BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TRI-CLOVER, INC.	Case 10 No. 44943 A-4729
and	
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LODGE 34	

Appearances:

Michael, Best & Friedrich, Attorneys at Law, by Mr. Thomas W. Scrivner, appearing on behalf of the Company.

Hanson, Gasiorkiewicz & Weber, Attorneys at Law, by Mr. Robert K. Weber, appearing on behalf of the Union.

ARBITRATION AWARD

Tri-Clover, Inc., herein the Company, and the International Association of Machinists and Aerospace Workers, Lodge 34, herein the Union, jointly requested the Wisconsin Employment Relations Commission to designate the undersigned as the arbitrator to hear and decide a dispute between the parties. The undersigned was so designated. Hearing was held in Kenosha, Wisconsin on August 5, 1991. A transcript of the hearing was received on August 20, 1991. The parties completed the filing of post-hearing briefs on October 10, 1991.

ISSUE:

The parties stipulated to the following issue:

> Was the 1989-1992 labor agreement violated when I.A.M. represented employes received orthodontia coverage paid at fifty percent (50%) by the plan, up to $1,500.00 per year? If so, what remedy is appropriate?

BACKGROUND:

The Company, a wholly-owned subsidiary of Alpha-Laval, is a manufacturer of industrial fittings, pumps and flow equipment for the sanitary food processing industry. The Company has collective bargaining relationships with three unions at its Kenosha facility. IAM Lodge 34, herein the Union, represents approximately 360 production and maintenance employes. The OPIEU represents approximately 65 office and clerical employes. The IFPTE represents approximately 21 technical employes. Approximately 140 salaried employes are not represented by any union.

Prior to the negotiations which culminated in the 1989-92 labor agreement, IAM represented employes had an option of either a Freestanding dental insurance plan or a DentaCare insurance plan. The orthodontia provision in the DentaCare plan required an employe to pay half of the cost of orthodontia treatment up to a maximum of $495 per case. The Freestanding plan did not cover orthodontia work and contained a graduated co-pay provision with a maximum benefit per calendar year of $1,200.

Prior to the negotiations between the Company and the Union which culminated in the 1989-1992 agreement, the Company's non-represented salaried employes were covered by a Freestanding dental plan, which plan covered orthodontia services at a 50% co-payment level, with a maximum dental benefit per calendar year of $1,200.00.

Both the IAM and Salaried Freestanding dental plans contained an incentive feature. Employes entered the Freestanding plans at a participation level of 70%. In exchange for receiving annual preventative care treatment, the level of participation increased 10% each year. Thus, in the second year an employe complying with the preventative care requirements would receive 80% coverage, followed by 90% coverage in the third year and 100% coverage in the fourth year. An employe who missed an annual preventative care treatment would fall back 10% for each year missed, but not below the 70% level.

At the time of the 1989 negotiations, approximately 134 Union members had DentaCare coverage and approximately 250 Union members had Freestanding coverage. During the 1989 negotiations, on or about February 20, the Company suggested that the Union should drop the DentaCare option because of the high cost of the option. One of the members of the Union negotiating committee discussed his experiences under DentaCare and the high cost of the option. Because the Company had experienced problems with the administration of the DentaCare option and was concerned with the high cost of the DentaCare option compared to the cost of the Freestanding option, the Company decided to explore the possibility of eliminating the DentaCare option. On or about February 24, the Company proposed, as part of an economic package, the following: "Dental Coverage - Discontinue DentaCare Option, add Orthodontia feature to Free-standing; 50% to maximum $1200 per year. DentaCare subscribers to be enrolled at 100%, new employees enrolled at 70%." The Union rejected said proposal.

On February 26 the parties began a negotiating session which continued through the night and into the following day. During that session, the Union proposed to raise the dental maximum to $2000. The Company modified its proposal of February 24 by raising the maximum cap on all dental payments, including orthodontia, from $1200 to $1500. The parties finally settled on a maximum of $1500 and agreed that all employes would be enrolled in the Freestanding plan at a 100% participation level, including those employes and dependents who had fallen under 100% due to a failure to follow the preventative care program. Also, as part of the insurance changes, the Company offered to increase accidental death and dismemberment insurance coverage and to increase life insurance benefits for employes by $2000 per year in each of the three years of the contract, which proposals were accepted by the Union.

The Company prepared a Memorandum of Understanding for the agreement on dental insurance, which the parties signed on February 27. Said Memorandum read as follows:

> "It is agreed between the company and the union that effective 5-1-90, DentaCare will be replaced by FreeStanding Dental, paid at 100% to a maximum of $1500.00/year, including the orthodontia feature. It shall be administered the same as the current salaried

program.

