BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

APPLETON PROFESSIONAL POLICE ASSOCIATION

and

CITY OF APPLETON (POLICE DEPARTMENT)

Case 427
No. 62180
MA-12189
(Grievance No. 02-003)

Case 428
No. 62181
MA-12190
(Grievance No. 02-009)

Case 432
No. 62275
MA-12216
(Grievance No. 02-004)

Case 433
No. 62276
MA-12217
(Grievance No. 02-005)

Case 434
No. 62277
MA-12218
(Grievance No. 02-007)

Case 435
No. 62278
MA-12219
(Grievance No. 02-008)

Case 436
No. 62279
MA-12220
(Grievance No. 02-010)

(Dental Insurance Grievances)

Appearances:

Andrea Hoeschen, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, appearing on behalf of the Association.

Ellen Totzke, Deputy City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, hereinafter referred to as the Association and the City, respectively, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. The above seven grievances were appealed to arbitration, and the Wisconsin Employment Relations Commission appointed the undersigned to decide them. A hearing on all seven grievances was held on June 10, 2003, in Appleton, Wisconsin. The hearing was transcribed. Thereafter, the parties filed briefs, whereupon the record was closed on August 6, 2003. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Association frames the issue as follows:

> Did the City violate the collective bargaining agreement when it unilaterally switched from Humana Dental to Delta Dental? If so, what is the appropriate remedy?

The City frames the issue as follows:

> Has the City of Appleton reduced the level of dental insurance benefits in breach of the language of the collective bargaining agreement? If so, what is the remedy?

Having reviewed the record and arguments in this case, the undersigned finds that the City's wording of the issue is appropriate for purposes of deciding these seven grievances. Accordingly, the undersigned adopts the City's wording of the issue.

PERTINENT CONTRACT PROVISION

The parties' 2002-2003 collective bargaining agreement contains the following pertinent provision:

> ARTICLE II – HOSPITAL PLAN
>
> . . .
>
> The Association retains the right to negotiate improved coverage. Reduction in benefits shall be made only by mutual agreement between the City and the Association. The selection of the carrier shall rest solely with the City.
>
> The Employer agrees to pay an amount equal to the full premium for family coverage for $1,000 maximum, no deductible free-standing dental coverage with orthodontia benefits for all permanent employees.

BACKGROUND

The City of Appleton has 15 bargaining units.

The bargaining unit involved here is the non-supervisory law enforcement bargaining unit. The Association is the exclusive collective bargaining representative for the non-supervisory employees in the police department with the power of arrest. There are about 85 employees in that bargaining unit.

The Association and the City are parties to a collective bargaining agreement which provides health and dental benefits to bargaining unit members. The collective bargaining agreement gives the City the right to change insurance carriers. If the City does change carriers though, there is to be no reduction in benefits.

The City has self-funded its dental insurance plan since 1990. It uses a third party administrator to administer the dental plan. The City pays the claims plus an administrative fee to the administrator.

Until July 1, 2002, the City's dental plan claim administrator was Humana Dental (formerly known as Employer's Health Insurance Company). Humana provided city employees with a dental benefits booklet. One copy of that booklet was dated January 1, 1994 and another copy was dated January 1, 2001. The copy of the booklet dated January 1, 1994 contained the following "Schedule of Dental Benefits" on page 2:

SCHEDULE OF DENTAL BENEFITS

Individual Maximum Benefit

Preventive, Basic, Major, Prosthodontic and Orthodontic Services	$1000 per calendar year

Preventive Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Basic Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Major Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Prosthodontic Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Orthodontic Services

Covered expenses are payable at 50% of customary, usual and reasonable charges for covered employees and covered dependent children up to the age of 19.

The booklet just referenced contained the following definition for the phrase "customary, usual and reasonable":

Customary, usual and reasonable means the lesser of:

1. the fee most often charged by the dentist.

2. the fee most often charged in the locality where the service was performed; or

3. the fee which is recognized as reasonable by a prudent person.

The copy of the booklet dated January 1, 2001 contained the following "Schedule of Dental Benefits" on page 1:

SCHEDULE OF DENTAL BENEFITS

Individual Maximum Benefit

Preventive, Basic, Major, Prosthodontic and Orthodontic Services	$1000 per calendar year

Preventive Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Basic Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Major Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Prosthodontic Services

Covered expenses are payable at 80% of customary, usual and reasonable charges.

Orthodontic Services

Covered expenses are payable at 50% of customary, usual and reasonable charges for covered employees and covered dependent children under age 19 at the time treatment commences.

The definition of "customary, usual and reasonable" did not change in the 2001 booklet. The only difference in language between the 1994 and 2001 booklets is in the section entitled "Orthodontic Services." The 1994 booklet says that "covered expenses are payable. . .for. . . children up to the age of 19", while the 2001 booklet says that "covered expenses are payable. . . for . . .children under age 19 at the time treatment commences."

Humana's 2001 booklet was not supplied to employees in the police department until mid-2002.

The record indicates that Humana's "customary, usual and reasonable" charge for each dental procedure is determined by compiling data obtained in the ongoing claim paying process. Each time a claim is processed, the procedure number, date of service, zip code of the provider, and the charge is recorded. This data is combined with data gathered and furnished to Humana by a company that surveys the average cost of dental procedures in regional markets. The company that does that work is Health Insurance Association of America. Humana's "customary, usual and reasonable" charge is not static; it changes twice a year.

Effective January 1, 2000, the City unilaterally added a $10 flex amount (also known as the $10 corridor) to the dental plan. This additional coverage specified that if the dentist charged within $10 of Humana's "customary, usual and reasonable" charge, Humana would pay a full 80% of the charge, leaving the employee to pay the remaining 20% of the charge. If the dentist charged more than $10 over Humana's "customary, usual and reasonable" charge though, Humana would pay only up to its "customary, usual and reasonable" charge for that procedure. This additional coverage was not negotiated with the Association.

On May 28, 2002, the City notified the Association in writing that effective July 1, 2002, the City was going to change its dental plan administrator from Humana to Delta Dental. This written notice also said: "The current benefit level will remain the same." The change from Humana to Delta Dental was implemented as scheduled on July 1, 2002. The City did not seek the Association's agreement or input prior to making this change. This change in dental plan administrators applied to all City employees, both represented and non-represented. Thus, the change in dental plan administrators did not just apply to non-supervisory police department employees.

The record indicates that Delta Dental has contracts with about 84% of Wisconsin dentists. Dentists who are part of the Delta Dental network file their usual fees with Delta and agree to be bound by certain uniform requirements established by Delta. The "maximum plan allowance" is the maximum amount that Delta will pay for a dental procedure. According to Delta, its "maximum plan allowance" rates are similar to the "usual and customary" rates of other dental carriers. Delta determines the "maximum plan allowance" as follows: it takes all the fees that are supplied to it by participating dentists, and incorporates that information with the claims data it receives from non-participating dentists.

In the Appleton area, about 75% of the dentists are part of the Delta Dental network.

Delta tried to duplicate the dental plan Humana administered. It prepared a dental benefits booklet for city employees. Delta's booklet contains the following "Schedule of Dental Benefits" on page 3:

SCHEDULE OF DENTAL BENEFITS

Individual Maximum Benefit

Preventive, Basic, Major, Prosthodontic and Orthodontic Services	$1000 per calendar year

Preventive Services

Covered expenses are payable at 80% of the maximum plan allowance

Basic Services

Covered expenses are payable at 80% of the maximum plan allowance

Major Services

Covered expenses are payable at 80% of the maximum plan allowance

Prosthodontic Services

Covered expenses are payable at 80% of the maximum plan allowance

Orthodontic Services

Covered expenses are payable at 50% of the maximum plan allowance for covered employees and covered dependent children under age 19 at the time treatment commences.

The only difference between this language and what was in Humana's 2001 booklet in the section entitled "Schedule of Dental Benefits" is the substitution of the phrase "the maximum plan allowance" in lieu of the phrase "customary, usual and reasonable charges."

Delta's dental booklet contains the following definition for the phrase "maximum plan allowance":

Maximum Plan Allowance means the total dollar amount allowed under the contract for a specific covered benefit including the amounts payable by Delta Dental and payable by the Covered Person.

Delta's dental booklet also contains a section entitled "Limitations and Exclusions" which begins on page 10. That section specifies thus:

The Plan does not provide benefits for:

6. . . .and composite fillings on molars, unless medically necessary.

Both Humana dental booklets also excluded "composite fillings on molars" from coverage, but the Delta Dental booklet included the phrase "unless medically necessary." (NOTE: The phrase "composite fillings" will be defined later in this section).

Delta Dental does not provide the $10 corridor that Humana provided.

. . .

The following facts pertain to the types of fillings and the coverage of fillings by Humana and Delta Dental.

Fillings can be amalgam or composite. Composite fillings are composed of a mixture of plastic resin and are sometimes called white plastic fillings or tooth colored fillings. Amalgam fillings are partially composed of silver and are sometimes called silver fillings. Composite fillings are more expensive than amalgam fillings because the composite material costs more than the amalgam material. Some dentists don't do amalgam fillings anymore. Instead, they only do composite fillings.

Humana covered amalgam fillings. So does Delta Dental.

Humana never covered composite fillings on molars. They were always a named exclusion. Under Humana, a person could get a composite filling on a molar, but if they did, they paid the cost difference between a composite filling and an amalgam filling.

Delta Dental does not cover composite fillings on molars either. They are a named exclusion. Under Delta Dental, a person can get a composite filling on a molar, but if they do, they pay the cost difference between a composite filling and an amalgam filling.

It is unclear from the record if Humana paid for composite fillings on non-molars.

Delta does not pay for composite fillings on non-molars.

The record indicates that Humana's "customary, usual and reasonable" charge for an amalgam, two surface filling (ADA Code 2150) in August, 2002 for the Appleton zip code was $121. The record does not indicate what Humana's "customary, usual and reasonable" charge was for a composite, two-surface filling (ADA Code 2386) at that time.

The record indicates that Delta Dental's "maximum plan allowance" charge for a composite two-surface filling in July, 2002 for the Appleton zip code was $99. The record does not indicate what Delta Dental's "maximum plan allowance" charge was for an amalgam, two-surface filling at that time.

. . .

The following facts pertain to three routine dental procedures and their coverage by Humana and Delta Dental. The three procedures are cleanings, exams and x-rays. They will be addressed in the order just listed.

The record indicates that Humana's "customary, usual and reasonable" charge for a cleaning (a/k/a prophylaxis – adult) (ADA Code 1110) in August, 2002 for the Appleton zip code was $56.

The record indicates that Delta Dental's "maximum plan allowance" charge for a cleaning (ADA Code 1110) in June, 2002 for the Appleton zip code was $54.

The record indicates that Humana's "customary, usual and reasonable" charge for an exam (a/k/a periodic oral evaluation) (ADA Code 0120) in August, 2002 for the Appleton zip code was $29.

The record indicates that Delta Dental's "maximum plan allowance" charge for an exam (ADA Code 0120) in June, 2002 for the Appleton zip code was $27.

The record indicates that Humana's "customary, usual and reasonable" charge for bitewing x-rays (four films) (ADA Code 0274) in August, 2002 for the Appleton zip code was $39.

The record indicates that Delta Dental's "maximum plan allowance" charge for bitewing x-rays (four films) (ADA Code 0274) in September, 2002 for the Appleton zip code was $38.

. . .

Delta's average claim payment for the period of July, 2002 through March, 2003 was $99.

FACTS

Shortly after the City changed dental plan administrators, the Association and various bargaining unit employees filed seven separate grievances which alleged a reduction in benefits

due to the change in dental plan administrators. The seven grievances were denominated by the parties as 02-003, 004, 005, 007, 008, 009 and 010. The facts pertaining to each are identified below. The grievances are not listed chronologically, but instead are listed based on their subject matter. The three cases which deal with fillings (009, 008 and 005) are listed together. The two cases which deal with dental exams and cleanings (004 and 010) are listed together. The two cases which deal with other matters (003 and 007) are listed together. The latter two cases are listed first.

Grievance 02-003

On July 4, 2002, the Association filed a grievance which contended that the switch from Humana to Delta Dental "will result in a reduction of benefits without the . . .Association's consent."

When this grievance was processed through the grievance procedure, the City identified it, in part, as the grievance which alleged that Delta Dental's "maximum plan allowance" language amounted to a reduction in benefits from Humana's "customary, usual and reasonable" language.

Grievance No. 02-007

On August 19, 2002, the Association grieved the City's change from Humana to Delta Dental. The grievance alleged that Delta's dental plan booklet contained 18 changes from what is listed in Humana's 1994 dental benefits plan booklet. The 18 alleged changes are not listed here.

On February 14, 2003, following a grievance meeting, the City's Human Resources Department sent a letter to the Association regarding this grievance which provided in part:

> The issue presented by the Union was as follows: The City of Appleton made changes to the 1994 Benefit Plan Booklet.

> The City explained the rationale of the changes made. Most of the changes were made to clarify things that Humana brought forward to the City. Two of the changes actually did impact the level of benefit by making it a better benefit. The rest of the changes were clarification and changes suggested by Humana. These changes do not impact the level of the dental benefit.
>
> To remedy the grievance, the Union requested that in the future these kinds of changes be communicated. The City will agree to notify the Union in the future of any changes made to the benefit booklet. The City intends on issuing a binder to each employee with Insurance plan booklets. Whenever changes are made, new pages will be printed and given to all employees.
>
> Given the City has agreed to notify the Union in the future, it would be our understanding that the grievance is settled.

Grievance No. 02-009

On September 24, 2002, Officer Jeffrey Gross went to his dentist, Dr. Erin Danielson, and sought to have four existing silver fillings in a rear tooth replaced with silver fillings. His reason for requesting silver fillings was that it was his understanding that Delta Dental would only allow for this filling type (i.e. silver amalgam fillings). Dr. Danielson, who is a Delta Dental network dentist, refused Gross' request to replace his existing silver fillings with silver fillings. She explained her decision in a letter which provided in pertinent part:

> It is our practice philosophy to no longer place amalgam (silver) restorations in teeth for filling purposes. Instead, we advise the use of composite resin tooth colored material for fillings. . .

Gross eventually had the four silver fillings replaced with composite fillings. A grievance concerning the facts just noted was filed October 8, 2002.

Grievance 02-008

On August 6, 2002, Officer Lori Howard received dental work from a dentist at the Northstar Dental Group. Those dentists are part of the Delta Dental network. Specifically, she had two fillings done. One was on a side tooth and the other was a rear tooth. Her dentist did composite fillings because the Northstar Dental Group does not do amalgam fillings anymore. Howard was billed $240 for this work. Howard then filed a claim with Delta Dental. Delta Dental subsequently determined that the "allowed amount" (i.e. the "maximum plan allowance") for the services rendered was $178. In making that determination, Delta Dental wrote:

> Tooth-colored filling on a back tooth is not a benefit of your plan. An allowance for a silver filling has been made and patient is responsible for the additional fee.

Delta applied the 80% co-pay to this figure (i.e. $178), and paid Howard $142.40. This resulted in Howard paying $81.60 of the billed amount (i.e. exactly 34%).

Grievance 02-005

On July 25, 2002, Joey Konkle, the wife of Officer Adam Konkle, received dental work from her dentist, Dr. Gregory Ludden. Specifically, she had x-rays and three amalgam fillings replaced on a rear tooth. The replacement fillings were composite fillings – not amalgam fillings. Dr. Ludden did composite fillings because he does not do amalgam fillings anymore. Dr. Ludden is not a Delta Dental network dentist. Dr. Ludden billed the Konkels $470 for this work. The Konkels then filed a claim with Delta Dental. Delta Dental subsequently determined that the "allowed amount" (i.e. the "maximum plan allowance") for the services rendered was $333. In making that determination, Delta Dental wrote:

> Tooth-colored filling on a back tooth is not a benefit of your plan. An allowance for a silver filling has been made and patient is responsible for the additional fee.

Delta applied the 80% co-pay to this figure (i.e. $333), and paid Konkel $266.40. This resulted in Konkel paying $203.60 of the billed amount (i.e. about 43%).

Grievance No. 02-004

On June 24, 2002, Officer Adam Konkle received dental work from his dentist, Dr. Gregory Ludden. Specifically, he had two bitewing x-rays, cleaning and a dental exam. Dr. Ludden, who is not a Delta Dental network dentist, billed Konkel $118 for this work. Konkel then filed a claim with Delta Dental. Delta Dental subsequently determined that the "allowed amount" (i.e. the "maximum plan allowance") for the services rendered was $108. In making that determination, Delta Dental wrote:

> Payment for these services is determined in accordance with the specific terms of your dental plan or of Delta's agreements with Delta network dentists.

Delta applied the 80% co-pay to this figure (i.e. $108) and paid Konkel $86.40. This resulted in Konkel paying $31.60 of the billed amount (i.e. about 27%).

Grievance No. 02-010

On September 18, 2002, Officer Scott De Broux and his wife Ann received dental work from their dentist, Dr. Louis Eich. Scott had four bitewing x-rays, cleaning and a dental exam, while Ann had cleaning and a dental exam. Dr. Eich, who is not a Delta Dental network dentist, billed the De Brouxs $126 for Scott's work, and $88 for Ann's work. DeBroux then filed two claims with Delta Dental. Delta Dental subsequently determined that the "allowed amount" (i.e. the "maximum plan allowance") for the services rendered for Scott was $119 and for Ann was $88. In making that determination, Delta Dental wrote:

> Payment for these services is determined in accordance with the specific terms of your dental plan or of Delta's agreements with Delta network dentists.

For Scott's claim, Delta applied the 80% co-pay to the figure of $119 and paid him $95.20. This resulted in him paying $30.80 of the billed amount (i.e. about 24%). For Ann's claim, Delta applied the 80% co-pay to the figure of $81, and paid her $64.80. This resulted in her paying $23.20 of the billed amount (i.e. about 26%).

. . .

The City denied all seven grievances. They were all processed through the contractual grievance procedure and were all appealed to arbitration.

. . .

At the hearing, Association witnesses Pat DeWall, Jeffrey Gross, Adam Konkel and Scott DeBroux testified that when Humana was the dental plan administrator, they never paid more than 20% of their dental bill. This testimony was not rebutted. In addition to this testimony, the record shows that when Jeffrey Gross got a cleaning and dental exam in November, 2001, he paid exactly 20% of the billed amount and Humana paid 80% of the billed amount. The record also shows that when Scott DeBroux and his wife Ann had dental work performed in March, 2002, they paid exactly 20% of the billed amount and Humana paid 80% of the billed amount. In that instance, Ann had two bitewing x-rays, cleaning and a dental exam, while Scott had cleaning and a dental exam. Their dentist billed the DeBrouxs $120 for Ann's work and $88 for Scott's work. When Humana figured the "amount allowed" (i.e. their "customary, usual and reasonable charge), it matched the "amount charged" by the dentist. For Ann's claim, Humana applied the 80% co-pay to the figure of $120 and paid her $96. This resulted in her paying $24 of the billed amount (i.e. exactly 20%). For Scott's claim, Humana applied the 80% co-pay to the figure of $88 and paid him $70.40. This resulted in him paying $17.60 of the billed amount (i.e. exactly 20%).

POSITIONS OF THE PARTIES

Association

The Association's position is that when the City switched from Humana Dental to Delta Dental, it reduced the level of benefits in violation of the collective bargaining agreement. The Association's contention is based on the premise that Delta pays less for dental procedures than Humana did. Building on that premise, the Association avers that some employees now pay more for the cost of their dental care (i.e. they have greater out-of-pocket expenses) under the Delta plan than when they were under the Humana plan. As the Association sees it, increased costs for participants constitutes a reduction in benefits. It elaborates on this contention as follows.

First, the Association addresses the question of which Humana plan is going to be used as a base point for purposes of making comparisons with the Delta plan. Rhetorically speaking, is it the 1994 plan booklet or the 2001 booklet? The Association maintains it should be the 1994 booklet. According to the Association, any changes made to the 1994 plan "are ineffectual, as it is undisputed that the City unilaterally made changes without proper notice to the Union."

Next, the Association compares the 1994 Humana plan to the new Delta plan. For the most part, the Association does not dispute the City's contention that the Delta plan covers the same dental procedures as the Humana plan did. However, the Association contends there are still some differences between the two plans.

One difference which the Association cites is that the Delta plan does not have the $10 corridor that the Humana plan did. The Association contends that the City's argument that it could unilaterally eliminate the $10 corridor because it claims to have unilaterally adopted it is a non sequitur. The Association submits in this regard that the collective bargaining agreement prohibits any reduction in benefits, regardless of how the benefits came about.

The Association avers that the most significant difference between the new Delta plan, and the 1994 Humana plan, is that Delta's "maximum plan allowance" reimbursement rates are less than Humana's "usual and customary" reimbursement rates. According to the Association, the record evidence shows that Humana paid more than Delta Dental does for the following dental procedures: exams, cleanings, x-rays and fillings. To support that contention, the Association maintains that the record shows that on exams, Humana paid $29 while Delta pays $27; on cleanings, Humana paid $56 while Delta pays $54; on bitewing x-rays (four films), Humana paid $39 while Delta pays $38; and on silver amalgam fillings, Humana paid $121 while Delta pays $99. The Association avers that in each of these instances, Delta's reimbursement rate is less than Humana's was, so it should be self-evident that employees now pay more. The Association argues that a reduction in reimbursement rates is a reduction in benefits.

The Association expounds further on the last dental procedure listed in the preceding paragraph (i.e. fillings). First, it avers that Delta refuses to cover composite fillings for any reason, even when they are the only type of filling provided by Delta dentists. The Association maintains that the effect of this policy is that even those employees who obediently

go to a Delta dentist are unable to obtain 80% coverage for their fillings. Second, it contends that even if Humana's plan excluded composite fillings, Delta still covers both composite and amalgam fillings at a lower rate than Humana did. This means that even if an employee was only reimbursed at the amalgam rate, they would get reimbursed more under Humana than under Delta.

Next, the Association contends that a requirement that employees switch dentists is a reduction in benefits. According to the Association, the ability to choose one's health care provider is a medical benefit, and impinging on that ability is a reduction in benefits. Building on that premise, the Association submits that if the prior plan and past practice allowed employees to choose their own dental provider without a financial penalty, then the City must preserve that level of choice for employees, even if the City has negotiated the right to change insurance carriers.

Finally, the Association responds as follows to the City's defense that only some bargaining unit employees have increased costs. As the Association sees it, that admission alone establishes that the City violated the agreement by making a change that resulted in a reduction in benefits for some employees. To support that contention, the Association notes that City Exhibit 2 purports to show that in a random sample of 19 employees, five employees would have increased costs in various procedures as a result of Delta covering less than Humana would have. As the Association sees it, it is immaterial that the higher costs were suffered by a minority of employees; cost savings for some employees do not negate the cost increases to other employees. The Association argues that measuring contractual compliance in the aggregate is a fallacy. To illustrate this, the Association notes that if the City unilaterally reduced one officer's pay by $1 per hour, this would violate the collective bargaining agreement even if the City also unilaterally increased ten officers' pay by $2 per hour. The Association argues that what is material here is that some bargaining unit employees have had their dental benefits diminished. The Association avers that the loss need not be borne by the entire bargaining unit to constitute a reduction in benefits.

The Association therefore asks the arbitrator to sustain all seven grievances. As a remedy, the Association asks that the City be ordered to return to the status quo and make the bargaining unit employees whole for any costs/losses incurred. The Association asserts that as part of this remedy, the City should not recover from employees who had a cost savings under the Delta Dental plan. In the Association's view, the employees have taken no steps that

would justify holding them accountable for the City's mistake. The Association further asks the arbitrator to retain jurisdiction to resolve any dispute over remedy.

City

The City's position is that it did not reduce the level of dental benefits or change the level of coverage when it switched from Human Dental to Delta Dental as its dental plan administrator. In its view, each and every level of coverage remained the same. It avers that since there was no reduction in benefits, no contract violation occurred and all seven grievances should be denied. It elaborates on this contention as follows.

As the City sees it, while there is just one issue to be decided herein (i.e. whether there was a reduction in dental benefits), there are two sub issues that are subsumed therein. They are as follows: 1) the difference between the "customary, usual and reasonable" language of the Humana plan vs. the "maximum plan allowance" language of the Delta Dental plan; and 2) the coverage for fillings (i.e. amalgam fillings on molars vs. composite fillings on molars).

The City begins its brief by making the following comments concerning the seven separate grievances.

With respect to Grievance No. 02-003, the City interprets that grievance to allege a general reduction in the dental insurance benefits for Association members. As the City sees it, that grievance contains "mere speculation" on the part of the Association, as it "was filed based upon conversations with the City and its benefits consultant with regard to the possible outcomes of the change in administration of the dental plan under Delta Dental."

The City interprets Grievance No. 02-007 to allege reduction in benefits based upon changes in the language from the 1994 Humana booklet. As the City sees it, that grievance intertwines changes made from the 1994 Humana booklet with the 2001 Humana booklet. According to the City, that grievance does not focus on any change in language from Humana to Delta, but instead focuses on changes between the two Humana booklets. The City essentially argues in the alternative that if this grievance does allege differences between the Humana plans and the Delta plan, a review of same "clearly shows that the Schedule of Dental Benefits and Covered Dental Expenses in all three booklets are virtually identical." In fact, the City avers that "each provision of the booklets regarding benefits is the same."

As part of its discussion on this grievance, the City opines as follows about the testimony of Association witness David Huttleston. The City contends that while he focused on alleged changes in the plan from Humana to Delta, he was unable to articulate actual changes in language from the Humana booklets to the Delta booklet. According to the City, those topics with which he took issue were shown to be set out using the same language in both the Humana booklets and the Delta booklet. The City maintains that two of the substantive coverage changes he talked about (i.e. changes in the orthodontic coverage for 19 year old children and the exclusion of composite fillings on molars unless medically necessary) in fact increased the level of benefits/coverage for bargaining unit members. As the City sees it, the balance of the changes made were to clarify language in the dental plan or changes made to comply with state or federal law regarding a variety of topics. Overall, the City argues that no evidence was presented by the Association which substantiated their claim that any of these changes reduced benefits to their members.

The City lumps Grievances 009, 005 and 008 together because all deal with fillings; specifically, the use of composite fillings on rear teeth and the fact that Delta pays only for amalgam fillings on rear teeth. The City contends that the record evidence shows that Delta's coverage on this is the same as Humana's was – both excluded composite fillings on rear teeth. If an employee chooses to get a composite filling, they would pay the difference between a composite filling and an amalgam filling, plus the standard 20% co-pay. Aside from that, the City notes that testimony was offered at the hearing that the dentists who treated the grievants (i.e. both Delta dentists and non-Delta dentists) refused to place amalgam fillings in any teeth as a general principle of their practice. The City avers that the coverage levels with regard to rear teeth fillings have nothing to do with whether or not a dentist is a Delta Dental provider but in fact is a limitation of the City's dental policy and has been a limitation of the City's policy clear back to the 1994 plan booklet. Finally, the City submits that there is nothing in either the Humana or Delta plans that forced the grievants to receive services from dentists who have made personal practice choices not to provide the covered services (i.e. amalgam fillings).

The City lumps Grievances 004 and 010 together because both deal with exams and cleanings. It notes that both grievants testified that the amounts paid by Delta were not the same as the amounts paid by Humana for prior cleanings. However, according to the City, neither was able to articulate whether the "usual and customary" rates for such procedures had changed under the Humana policy between the time of their prior cleaning and the time of the

cleaning under dispute, nor had they attempted to find out what Humana would have paid at the time of the services processed by Delta. The City asserts that the Association presented no evidence in this regard, despite the fact that Humana adjusts their "usual and customary" rates twice a year. This means that the "usual and customary" rates could rise, fall or remain unchanged.

Having thus commented on the grievances, the City turns its attention to the Association's contention that Delta's "maximum plan allowance" is different from Humana's "customary, usual and reasonable". It disputes that assertion. The City's position is that there is no real difference between these terms. According to the City, both terms describe the same concept. The City cites the following points to support that contention. First, the City notes that while Association witness Huttleston was extremely concerned about the authority given to the Plan Supervisor under the Delta Dental contract, he admitted on cross-examination that the language about which he was so troubled existed in both the Humana and Delta contracts, and therefore was not a change. Second, when questioned about the individual paragraphs in Association Exhibit 1 that were positive comments regarding the Delta Dental plan, his memory was vague and his answers minimal. Third, when cross-examined regarding the "maximum plan allowance" versus the "customary, usual and reasonable" terminology, Huttleston testified that he was unable to receive a copy of the proprietary information from Delta regarding their "maximum plan allowance" fee schedule and did not attempt to request the "customary, usual and reasonable" fee schedule from Humana. Instead, he merely relied on a selected list of ten procedure codes and fees which were provided to him by the Association. Fourth, under the Delta plan, the "maximum plan allowance" rates are applicable only to services provided by non-Delta dentists. The testimony was that 84% of the dentists in Wisconsin participate in Delta Dental plans and have agreed to accept the reimbursement levels coordinated through Delta. According to the City, that means that 84% of the dentists in Wisconsin do not bill patients for anything over the agreed upon reimbursement, and the "maximum plan allowance" only applies to the 16% of the dentists in the state who do not participate in Delta Dental plans. Fifth, the City notes that the testimony was that 78% of the dentists in the Appleton area are Delta dentists. According to the City, the employees who use Delta dentists "are charged nothing over and above what Delta allows and pay only 20% of what Delta allows or they pay 20% of the actual charge if it is less than the agreed upon fee schedule." In sum, it is the City's view that the Association has failed to show that their members have been impacted by the use of Delta's "maximum plan allowance" language because that language is essentially no different than Humana's "customary, usual and reasonable" language.

The City avers that only some bargaining unit employees have had increased costs with Delta. To support that premise, it asserts that it took the claims of a sample group, had Humana run a group of claims that had already been processed by Delta Dental, and the results were that 70% of the members either paid the same or paid less under the Delta plan than they did under the Humana plan, utilizing the $10.00 corridor. Additionally, the City calls the arbitrator's attention to the fact that after the City switched to Delta, the Association solicited information from bargaining unit members regarding their out-of-pocket expenses. It notes that only four employees came forward. According to the City, "one can hardly characterize this as an overwhelming chorus of disapproval." It further notes that one of the employees who did come forward, Lori Howard, indicated that she had no dental work done under the Humana plan, yet she felt there had been a reduction in benefits due to refusal of her dentist to provide amalgam fillings and to instead use composite fillings in molars. According to the City, she paid exactly what both the Humana plans and the Delta plan specify: first, she paid the normal 20% co-pay and then she paid the difference in cost between the composite and amalgam filling costs. The City maintains that she would have had to pay the latter cost no matter which administrator was handling the dental plan.

Next, the City responds to the Association's contention that employees' individual choice of which dentists to receive services from, as well as the individual choice of the dentists themselves as to whether or not to perform certain procedures, is a reduction in benefits from the Humana plan to the Delta plan. It disputes that assertion. As the City sees it, the individual choice of an employee as to which dentist to patronize, or the choice of an individual dentist regarding procedures they will or will not perform, or materials which they will or will not use, has nothing to do with insurance coverage or insurance plans. The City avers that it does not have control over, nor does it want to control, which dentists bargaining unit members select.

Next, the City acknowledges that Delta does not have the $10 corridor the way Humana did, but the City contends that is of no contractual consequence. Here's why. First, it notes that the $10 corridor is not referenced anywhere in the collective bargaining agreement or in either Humana dental plan booklet. The City believes that is significant. Second, the City also calls the arbitrator's attention to the fact that it (i.e. the $10 corridor) was never bargained with any group. According to the City, the reason it implemented it was to respond to complaining employees "annoyed with having to send their dentist a check for a couple of dollars for fees that were in excess of the usual and customary rates." As a result, it is the City's view that the

$10 corridor does not rise to the status of a past practice or implied contract term. Third, the City characterizes the $10 corridor as "merely a claims processing directive to Humana which offered an unbargained for benefit to all City employees regarding small, e.g. one ($1) or two ($2) dollar charges, over and above the usual and customary rates that they might have had to pay."

Finally, the City argues that the coverage under Delta is equivalent to the coverage under Humana. Building on that premise, the City asserts that equivalent coverage does not mean identical coverage. According to the City, each carrier administers the same plan a little differently, and to find absolutely identical coverage would be an impossibility. Said another way, differences in the procedures for making "usual and customary" determinations are inevitable given the uniqueness and secrecy of each carrier's data base and internal procedures. The City avers that the language giving it the right to switch carriers would be meaningless if the existence of "procedural differences" in the "usual and customary" determinations meant the coverage was changed. The City urges the arbitrator to focus on the areas of risk currently covered; not the minutiae of "usual and customary" rates.

In sum, the City maintains that no reduction in dental benefits occurred after it switched dental plan administrators. It asks that all seven grievances be denied.

DISCUSSION

At issue herein is whether the City reduced the level of dental benefits when it switched dental administrators from Humana to Delta. Based on the rationale which follows, I answer that question in the affirmative, find that action violative of the collective bargaining agreement, and order a remedy.

I begin with a description of how this discussion is structured. While seven separate grievances were filed and appealed to arbitration, there is not a separate discussion on each one. Instead, all have been incorporated into the discussion which follows. The discussion is essentially divided into two parts. In the first part, I address the contract language. In the second part of the discussion, I apply that language to the facts. This part of the discussion is the longest because this is a factually-driven decision as opposed to a language-driven decision. In this part of the discussion I will first address the amount paid for various dental procedures under Humana's "customary, usual and reasonable" language. Then, I will address the

amount paid for various procedures under Delta's "maximum plan allowance" language. Then, I will compare them and decide if there was a reduction in benefits. In the above paragraph, I announced that I find a reduction in benefits occurred, so the final matter in the discussion is the remedy.

My discussion on the contract language begins with an overview of Article 11. The bulk of that article deals with health insurance. However, this dispute does not involve health insurance, so most of Article 11 is inapplicable here. Just the last two paragraphs of that article relate to dental insurance, so in the context of this case, those two paragraphs are the only two pertinent here.

The last paragraph of Article 11 obligates the City to pay the full premium for dental insurance. Additionally, that paragraph specifies that the dental coverage is to include the following: "$1,000 maximum, no deductible free-standing dental coverage with orthodontia benefits. . ."

The next to the last paragraph of Article 11 gives the City the right to choose the insurance carrier. Subsumed into the right to chose is the right to change. Thus, the City has the right to change insurance carriers. The only caveat which is imposed on the City is that there not be a "reduction in benefits" as a result of a change in carriers. The parties do not dispute what the phrase "reduction in benefits" means. Instead, the question is whether in this particular instance, there was a reduction in benefits. The Association contends that there was while the City disputes that contention.

Having just noted what the contract language says, the focus turns to what it does not say.

To begin with, while the last paragraph specifies that the dental coverage is to include "$1,000 maximum, no deductible free-standing dental coverage with orthodontia benefits", it does not go into any further detail than that. For example, it does not specify what procedures are included and what procedures are excluded. That is not surprising. While sometimes such details are contained in the collective bargaining agreement itself, other times they are contained outside the contract in an insurance document or booklet. In this case, the details of the City's dental plan are contained in insurance plan booklets. There are two Humana plan booklets and one Delta plan booklet. In the analysis which follows, I will look at those plan

booklets for guidance in resolving this dispute. I am empowered to do so because those documents are incorporated by reference into the collective bargaining agreement (at least for the purposes of contract administration review) via the last paragraph of Article 11.

Next, while there is no reference in the contract language to any type of employee co-pay, all of the dental insurance plan booklets just referenced include an employee co-pay. This matter will be addressed in more detail later in the discussion.

Finally, it is noted that public sector labor agreements in Wisconsin commonly provide that if the employer switches insurance carriers, the new carrier will provide benefits that are equivalent or comparable or similar. When that type of language is found in the contract, arbitrators typically go through the plan documents line by line and compare the provisions, and ultimately decide whether they are equivalent or comparable or similar (depending, of course, on what word(s) the contract uses). Here, though, this contract does not contain such language. Consequently, in this case, I need not decide if the benefits under Delta are equivalent or comparable or similar to the benefits under Humana. The reason this point is noted is because one of the City's arguments herein is that the coverage under Delta is equivalent to the coverage under Humana. That is not the contractual standard here. Instead, as previously noted, the contractual standard is whether there was a reduction in dental benefits as a result of the City's change in dental plan administrators. That is the question here – not whether the plans are equivalent.

The focus now turns to the level of benefits that existed under Humana.

Since there are two Humana booklets (i.e. the 1994 version and the 2001 version), the threshold question is which one is going to be used to set the basepoint. I've decided to use the 2001 version because it's the more recent of the two and it's the one Delta tried to duplicate. However, for reasons that will become clear later in this discussion, it really does not matter which Humana booklet is used as the basepoint because both booklets contain the same "customary, usual and reasonable" language.

Before looking at that booklet though, I've decided to note the following. All three of the dental booklets involved here are almost twice as long as the parties' collective bargaining agreement. That being so, the threshold question is where do I look therein for purposes of determining the level of benefits? Suffice it to say there are many places I could look. I have

decided though that I need look no further than the "Schedule of Dental Benefits" that is found in the front of each dental booklet. My rationale for this approach will become apparent later in the discussion.

The 2001 Humana dental booklet contained a "Schedule of Dental Benefits" which indicated that preventative services, basic services, major services and prosthodontic services were payable at "80% of customary, usual and reasonable charges". While the schedule did not explicitly say so, if Humana paid "80% of customary, usual and reasonable charges", it was implicit that employees paid the balance.

I begin my discussion on Humana's language (i.e. "covered expenses are payable at 80% of customary, usual and reasonable charges") with the following observation. This language does not require an exact 80/20 split of the bill between Humana and the employee. By that, I mean that this language does not say that in every instance, Humana pays 80% of the total bill and the employee pays 20% of the total bill. If that is what the City and Humana had intended, they could have agreed to language that said that. They did not. Instead, they agreed to language that said that Humana pays 80% of the "customary, usual and reasonable charge". The distinction between that language, and language which says "Humana pays 80% of the amount charged", is important. While Humana could determine that a dentist's bill is "customary, usual and reasonable", and then pay exactly 80% of the billed amount, that result is not guaranteed under this language.

The reason the foregoing observation about the language in Humana's plan document was made is this: notwithstanding the reference to "reasonable, usual and customary charges", the record evidence shows that, at least in this bargaining unit, Humana usually paid 80% of the billed amount and the employees usually paid 20% of the billed amount for cleanings and dental exams. (NOTE: the matter of fillings will be addressed later). This statement is based on the following record evidence. First, at the hearing, Association witnesses Pat DeWall, Jeffrey Gross, Adam Konkel and Scott DeBroux testified that when Humana was the dental plan administrator, they never paid more than 20% of their dental bill. This testimony was not rebutted. Second, in addition to this unrebutted testimony, the record shows that when Jeffrey Gross had a cleaning and dental exam done in November, 2001, he paid exactly 20% of the billed amount and Humana paid 80% of the billed amount. Third, the record shows that when Scott DeBroux and his wife had a cleaning and dental exam done in March, 2002, they paid exactly 20% of the billed amount and Humana paid 80% of the billed amount. In the instances

just noted involving Gross and DeBroux, Humana determined that the "customary, usual and reasonable charge" for a cleaning and dental exam was the amount charged by the dentist. Fourth, in contrast, there are no instances documented in the record where Humana's "customary, usual and reasonable charge" was less than the amount billed. Said another way, there are no instances documented in the record where Humana paid less than 80% of the amount billed, and the employees paid more than 20% of the amount billed.

While there are no specific instances cited or contained in the record where Humana's "customary, usual and reasonable charge" for a cleaning and dental exam was less than the amount billed, and the employees therefore paid more than 20% of the amount billed, it can nevertheless be inferred from the City's unilateral implementation of the $10 corridor in January, 2000 that there were some instances in the past where that happened. In its brief, the City avers that the reason it implemented the $10 corridor was "to cover complaining employees annoyed with having to send their dentist a check for a couple of dollars for fees that were in excess of the usual and customary rates." The City also avers in its brief that if the employees had to pay anything "over and above the usual and customary rates that they might have had to pay", the amounts were small: specifically, $1 or $2. The conclusion which I draw from these statements is that in those instances where Humana's "customary, usual and reasonable charge" for a cleaning and dental exam was less than the amount billed, it was generally just a couple of dollars off. That's why the City implemented the $10 corridor. After it was implemented, Humana paid 80% of the billed amount and the employees paid 20% of the billed amount.

The City contends that since it unilaterally adopted the $10 corridor, it should be able to unilaterally eliminate it (as it did when it switched from Humana to Delta). I find otherwise. I conclude that the contractual prohibition against reduction in benefits prohibits any reduction in benefits – even those that come into being as a result of the City's unilateral act.

Having set a basepoint for comparison purposes, the focus now turns to the level of benefits which currently exists under Delta.

When Delta became the dental plan administrator, it prepared a dental benefits booklet for Appleton city employees. While the City avers in its brief that "each provision" in the Delta booklet "is the same" as the Humana booklet, that simply is not factually accurate. Each

provision is not the same. However, as was noted earlier, I'm not going to go through the Delta booklet line by line and compare it to the Humana booklet. Instead, I've decided to simply focus on the "Schedule of Dental Benefits" which is at the front of the Delta booklet. There, Delta substituted the phrase "the maximum plan allowance" in lieu of the phrase "customary, usual and reasonable charges."

The central question herein is whether there is a difference between Delta's "maximum plan allowance" for a given dental procedure and Humana's "customary, usual and reasonable" charge for the same procedure. The City contends that there is no real difference between them and that they mean the same thing. The Association disagrees.

I begin my discussion on this point by noting that Delta's definition of "maximum plan allowance" is not the same as Humana's definition of "customary, usual and reasonable." Thus, the definitions of those two phrases, which are contained in their respective plan booklets, are different. However, the fact that they have different definitions proves little. Here's why. Delta and Humana could pay the same amount for a given dental procedure even though they used different formulas to get there. For example, Delta could determine that its "maximum plan allowance" for an exam was $28 and Humana could determine that its "customary, usual and reasonable" charge for an exam was $28 as well. That being so, this decision will not be based on the definitions contained in the plan booklets. Instead, I've decided to base my decision on something more quantifiable than the definitions. What is quantifiable in this case is the amount of money paid by Humana and Delta for various dental procedures. In my view, there is sufficient information in the record to make such a comparison.

If there was no difference between Delta's "maximum plan allowance" charge and Humana's "customary, usual and reasonable" charge, as Delta representative Jerry Ratajczak testified, then one would expect the record evidence to show that. Specifically, one would expect that the record evidence would show that employees are still paying 20% of the billed amount under Delta like they did when Humana was the dental administrator. If the evidence showed that, this would support the assertion in the City's brief that employees "are charged nothing over and above what Delta allows and pay only 20% of what Delta allows or they pay 20% of the actual charge if it is less than the agreed upon fee schedule." However, the record evidence does not show that. Additionally, if Ratajczak was correct, one would expect that the record evidence would show that Delta pays the same dollar amount for a given procedure as Humana did. Once again though, it does not. These conclusions are elaborated on below.

The record evidence shows that since Delta became the plan administrator, the employees who have had cleanings and dental exams done (at least those documented in the record) are paying more than 20% of the billed amount. Specifically, in the summer of 2002, Adam Konkel paid about 27% of the billed amount for those services, Scott DeBroux paid about 24% of the billed amount for those services and Ann DeBroux (Scott's wife) paid about 26% of the billed amount for those services. What is important about these percentages is that each is above 20% - the percentage normally paid by employees when Humana was the plan administrator. After the City switched to Delta, these employees paid a higher percentage of the bill for cleanings and dental exams than they had under Humana.

The record evidence also shows that since Delta became the plan administrator, the employees who have had fillings done also paid more than 20% of the total bill. However, the bills for fillings are more problematic than are the bills for the dental procedures that were listed in the preceding paragraph (i.e. cleanings and dental exams). The following shows this. First, while both Humana and Delta cover amalgam fillings, some dentists don't do amalgam fillings anymore – they only do composite fillings. That's the situation Jeffrey Gross, Lori Howard and Joey Konkel faced and explains why they got composite rather than amalgam fillings. Second, while Delta does not pay for composite fillings on non-molars, it is unclear from the record if Humana did (pay for composite fillings on non-molars). Thus, I can't tell if there has been a change/reduction in that regard. Third, both Humana and Delta exclude composite fillings on molars. That is a named exclusion. Under both Humana and Delta, a person can get a composite filling on a molar, but if they do, they pay the cost difference between a composite filling and an amalgam filling. Fourth, while all three of the aforementioned people had fillings done on rear teeth, it is unclear from the record evidence if the teeth involved were molars or non-molars. If a molar was involved, then it is clear that the person had to pay the cost difference between a composite filling and an amalgam filling. However, if a non-molar was involved, it is unclear how much the employee had to pay under Humana because, as was noted in #2 in this paragraph, it is unknown if Humana paid for composite fillings on non-molars. Given these unanswered questions, the arbitrator decided to separate fillings from the other dental procedures noted (i.e. cleanings and dental exams).

Having previously found that some bargaining unit employees paid more than 20% of the billed amount for cleanings, dental exams and fillings after Delta became the plan administrator, the focus now turns to answering why that happened. It happened because at the time the grievances were filed, Humana and Delta had different maximum allowable fees

for the same dental procedures. The rates that Humana considered "customary, usual and reasonable" for the ten most-frequently billed dental procedures in the Appleton zip code in August, 2002 were identified in Association Exhibit 3. These were Humana's numbers. I compared the rates on that exhibit (i.e. Association Exhibit 3) with Delta's rates which are found in Association Exhibits 6, 7, 9, 11 and 13 (specifically, in Delta's "Explanation of Benefits" forms which are part of those exhibits). The following chart has been prepared to summarize the results of that comparison:

Procedure	***Humana's "Customary, Usual and Reasonable" Charge***	***Delta's "Maximum Plan Allowance" Charge***
1) Cleaning (a/k/a prophylaxis – adult) (ADA Code 1110)	*$56*	*$54*
2) Exam (a/k/a periodic oral evaluation)(ADA Code 0120)	*$29*	*$27*
3) Bitewing X-rays (Four films) (ADA Code 0274)	*$39*	*$38*
4) Filling – amalgam (Two surface) (ADA Code 2150)	*$121*	*Unknown*
5) Filling – composite (Two surface) (ADA Code 2386)	*unknown*	*$99*

The numbers on the chart compare the proverbial apples to apples in that they compare identical dental procedures based on their ADA (American Dental Association) standard numbering codes. Additionally, the numbers are all from the same time period – namely, the summer of 2002. Finally, the numbers are all from the same geographic area – namely, the Appleton zip code.

What the above chart shows is that in the summer of 2002 in the Appleton zip code, Humana clearly paid more for cleanings, exams and x-rays (procedures 1, 2 and 3 on the chart) than Delta did.

It can also be inferred from the chart that in the summer of 2002 in the Appleton zip code, Humana paid more for amalgam and composite fillings (procedures 4 and 5 on the chart) than Delta did. Here's why. Since an amalgam filling is cheaper than a composite filling, and Delta paid less for a composite filling than Humana paid for an amalgam filling, it stands to reason that Humana must have paid more for both amalgam and composite fillings than Delta did.

Putting the foregoing together, I find that in the summer of 2002 in the Appleton zip code, Delta paid less than Humana did for cleanings, exams, x-rays and fillings (both amalgam and composite).

Since Delta paid less than Humana did for those dental procedures, I conclude that as of the time the grievances were filed, Delta's "maximum plan allowance" rates were less than Humana's "customary, usual and reasonable" rates for the five dental procedures just noted. That resulted in employees paying more out of pocket for those dental procedures than they used to when Humana was the dental plan administrator.

Based on the foregoing, I find that the City reduced the level of benefits when it switched dental plan administrators from Humana to Delta. This action violated Article 11 (specifically, the next to the last paragraph of that article) wherein the City obligated itself to not reduce benefits if it switched insurance carriers.

Remedy

Having found a contractual violation, it follows that a remedy is warranted. I have decided that the following remedy is appropriate here.

First, I am not ordering the City to switch back to Humana because the City gets to select the carrier. The City can stay with Delta if it wants.

Second, if Delta remains the City's dental plan administrator, Delta can continue to pay the "maximum plan allowance" charge for the dental procedures which are covered under Delta's dental plan booklet. Nothing in this decision is intended to tell Delta how it determines its "maximum plan allowance" charge.

Third, after Delta pays its "maximum plan allowance" to the employee/covered person, then the City has to pay the employee/covered person the difference between Delta's "maximum plan allowance" and 80% of the billed amount, so that after the City's payment is made, the employee's share of the bill is (normally) 20%. (NOTE: the hedge word "normally" will be addressed in #5.)

Fourth, with regard to composite fillings on non-molars, the City is directed to ascertain whether Humana paid for composite fillings on non-molars. If they did, then #3 above applies to that dental procedure because Delta is not paying for composite fillings on non-molars. However, if Humana did not pay for composite fillings on non-molars, then Delta has not changed anything in that regard, and #3 above would not apply to composite fillings on non-molars.

Fifth, this remedy is retroactive to July 1, 2002 – the date when the City switched from Humana to Delta. As part of this remedy, the City shall review all dental claims incurred since July 1, 2002 in this bargaining unit (including the ones covered in Grievances 02-009, 008, 005, 004 and 010) and make the additional payments pursuant to #3 above and #6 below.

Sixth, while the employee's/covered person's final share of the bill will normally be 20% of the billed amount, there will be instances where it is more than that. One instance where an employee/covered person will pay more than 20% of the billed amount is when the person gets a composite filling on a molar. That was a named exclusion under the Humana plan and still is a named exclusion under the Delta plan. If that happens (i.e. an employee/covered person gets a composite filling on a molar), that person will pay the 20% co-pay, plus the cost difference between a composite filling and an amalgam filling. While there are no doubt other instances where an employee/covered person will pay more than 20% of the billed amount because of a named exclusion under the plan, those instances are not mentioned here because they were not part of the case that was litigated herein.

Seventh, I am not retaining jurisdiction over this matter.

. . .

The remaining arguments not addressed in the above discussion were considered, but were deemed unnecessary to resolve this matter.

MA-12189
MA-12190
MA-12216
MA-12217
MA-12218
MA-12219
MA-12220

In light of the above, it is my

AWARD

That the City of Appleton reduced the level of dental insurance benefits in breach of the language of the collective bargaining agreement when it switched dental plan administrators from Humana Dental to Delta Dental. In order to remedy this contract violation, the City shall take the action noted in the **Remedy** section.

Dated at Madison, Wisconsin, this 20th day of October, 2003.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
6586