BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SAUK PRAIRIE EDUCATION ASSOCIATION

and

SAUK PRAIRIE SCHOOL DISTRICT

Case 30
No. 47335
MA-7235 (John Freriks)

Appearances:

Dr. Richard Magnuson, District Administrator, Sauk Prairie School District, 213 Maple Street, Sauk City, WI 53583, and the Wisconsin Association of School Boards, 122 West Washington Street, Madison WI 53703 by Mr. Robert Butler, Staff Counsel, appearing on the brief, on behalf of the Sauk Prairie School District.

South Central United Educators, Post Office Box 192, Portage, WI 53901 by Mr. James M. Yoder, Executive Director appearing on behalf of the Sauk Prairie Education Association.

ARBITRATION AWARD

The Sauk Prairie Education Association (hereinafter referred to as the Association) and the Sauk Prairie School District (hereinafter referred to as the District) jointly requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as arbitrator of a dispute over teacher John Freriks' claim for orthodontia benefits. The undersigned was so designated. A hearing was held at the District offices in Sauk City, Wisconsin on August 20, 1992 at which time the parties were afforded full opportunity to present such testimony, exhibits, stipulations, other evidence and arguments as were relevant. No stenographic record was made of the hearing. The parties submitted post-hearing briefs and the record was closed on September 30, 1992.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties stipulated that the following issue was to be decided herein:

"Did the Sauk Prairie School District violate Item II, G. 6, of the Master

Agreement by denying John Freriks reimbursement of orthodontia expenses for his daughter by treating dental costs and orthodontia expenses as being restricted

by the same annual reimbursement limitation? If so, what is the appropriate remedy?"

CONTRACT LANGUAGE

ITEM II
COMPENSATION

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G. INSURANCE

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6. Dental Insurance. The District shall directly reimburse employees for dental care costs according to the following provision:

A. 100% of the first $100 for each employee and each dependent per year.

B. 80% of the next $200 for each employee and each dependent per year.

C. 50% of the next $700 for each employee and each dependent per year.

D. A lifetime maximum of $1500 paid by the District for orthodontia work per employee or dependent shall apply. The amount per year shall not exceed the limits of the above formula.

The benefit amounts shall be calculated on an annual basis to run concurrent with the duration of the master agreement. All reimbursements shall be based on a paid dental bill submitted to the District Office and shall be reimbursed within thirty (30) days after receipt. Both the dental work and payment of the bill must be completed during the fiscal year ending June 30 to be included in that year's reimbursement calculation. Should an employee resign after June 30 and prior to the school beginning, he/she will reimburse the district for 100% of the dental payment received during that time.

In addition the contract contains a provision for final and binding arbitration of disputes, with the arbitrator prohibited from modifying or amending the agreement in his opinion.

BACKGROUND

There is no dispute about the facts giving rise to this grievance. The District is a municipal employer providing general educational services to citizens in Sauk City and Prairie du Sac in south central Wisconsin. The Association is the exclusive bargaining representative for the District's teaching staff. The grievant, John Freriks, has been a middle school teacher for nineteen years.

In January of 1984, the District and the Association negotiated a new collective bargaining agreement introducing dental insurance benefits. The settlement was reached in mediation with Arbitrator Richard Pegnetter. The agreed upon plan was self-insured, with the District reimbursing employees directly for their first $1,000 of expenses per individual per year. The plan included a co-payment feature after the first $100, allowing 80% of the next $200 and 50% of the next $700. The contract set a lifetime maximum of $1500 for orthodontia. The formula in the contract has remained unchanged since 1984.

On July 22, 1991, the grievant paid a bill for his daughter's orthodontic work totalling $2,400. He submitted the bill to the District for reimbursement. On September 18th, the District told him that it would reimburse $610 of the bill. The grievant and the District became involved in an argument centering around how the District would reimburse future orthodontia claims. He filed a grievance and, on January 3, 1992, a local advisory arbitration panel ruled in his favor. The District accepted the panel's decision.

On January 31st, the District denied payment of a $53 claim for regular dental work on the grievant's daughter. The District took the position that the $610 payment in September exhausted the grievant's yearly dental benefit and that orthodontia expenses were indistinguishable from dental expenses for purposes of the annual maximum under the reimbursement formula. The grievant argued that reimbursement for dental work and reimbursement for orthodontia are separate benefits under the contract, each having a separate $610 yearly cap.

