition occurred although the information sheet also indicates that over that same period of time seven employees were struck off the roles for being "terminated" and at least another nine employees were declared as having inactive status. There is no indication in this information sheet of any employee having been laid off during the course of the 5½ months under review. She acknowledged not being able to testify concerning what or whether any bargaining unit positions were posted related to the employees on leave, or those terminated, or those having inactive status. Presumably, given the totality of her evidence, some vacancies were declared and posted and some of the jobs were contracted out, as she said: "depending on the role". She pointed out that the Employer's business plan for Ekati only sets out raw numbers associated with the roles performed by workers and does not state bargaining unit positions. She also remarked that by her understanding the numbers of bargaining unit employees at Ekati has been "pretty consistent" from 2015 through 2017.

Ms. MacPherson in her examination by Employer counsel was taken through several previous rounds of collective bargaining where, one might observe, the Union

in the past had unsuccessfully proposed stiffer restrictions against the Employer contracting out bargaining unit work at the Ekati mining operations. The current Article 26.01 language was negotiated during the 2007 round of collective bargaining. Were there to be no ambiguity existing, this information, while providing some context perhaps, could form no part of my interpreting the contract language on its clear and ordinary meaning from the words they used. Counsel cited Brown and Beatty, *Canadian Labour Arbitration*, at topic 4:2250 pertaining to arbitrators using extrinsic evidence for purposes of considering context or explaining a special technical term, but otherwise not resorting to extrinsic evidence to assist in construing the meaning of collectively bargained language unless there is an ambiguity needing to be resolved.

Argument:

In argument on behalf of the Union Ms. Thompson submitted that this matter does not concern the Employer's Art. 26.01 right to contract out work as described therein but rather "this is a case about job postings", with any issue concerning contracting out jobs being "secondary and contingent upon the first issue". Ms. Thompson described the language of Art. 27.01 as being mandatory, requiring on its plain and ordinary reading that the posting must occur "when the Employer elects.... to fill a vacancy in an existing position, within the Bargaining Unit...." . That vacancy within the bargaining unit, she said, is established immediately upon the Employer determining that the work will continue being done, that there will be no discontinuance of the function. It is at that point that the mandatory language of Art.

27.01 must be followed, she submitted, and the position is required to be posted, separate from whether the Employer down-the-road might choose to exercise its contracting out prerogative. It means that bargaining unit employees are at least being given the opportunity to bid into the position where qualified and interested. Whether creating a new position or filling a vacancy, the election, she said, means the Employer is choosing to have the work continue as a job as opposed to discontinuing it, hence the need to post the position for a period of 21 days prior to the closing date. The Employer cannot contract out bargaining unit work before posting and filling it, she said, unless there is no qualified or interested employee. The process must be followed.

Again, as stated by Ms. Thompson in argument: "our reading of Article 27.01 requires an internal posting when the work is to continue". It reflects the Union's view that contracting out work cannot occur as the first-choice means of managing staffing losses through attrition or for some other reason where there is no cessation in the work being performed. It takes there to be a violation of Article 27.01 where the Employer hires a contractor prior to posting the position(s) which ultimately should be viewed as resulting in the elimination of bargaining unit positions.

In support Ms. Thompson tabled *Re Beacon Hill Lodges of Canada Ltd. and Service Employees Union, Local 210* 1985 CarswellOnt 2636, 20 L.A.C. (3d) 316 (McLaren) where the arbitrator cited the established line of cases such as *Re Horton Steelworks Ltd. and USW, Local 3598* (1973), 3 L.A.C. (2d) 54 (Rayner); *Re Polymer Corp. Ltd and Oil, Chemical & Atomic Workers, Local 9* -14 (1974), 5 L.A.C.(2d) 344 (Rayner); *Re Air Canada and Canadian Air Line Employees Assoc.* (1975), 8 L.A.C. (2d)

239 (Brandt); and *Re Pilkington Brothers Canada Ltd. and Ceramic Glass & Ceramic Workers* (1976), 13 LAC (2d) 287 (Burkett). The Union relies on the labour relations principle discussed in these cases that an employer's deciding whether work exists in a classification sufficient to create a vacancy is not an unqualified right, it being well established that management cannot assert there is no vacancy while requiring the work of the classification to be done to the extent that a job exists in all the circumstances under review. It must put its mind to the question of there being availability of work and adequate work in order to justify filling a position.