Dentacare subscribers to be enrolled at 100%, new employes enrolled at 70%."

The parties also signed at least two other Memoranda of Understanding on different subjects on February 27.

After negotiations with the Union were concluded on March 1, the Company bargained with the OPIEU in May and with the IFPTE in September. DentaCare was eliminated in those contracts also and replaced by orthodontia coverage under the Freestanding plan at a 50% co-payment level with a maximum benefit of $1500.

When the Company implemented the orthodontia coverage under the Freestanding plan, the coverage was at a 50% co-payment level to a maximum of $1500. The Union grieved the co-payment feature. Grievances were not filed by either the OPIEU or the IFPTE over the co-payment feature.

POSITION OF THE UNION:

The language of the Memorandum of Understanding is clear and unambiguous in providing 100% coverage to a maximum of $1500 for dental work including orthodontia. The Union gave up the option of DentaCare in return for having better coverage in the Freestanding plan and had no intention of reducing its benefits to the same level as the non-represented salaried employes received. The non-represented salaried employes and the Union represented employes have had different plans in the past. The Company's cost manipulations are irrelevant to the contract interpretation question. There is no need to resort to outside construction aids in the interpretation of the provision in dispute, since the language is clear.

Whatever the Company's intentions were, it conveyed to the Union a document which expressly states the working agreement of the parties. The Company proposed the language modification and drafted the revised language. There was no mutual mistake. The grievance should be upheld and a make-whole order should be granted.

POSITION OF THE COMPANY:

The Memorandum of Understanding provides for 100% participation in the Freestanding plan and does not disturb the parties' agreement to provide orthodontia coverage with a 50% co-payment. The Union has seized upon the juxtaposition of references to 100% plan participation and $1500 maximum benefit levels in the Memorandum in an attempt to create a contract binding the Company to pay benefits which all admit were never proposed, discussed or agreed to in bargaining. The Union's position has no foundation in the negotiations.

While the Memorandum was less than artfully drafted, when carefully read, it means and says that the provision of orthodontia services has a 50% co-payment. The phrase "administered the same as the current salary program" has no meaning except in reference to the co-payment level. Without such a meaning, the second sentence of the first paragraph is rendered mere surplusage. Further, administration of the Freestanding plan was not even discussed.

The figure of 100% was referred to only in one context during the negotiations, i.e., the level of participation for existing employes and their dependents. Thus, it is necessary to read the reference to 100% in the

Memorandum as referring to something which was repeatedly discussed during bargaining, rather than as referring to something which was not discussed at all.

Paragraph 149 of the labor agreement specifically provides that the plan booklet is part of this agreement. The clear language of the plan booklet, which provides for a 50% orthodontia co-payment, must control over what is, at most, ambiguous language in the Memorandum.

If the Company had agreed to orthodontia coverage with no co-payment, the Company would have performed a cost analysis of such a term, as it did for 50% and 80% co-payment features. Moreover, the Company intended to eliminate DentaCare for all bargaining units and to create an identical Freestanding plan for all employes, as evidenced by the agreements with the OPIEU and the IFPTE, which plans contain a 50% co-payment for orthodontia. The Union representative conceded that coverage would be under the terms of the salaried employes Freestanding plan and that during the negotiations he had intended to acquaint himself more thoroughly with the terms of that plan.

The Union did receive a package of improved insurance benefits, even with a 50% co-payment, in exchange for elimination of DentaCare. There was a meeting of the minds to provide orthodontia coverage with the same 50% co-payment as under the salaried plan. There was no meeting of the minds to provide orthodontia services without any co-payment. If such was the Union's belief, it never made such known to the Company.

An agreement was reached and the Union is bound by that agreement. If it is determined that no agreement was reached, then the only recourse is to require further bargaining. The grievance cannot be sustained.