On February 5th, a grievance was filed over the denial of dental reimbursement. It was not resolved in the grievance procedure, and was referred to arbitration. Additional facts, as necessary, will be set forth below.

ARGUMENTS OF THE PARTIES

The Position of the Association

The Association takes the position that orthodontia benefits are clearly separate under the contract from regular dental expenses. Had the two been identical, the Association argues, there would have been no need to identify a separate orthodontia benefit:

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> A. 100% of the first $100 for each employee and each dependent per year.
>
> B. 80% of the next $200 for each employee and each dependent per year.
>
> C. 50% of the next $700 for each employee and each dependent per year.

D. A lifetime maximum of $1500 paid by the District for orthodontia work per employee or dependent shall apply. The amount per year shall not exceed the limits of the above formula.

Subsection (D) deals exclusively with orthodontia, and operates to establish the separate benefit. The plain meaning of the last sentence is that payments for orthodontia will not exceed $610 per year. While both benefits are subject to a formula, only a convoluted reading of the contract can yield the combined cap urged by the District.

Bargaining history also strongly supports the Association's position. The Association initially proposed a plan sold by WEAIT featuring separate caps for dental work and orthodontia. The ultimate compromise yielded the Association's desired benefits while allowing the District to self-insure. The Association notes that the minutes of the Board of Education for the 1984 session with Arbitrator Pegnetter make no reference to combining the dental and orthodontia benefits, and in fact describe the dental benefits and orthodontia benefits separately.

While the District offered evidence of their records to show that dental and orthodontia benefits have been combined in the past, this demonstrates only that the District has been incorrect for some time. No employee sees the District's accounts of dental reimbursements and, particularly given the complicated formula, past violations as documented by the District can hardly be offered as proof that the parties ever agreed to combine the dental and orthodontia benefits.

For all of the foregoing reasons, the Association asks that the grievance be sustained and the grievant reimbursed for his daughter's 1991-92 dental expenses.

The Position of the District

The District takes the position that it has no obligation to pay more than a total of $610 for dental and orthodontic claims in any given year. The contract language has been unchanged for nearly ten years, and neither party has even attempted to modify the provision during that time. The language makes no mention of two yearly benefits and nothing in the bargaining history suggests that the parties intended such a system.

The most commonly accepted means for determining the meaning of ambiguous language is to refer to the past practices of the parties. For as long as the language has been in the agreement, the District has treated the $610 as a combined total, and has never paid more than that amount to any employee in any year. The District presented proof of at least three other cases in which orthodontic claims and dental claims were applied together under the contract formula. No evidence exists of any case in which the Association's theory of the reimbursement formula was accepted by the District or demanded by employees. Thus past practice strongly and solely supports the position of the District. The Association must be deemed to have an awareness of the

District's practice with regard to dental benefits, since the knowledge of the individual employees must be the knowledge of the Union.

By failing to challenge the District's long standing, consistent and clear practice of combining dental and orthodontic expenses in calculating the yearly cap, the Association has waived any right o now grieve the issue. For all of these reasons, the District asks that the grievance be denied.

DISCUSSION

At issue in this case is whether Item II, Section G(6) of the contract allows for up to $610 per year for dental expenses, including orthodontia, or allows separate $610 per year accounts for each category of expense. The controversy turns on the meaning of the last sentence of subsection (D): "The amount per year shall not exceed the limits of the above formula."

The Language of the Agreement

The first point of reference in determining the parties' intent, and the best evidence of that intent, is the language they have used to express themselves:

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> C. 50% of the next $700 for each employee and each dependent per year.
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> D. A lifetime maximum of $1500 paid by the District for orthodontia work per employee or dependent shall apply. The amount per year shall not exceed the limits of the above formula.
>
> The benefit amounts shall be calculated on an annual basis to run concurrent with the duration of the master agreement….

The language is somewhat ambiguous, in that the last sentence of subsection (D) may be read as limiting the amount of a separate orthodontia benefit or as setting a limit on all payments. Reading Subsection (D) as a modifier of the first sentence, the orthodontia coverage is simply one of the "dental care costs" reimbursed according to the formula in subsections A, B and C, and the phrase "[the] amount per year" in the final sentence refers to the total amount per year, and serves to clarify that this coverage is not in addition to other dental care costs.