In *Beacon Hill Lodges*, not a contracting-out situation (nor were the other leading cases cited by counsel), the employer had determined there was over staffing in the dietary aid classification in relation to performing kitchen duties. That conclusion led to its reorganizing the kitchen department and redistributing the job duties of a resigned employee, absorbed by others without layoff, but no posting of a vacant position. The arbitrator found in the employer's favour in that case, upholding its decision not to post the duties of the resigned employee but rather to deal with the work needing to be done by rescheduling and redistribution of job duties within the bargaining unit, no layoffs occurring.

The Union can agree, Ms. Thompson said, that in a situation where the work is discontinued, or redistributed amongst other bargaining unit employees, there is no need to post a vacancy as the employer will have chosen to deal with the duties needing to be performed in another legitimate fashion. The key difference here, she submitted, is that the work associated with the contracting out decision was continued as

identifiable single jobs, thereby needing to be posted before any consideration could be given to the contracting-out alternative. Hence, the Employer should be taken as violating the posting provision of Article 27.01. That said, it leaves one to ponder the labour relations sense of such a requirement which presumably still leaves the Employer able to contract out the work immediately following posting and filling it with a bargaining unit employee, were anyone even interested given the impending situation.

In argument on behalf of the Employer, Mr. Demerse submitted that this grievance is about the Employer's management right to contract out work at Ekati. The success or failure of the Union's policy grievance hangs on the plain language of Article 26.01 which requires that in its deciding to contract out any work it will notify the Union and provide it with the opportunity to present proposals as an alternative only where it "directly results in the layoff of Bargaining Unit members". There was no evidence of any such direct result in the current situation where the contracting-out situation involves work which has been performed by some individuals assigned to underground operations at the mine who have successfully transitioned/transferred into other positions above ground. He submitted that it is not the bargaining unit person leaving their work for any reason, i.e., terminated, resigned, retired or transferred, which triggers the possible legal obligation to declare the vacancy within the bargaining but rather such declaration is, at the lease, dependent on its decision to keep the work as a bargaining unit job as opposed to contracting it out and electing to fill it on that basis. In short, "it has not elected to fill a vacancy", by reference to

Article 27.01, if one existed and was unfilled at some point, within the bargaining unit. It chose to contract out the work.

Counsel submitted that there is no language contained in the collective agreement which provides the Union with jurisdiction over any particular type of work at the Ekati mine operations, the only restriction over contracting out work being the language of Article 26.01 as it relates to a direct result of layoff. Otherwise there are no restrictions on the Employer's ability to contract out work.

Mr. Demerse cited the arbitral jurisprudence starting with *Russelsteel Ltd and. U.S.W.A.*, [1966] O.L.A.A. No. 4 where arbitrator Harry Arthurs cautioned the union against expecting an arbitrator to apply implicit limitations on management's right to contract out in a situation where there was no express protection in the contract language, and by reference to what he observed even then to be "the overwhelming trend of decisions". Counsel pointed to the most recent arbitration award cited, *Zehr's Real Canadian Superstores v. U.F.C.W, Local 175*, [2013] O.L.A.A. No. 540 (Marcotte) where the employer had decided to use non-bargaining unit persons to perform work during renovations in the store, resulting in some lost hours and potential lost earnings to bargaining unit members, but no outright layoffs. There was contract language restricting the use of sales representatives in the store, but no express language prohibiting the contracting out of bargaining unit work. The grievance was dismissed.

Mr. Demerse cited *C.U.P.E., Local 2348 v. C.O.P.E, Local 342,* 2009 CarswellMan 626, 189 L.A.C.(4th) 44 (Peltz) where an employee had retired, there

being no loss of current employment by any coworker. The employer had decided to assign the vacated duties to volunteers, or at least whatever amount of the work was still left to be done, to which the union objected as a matter of violating a specific contractual provision by assigning bargaining unit work to persons outside the bargaining unit. It also alleged that the integrity of the bargaining unit was at stake given its size. The employer held to the view that it lay within management rights for it to make operational decisions which included using an alternative to paid staff, such as volunteers. The arbitrator's discussion centred on the contract language, his indicating reluctance to apply any espoused general principles which might run contrary to its clear meaning. He saw his role as one of construing and applying the express terms of the agreement. The arbitrator indicated having due regard for the discussions contained in *Polymer,* supra, and *Pilkington Brothers,* supra, and other cases recognizing that vacancies can cease to exist in a particular classification after the work has been assigned to persons in another classification, and as stated in *Pilkington Brothers*: "... Rather it has been held that a vacancy exists when, in the opinion of the company, there is sufficient work in the classification to justify filling it". In *C.U.P.E. / C.O.P.E.* the arbitrator found that while the evidence was insufficient to quantify exactly how much work previously performed by the employed bargaining unit member was being performed by volunteers, "this much can be said – some bargaining unit work was moved outside the unit and was undertaken by volunteer members of the Employer". The arbitrator did not interfere with the Employer's view that there was an insufficient quantity of work available in the classification which

would require filling any supposed vacancy in its turning over what was available to volunteers.

However, the arbitrator in C.U.P.E. / C.O.P.E. also remarked that the effect of using volunteers and failing to post did not impair the bargaining unit, nor was there any contract language guaranteeing any particular level of employment. The Employer asserts here that there has been no argument made out indicating its undermining the bargaining unit or acting for other than valid business reasons. In so holding, the Employer relies on Ms. MacPherson's evidence that the proportion of bargaining jobs has remained relatively constant for many years, and advances her explanation for the reasons behind its contracting out some amount of the work, done without encountering any layoffs.

It can be observed that a portion of the Employer's written legal brief tabled in argument involved reviewing proposals from previous rounds of contract negotiations to show lack of change in the long-standing contracting out language, pointing out that the Employer had never agreed to various proposed restrictions from the Union. These proposals were detailed by Mr. Demerse in the context of setting out the background and also in his dealing with the possibility of an ambiguity existing as an alternative view. But, in all, I am ruling that while such information may provide some proper contextual background for this dispute, the pertinent contract language is capable of being interpreted by applying its plain and ordinary meaning. Certainly, it has been in place through several negotiating rounds. The Parties are taken to have established their mutual intention on the basis of the express words they used in arriving at the

long-standing acceptable contract language.

That being the case, in turning to Article 27.01 Mr. Demerse submitted that its plain and ordinary language, the election aspect, shows the Employer to have no obligation to declare a vacancy where an employee leaves his or her employment for any reason, or moves into another position at Ekati, including where management takes the contracting-out route for whatever duties it chooses to piece together in that fashion. Where an incumbent has transferred into other duties or otherwise left the assigned work behind, Article 27 applies only where the Employer " elects to ... fill a vacancy in an existing position, within the bargaining unit" i.e. its deciding to accept that approach from a group of possibilities. Counsel cited arbitrator Rayner's *Polymer* award, supra, for his observation that it has been held by arbitrators that a vacancy exists "when, in the opinion of the company, there is sufficient work in the classification to justify filling"; and also relying on arbitrator Weatherill's observations made in *Re United Brewery Workers, Local 800 and Loblaw Groceterias Co. Ltd* (1967) 18 L.A.C. 420 where he stated: "Whether or not work is required in any particular classification... is, in my view, a matter for the company to determine" going on to state that is only after the company determines that work is to be done in a particular classification without anyone in that classification to do it that a vacancy exists. Presumably it is dependent at that point on the bidding rights within the classification.

Here, counsel submitted, even in a situation where the Employer might determine there to be a vacancy, there is no requirement to post and fill it within the bargaining unit in that Article 27.01 expressly provides for an election on whether to

create and fill a new position or to fill a vacancy in an existing position, within the bargaining unit. Mr. Demerse also pointed out that the Parties have not provided any definition for "vacancy" in the agreement. The only restriction, as has been discussed in numerous arbitration awards, and in *Canadian Labour Arbitration* at topic 5:1310, is that the Employer exhibit the "good faith" requirement to have been motivated by sound business reasons and not being an attempt to erode the bargaining unit.

The Employer takes the view that as with situations cited from other cases, were the contracting-out possibility something to which the Union objects, the issue should be pursued at the bargaining table. Otherwise, the Parties should have regard for their clear contract language. It does not prevent the Employer from contracting out work as an option distinct from electing to fill a possible bargaining unit vacancy where choosing to go that route is a matter of exercising its management rights. To this point, the Union has been unsuccessful during negotiations in changing the language of Article 26.01 and Article 27.01 as plainly written. Outside contractors have been handling some underground operations which at one point were being done by bargaining unit employees, whether occasioned by the rate of absenteeism requiring relief workers on site or other valid business reasons. Further, the fact that over an approximate six month period under review by reference to the filed information sheet, the total staffing of bargaining positions fell from 467 to 459 bargaining unit employees on site, while the underground operations were starting to be cut back, does not show any erosion of the Union. There was some attrition, while other employees voluntarily transferred to aboveground bargaining unit positions, no layoffs.

Counsel also stated that there simply is no contract language present here which would require the Employer to post a vacated position on the basis of the associated duties continuing to be done, which is to say the Union to be successful, requires a pointed restriction against contracting out work which is not provided by the collective agreement. The Employer, counsel submitted, has no legal obligation to declare a vacancy on a reasonable reading of Article 27.01. The Parties have contractually agreed that the Employer maintains its right to elect to fill a vacancy in an existing position, within the bargaining unit. It always has the right to do something different such as transferring the work to another classification, distributing amongst others, or as here, contracting out the work. Surely there could be no election to fill a supposed vacancy when the management choice has been made to contract out the work.

Conclusion:

The factual findings of this matter, limited as they might be, but straightforward enough as far as they are known through the documentary materials submitted in evidence and the testimony of the single witness, Ms. MacPherson, are significant. They can be summarized as the Employer choosing to contract out work being done by some or other unidentified bargaining unit employees who had transferred, or otherwise vacated their positions; the contracting-out decision in part related to difficulties managing the level of absenteeism at Ekati; the fact of its belowground operations at Ekati closing down in the near term with bargaining unit workers transitioning into surface operations; also the fact of the Employer having utilized

shuttle drivers for some years and other workers supplied by contractors being an ongoing situation known to the Union. There is no adverse finding of fact to be made against the Employer on the evidence that it was somehow acting in bad faith, or was attempting to impair the Union's existence or undermine the unit. There were no direct layoffs, the transferring incumbents of any vacated positions continuing to do bargaining work and, according to Ms. MacPherson, the numbers of bargaining unit employees have remained relatively consistent over several years. The information sheet entered in evidence shows a reduction of eight active bargaining unit members through attrition during the observed 5 ½ months between May and mid October 2017 (approximately 1.7% of bargaining unit positions).

One observes there is no doubt the case law authorities indicate that the discretion resting with employers whether to post a vacated position under the usual posting language is not completely unfettered. There has been arbitral scrutiny applied in some cases in terms of whether the work of a classification is continuing and will continue to be done to the extent that a job exists and will continue to exist notwithstanding an employer's decision not to declare a job vacancy. Arbitrators may intervene to rule that the job should be posted and filled in accordance with the collective agreement. However, unquestionably, the case law indicates there are factual circumstances which can interfere with making this direction, such as an employer combining work in order for it to be distributed amongst other employees, or reassessing and reassigning the work to another classification altogether, or as in the *C.U.P.E /C.O.P.E* situation, bringing in volunteers.

At the same time, in turning to the situation at hand, the case law is long-established and compelling that it falls within management rights for employers to contract out work of their choosing for valid business reasons subject to the express terms of the collective agreement which here can be interpreted on their clear and ordinary meaning. Obviously, some collective agreements seriously restrict that option. Here, the contract language of Article 26.01 requires that the Employer will notify the Union and provide it with the opportunity to present proposals as an alternative prior to contracting out any work that directly results in a layoff of bargaining unit employees. Further, the language acknowledges that as at the date of the Agreement it is not the Employer's intention to contract out any work that directly results in the layoff of bargaining unit members. The evidence indicates that it has continued pursuing that intention, or at least there have been no direct layoffs to this point.

In my review of the language of Article 26.01 and Article 27.01, read in context one with the other and striving for compatibility between the two paragraphs, I am not persuaded that this contract language prevents the Employer from choosing not to elect to fill a vacancy arguably coming available through the incumbent's moving on to another position or otherwise leaving the work, and instead choosing to contract out the work. The fact that Article 27.01 employs the term "elects" suggests that the creation of a new position or filling a vacancy in an existing position, within the bargaining unit, is not an automatic occurrence at the point of a position becoming vacant. Management at some point may leave itself open to a consideration of the case law dealing with situations where an employer is still requiring the work of the

classification to be done to the extent as would establish a "job of work" as stated in the *Polymer*, supra, line of cases. But those cases do not suggest any prohibition against contracting out the work as a legitimate option, the related functions of the job which would otherwise eventually be posted were the Employer to decide to leave them within the bargaining unit. In my view Article 27.01 does not stand as a prohibition against contracting out work where the Employer decides to go in that direction as opposed to electing to fill a vacated position within the bargaining unit, being the situation at hand. The fact that there has been no contracting out described in evidence that has directly resulted in any layoff of bargaining unit members does not alter the conclusion that it was done for valid business reasons and without any indication of acting in bad faith at any point. The reasons put forward by Ms. MacPherson in her testimony cannot be said to be ill-founded or illegitimate, nor acting outside management rights as only somewhat restricted by Article 26.01.

In all, I find that there has been no contravention of Article 26.01, nor Article 27.01, and the Union's policy grievance must be decided against it on that basis. It is accordingly dismissed as it relates to the issue at hand, being the Employer's decision to contract out some work when the incumbents have moved into other positions, or otherwise vacated their positions, without any direct layoffs occurring.

DATED at Calgary, Alberta, this 9th day of January, 2018.

Tom Jolliffe, Q.C.