DISCUSSION:

The undersigned does not find the language of the disputed Memorandum to be clear and unambiguous. While the Union's interpretation of the language is plausible, it is not the only possible interpretation. The use of commas to bracket the phrase "paid at 100% to a maximum of $1500.00/year" reasonably could be construed to mean that the Memorandum was specifying three separate changes in the dental insurance program: 1) the replacement of DentaCare by Freestanding; 2) an increase in the maximum benefit from $1200 to $1500 per year; and, 3) the addition of the orthodontia feature to the Freestanding plan. The punctuation of the sentence does not exclude such an interpretation. Neither is the phrase "paid at 100% to a maximum of $1500/year" absolutely clear on its face. It would be very reasonable to argue that, read in isolation and based on its placement in the sentence, said phrase refers to the Company's required contribution toward the annual premium of the Freestanding dental plan. Clearly, it is necessary to look beyond the Memorandum to interpret the meaning of both the 100% and $1500/year figures. Even under the Union's interpretation of the phrase, one would have to review the testimony and read the insurance plan to learn that the $1500 was intended to mean the revised maximum dental benefit per calendar year. And, assuming for the sake of argument that orthodontia was to be covered at 100%, then the wording of the Memorandum would require 100% coverage of prosthodontics also, even though the parties never discussed prosthodontics during the negotiations and the plan specifies 50% coverage for such procedure, because the Memorandum does not contain any exceptions to the "100% to a maximum of $1500.00/year." Yet, the Memorandum only refers to orthodontia. Further, the second sentence of the first paragraph does not define "administered." Thus, administered could mean either simply the mechanics of receiving benefits, or, an identical plan including both benefits and the mechanics.

Based on the ambiguity of the language in the Memorandum, it is necessary to look beyond the Memorandum to determine the agreement of the parties which the Memorandum was intended to reflect.

In its brief, the Union asserts that it understood the Company's proposal to mean that orthodontia would be paid at 100% to a maximum of $1500. Both the exhibits and the testimony of the witnesses reveal that the initial Company's proposal on dental insurance on February 24 specified that orthodontia would be paid at 50% to a maximum of $1200 per year. At no time during the negotiations did either party ever specify that the orthodontia coverage was to be 100%, rather than 50%. The Union argues that such a position was inherent in its rejection of the Company's proposal of February 24 and thus the Company should have been aware of that intent. However, it is clear from the testimony of the Company witnesses that they were not aware the Union believed the orthodontia coverage was to be 100%, rather than 50%. Two members of the Company's negotiating team testified that on more than one occasion, the Union was advised that the orthodontia provision would be the same as it was in the Freestanding plan for the salaried employes, which plan included a 50% co-payment feature. Although the Union witness did not recall hearing such a statement, he did state that he planned to look at the language of the salaried employes' plan.

The only discussion during the negotiations with respect to a figure of 100% was over the placement of DentaCare subscribers on the reimbursement schedule when they switched to the Freestanding plan, if those subscribers then were being reimbursed at a rate less than 100%. There was no conflict in the testimony of the various witnesses on this fact. Neither party ever specifically proposed nor discussed 100% coverage of orthodontia.

The Memorandum at issue herein was poorly worded, but the fact that the language is ambiguous can not be used to now justify a change in the tentative agreement of the parties, which agreement the Memorandum was intended to reflect. When the Company changed its offer on dental insurance by increasing the maximum dental benefit per calendar year to $1500 and advised the Union that the plan would be the same as the salaried employes' Freestanding plan, the Union should have asked about the co-payment percentage, if it intended to accept only a 100% coverage of orthodontia. Since the salaried employes had a 50% co-payment, it would have been unreasonable for the Union to assume that the Company had proposed 100% coverage of orthodontia without mentioning that change, especially when the Company continued to refer to the salaried employes plan. There is nothing in the record to show that the Union ever informed the Company of such an assumption, if it believed 100% coverage of orthodontia was part of the package.

The Union argues that it would not have agreed to a co-payment of only 50%, because that was less than the employes were already receiving. In isolation, such an argument seems logical. However, the co-payment was part of a package. The cap on total benefits for all dental services was raised from $1200 to $1500 for all employes and their dependents. All former DentaCare subscribers were placed at a 100% reimbursement level in the Freestanding plan. There were approximately 134 DentaCare subscribers and 250 Freestanding subscribers among the IAM represented employes. The insurance changes also included increases in AD & D weekly benefits and life insurance benefits for all bargaining unit employes. The undersigned is in no position to judge whether a potential increase in orthodontia costs for one group of employes is offset by both the orthodontia coverage, at 50%, gained by a larger group of employes and the other insurance changes for all employes. Such a judgment is the responsibility of the Union's negotiating committee. The undersigned is persuaded that the agreement reached by the parties was for orthodontia

coverage at 50%, rather than 100%. Accordingly, the Company did not violate the labor agreement when it implemented orthodontia coverage at 50%.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the 1989-92 labor agreement was not violated when IAM represented employes received orthodontia coverage paid at fifty (50%) by the plan, up to $1500 per year; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 20th day of November, 1991.

By _____
Douglas V. Knudson, Arbitrator