The District's understanding of subsection (D) requires that the arbitrator read in the word

"total" before the phrase "amount per year". Moreover, this reading puts something of a strain on the logical construction of the provision. The first sentence of subsection (D) deals only with orthodontia work. Under the District's reading, the second half of this clause modifies the entire contract provision rather than the first half of the clause. The placement of this modifying sentence is questionable, as there is little reason for the overall limitation to be stated in subsection (D), rather than in the general body of the dental insurance provision. A more logical construction is that the first sentence of the subsection describes the lifetime benefit and the second sentence describes how much of the benefit may be drawn upon in any given year. The idea of two distinct benefits is buttressed by the use of the plural "benefit amounts" in the first sentence of the general provision following subsection (D).

More importantly, there is no need for the final sentence of subsection (D) if, as the District argues, it simply restates the formula for benefits. Under the District's theory of the case, general dental benefits are indistinguishable from orthodontia benefits for reimbursement purposes. This being the case, the sole function of the first sentence of subsection (D) must be to note that there is a lifetime maximum on a portion of the overall benefit. The expression of that thought is not inconsistent with the yearly formula limitations in subsections A, B and C, and there is no need to restate the limitations. If, on the other hand, subsection (D) states a separate benefit which the parties wish to limit on both a lifetime and yearly basis, it makes sense to express the yearly limitation in that subsection. Under this interpretation, the phrase "the amount per year" refers to the amount of orthodontia benefit payable, and the sentence is necessary since subsections A, B and C only define the yearly amount for the general dental benefit. The principles of contract interpretation strongly favor a reading of the contract giving effect to all clauses, since the parties are not presumed to have included surplusage.

The language of the contract does not foreclose either party's interpretation. Applying the general principles of interpretation to the wording and structure of Section 6 lends much stronger support to the interpretation urged by the Association than to that argued by the District. The District, however, urges that past practice clearly favors its view of Section 6.

Past Practice

One of the best indicators of parties' intent in negotiating contract language is the manner in which they have administered the language. A practice or pattern of conduct which is known to and accepted by both parties over time will usually be a reliable indication that the parties share an understanding of the contract's meaning. In this case, the District points to several instances in which orthodontia expenses and dental expenses were combined and paid out according to the contract formula using a single $610 yearly cap.

The persuasive weight of a past practice depends upon (1) whether it has been equivocal, (2) whether it has been known to and accepted by both parties, and (3) whether it is a steady and consistent practice over time. The District has apparently been unequivocal and consistent in its

administration of the dental-orthodontia benefit. The weakness of the past practice argument in this case springs from the relatively small number of cases in which the issue has come up, and the likelihood that the Association was not aware of the practice. The Association correctly observes that the formula for reimbursing dental expenses is rather involved, and that the District does not explain its reasons for reimbursing at a particular level when claims are processed. It is hard to say whether the three teachers on whom the District relies for its past practice argument understood the reasons for the amount of their reimbursement, and it is harder still to say that the knowledge of those three individuals may be imputed to the Association and offered as proof of acquiescence in the District's interpretation.

Having noted the factors which reduce the persuasive weight of the past practice, I do find that the District has proven the existence of the claimed practice, and that it is entitled to some weight in determining what Section 6 of the contract was intended to mean. The question then is which of the principles of interpretation, those dealing with the use of language in the contract or those focusing on the conduct of the parties, are entitled to controlling weight in arriving at a conclusion. 1/

On balance, I believe that the composition of the contract provision, and the fact that accepting the District's interpretation would render the final sentence of subsection (D) surplusage, are more compelling evidence of the contract's meaning than is the past practice. While I have no doubt of the District's good faith belief in its interpretation of the orthodontia benefit, the application of a single cap for both dental and orthodontia cannot be reconciled with the manner in which Section G(6) of the contract is presently structured.

On the basis of the foregoing, and the record as a whole, it is my

AWARD

The Sauk Prairie School District violated Item II, G. 6, of the Master Agreement by denying John Freriks reimbursement of orthodontia expenses for his daughter by treating dental costs and orthodontia expenses as being restricted by the same annual reimbursement limitation. The appropriate remedy is to order that Freriks be made whole by reimbursing him for his daughter's 1991-92 dental expenses according to the formula in Item II, G. 6 without charging orthodontia expenses against the yearly maximum on his dental benefit.

Signed at Racine, Wisconsin this 6th day of October, 1992:

1/ Both parties made passing reference to bargaining history as supporting their positions. Contrary to these claims, I find that the evidence of bargaining history is completely equivocal as to the scope of the orthodontia benefit, and I have not assigned it any weight in deciding this case.

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator