

IN THE MATTER OF THE ARBITRATION)	ARBITRATOR'S
)	
BETWEEN)	OPINION AND AWARD
)	
UNITED STEEL WORKERS LOCAL 12-591)	
)	
"LOCAL" OR "THE UNION")	
)	
AND)	
)	
SHELL OIL COMPANY)	
"THE EMPLOYER")	CALCULATIONS OF MEDICAL
)	PREMIUMS PAID BY COMPANY

HEARING:

February 24, 2010
 Anacortes, Washington

HEARING CLOSED:

May 7, 2010

ARBITRATOR:

Timothy D.W. Williams
 2700 Fourth Avenue #305
 Seattle, WA 98121

REPRESENTING THE EMPLOYER:

Chris Butler, Attorney
 Sarbina Wolfs, Human Resource Representative

REPRESENTING THE UNION:

Tom Lind, United Steel Workers Representative

APPEARING AS WITNESSES FOR THE EMPLOYER:

David Sauber, HR Manager Manufacturing, Shell Oil
 Philip Metzler, Manager Policy Benefits and Services
 Alicia Smith Manager Health and Welfare
 Jauntu Rutter, HR Manager, Shell Puget Sound Refinery

APPEARING AS WITNESSES FOR THE UNION:

Scott Johnston, Bargaining Unit Chairman
 George E. Welch, Former Bargaining Unit Chairman

EXHIBITS

Joint

1. Memorandum of Agreement between Texaco Refining and marketing Inc. Puget Sound Plant and the Oil, Chemical and Atomic Workers International Union (AFL-CIO) Local I-591 signed on May 21, 1996.
2. Agreement between Texaco Refining and marketing Inc. and the Oil, Chemical and Atomic Workers International Union (AFL-CIO) Local I-591, covering all Employees of Puget Sound Refinery 1996 - 1999.
3. Texaco Refining and Marketing, Inc, (TRMI) Puget Sound Plant/Offer to Amend and Extend the Collective Bargaining Agreement between the Oil Chemical and Atomic Workers International Union (AFL-CIO) Local I-591 covering all Employees of Puget Sound Refinery, 1996 - 1999.
4. Letter Agreement between Shell Oil Products Company - Anacortes refinery and Oil, chemical and Atomic Workers International Union (AFL-CIO) Local I-591 accepted and agreed on March 6, 1996 (with attachment)
5. Alliance Company/OCAWIU Master Agreement Benefits dated August 21, 1998.
6. *Connections* - Your Alliance Benefits Program.
7. Letter Agreement between Equilon Enterprises LLC Puget Sound Refinery and paper, Allied-Industrial, Chemical and Energy Workers International Union Local 8-591 dated May 23, 2002.
8. *Dimensions* issued January 1, 1998.
9. Shell Oil Products - U.S./Motiva Enterprises/PACEWIU - Shell Benefits Agreement dated June 26, 2002.
10. *Dimensions* issued August 2002.
11. Agreement between Shell Oil Products US and Paper, Allied Industrial, Chemical and Energy Workers International Union (P.A.C.E.) Local 8-591 covering all employees of Puget Sound Refinery 2002 - 2006.
12. Letter Agreement between Shell Oil Products US Puget Sound Refinery and Paper, Allied-Industrial, Chemical and Energy Workers International Union Local 8-591 dated April 4, 2005 with attachment.
13. Grievance Report dated October 13, 2006, Grievance Number PSR-22-06.

14. Letter from Valerie Kultgen, Human Resources to United Steel Workers Union dated October 27, 2006.
15. *Dimensions* issued January 1, 2008.
16. Letter Agreement between Shell Oil Products US/Motiva Enterprises LLC Puget Sound Refinery and United Steel Workers Local 12-591 dated May 4, 2009.

Union

1. Regence Contract Effective 1-1-08
2. Regence Contract Effective 1-1-09
3. Regence Contract Effective 1-1-07

Employer

1. Alliance Med. Benefits Binder 79, 137, - Page 29 & 30,
2. Table of Various Shell Healthcare Plans, Pgs 99, 103, 107, 109, 113, 121
3. Highlights of Various Shell Healthcare Plans
4. Historical Renewals for Regence Hourly

BACKGROUND

Shell Oil Company (hereafter "the Employer" or "the Company") and United Steel Workers Local 12-591 (hereafter "Local" or "the Union") agreed to submit a dispute to arbitration. A hearing was held before Arbitrator Timothy Williams at Anacortes, Washington on February 24, 2010. At the hearing the Parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make arguments in support of their positions. An official transcript of the proceedings was taken and a copy of the transcript was provided to the Arbitrator.

At the close of the hearing, the Parties were offered an opportunity to give closing oral arguments or to provide arguments in the form of post-hearing briefs. Both parties chose to submit written briefs and the briefs were timely received by the Arbitrator. Thus the award, in this case, is based on the evidence and arguments presented during the hearing and on the arguments found in the written briefs.

SUMMARY OF THE FACTS

The grievance in this case is between the Shell Oil Company and United Steel Workers Local 12-591. The Parties are bound by a Collective Bargaining Agreement. At the time that the grievance was filed, the Parties were operating under a CBA effective 2002 through 2006, an agreement that was renewed to April 30, 2009.

The Parties provided the Arbitrator with an extensive stipulation of fact which sets forth the history behind the grievance. It is reproduced below.

1. Prior to 1998 the Puget Sound Refinery was owned and operated by Texaco Refining and Marketing, Inc. (TRMI), a subsidiary of Texaco, Inc.

2. On May 21, 1996 TRMI and the Oil, Chemical and Atomic Workers International Union (AFL-CIO) Local 1-591 (OCAW) signed a "Memorandum of Agreement," representing "the framework for a new Labor Agreement as negotiated by the parties to become effective September 1, 1996 through August 31, 1999." (Joint Exhibit 1)

3. On August 29, 1996 an "Agreement between Texaco Refining and Marketing Inc and the Oil, Chemical and Atomic Workers International Union (AFL-CIO) Local 1-591 (OCAW)" covering all employees of the Puget Sound Refinery was signed (1996 TRMI/OCAW Labor Agreement). (Joint Exhibit 2)

4. On December 15, 1997 TRMI and OCAW signed an "Offer to Amend and Extend the Collective Bargaining Agreement," which extended the 1996 TRM/OCAW Labor Agreement through August 31, 2002. (Joint Exhibit 3)

5. Prior to 1998 the Anacortes refinery was owned and operated by Shell Oil Products Company (SOPC), a subsidiary of Shell Oil Company. The Anacortes Refinery is located adjacent to the Puget Sound Refinery.

6. On March 6, 1996 SOPC and the Oil, Chemical and Atomic Workers International Union (AFL-CIO) Local 1-591 (OCAW) signed a Letter Agreement extending the collective bargaining agreement at the Anacortes Refinery through January 31, 1999. (Joint Exhibit 4)

7. In 1998 Shell Oil Company, Texaco Inc and Saudi Refining Inc formed new companies for "downstream" operations, i.e. refining, transportation and marketing of petroleum products. The primary new companies were named Equilon Enterprises LLC and Motiva Enterprises LLC. Collectively, the new companies were known as "the Alliance."

8. As a result of the formation of the Alliance, SOPC sold the Anacortes Refinery to Tesoro Inc.

9 Effective July 1, 1998 Equilon Enterprises LLC became the owner and operator of the Puget Sound Refinery.

10. During 1998 the Alliance companies negotiated with the OCAW and its various local unions regarding benefits to be offered to all Alliance employees. These negotiations resulted in an "Alliance Company/OCAWIU Master Agreement - Benefits" signed in August, 1998 by representatives of labor and management at each of the Alliance refineries, including the Puget Sound Refinery. (Joint Exhibit 5)

11. Beginning in April 1999 and continuing through 2002 the Alliance Companies offered benefits to its employees that were separate and different from the benefits previously offered

by TRMI. These benefits were explained to employees in a booklet entitled "Connections." (Joint Exhibit 6)

12. In January 1999 the Oil, Chemical and Atomic Workers International Union merged with the United Paperworkers International Union to form the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE).

13. On May 23, 2002 Equilon Enterprises LLC - Puget Sound Refinery and PACE signed a Letter Agreement extending the 1996 TRM/OCAW Labor Agreement from September 1, 2002 through April 30, 2006. (Joint Exhibit 7)

14. In 2002 Chevron acquired Texaco, Inc. As a result of this acquisition, Texaco was forced to divest itself of ownership in the Alliance Companies. Texaco's forced divestiture necessarily increased Shell's ownership stake in the Alliance Companies. Shell became the majority owner of the Alliance Companies. Equilon Enterprises LLC is now entirely owned by subsidiaries of Shell Oil Company and does business as "Shell Oil Products - U.S.," (SOP-US)

15. In accordance with its policy of offering uniform benefits to all of its employees, Shell began negotiating with the unions representing Alliance employees to transition to Shell benefits.

16. During the negotiations, copies of a booklet entitled "Dimensions," which contained the Summary Plan Descriptions for the Shell benefits were distributed to P.A.C.E. representatives, including representatives of the Puget Sound Refinery. (Joint Exhibit 8)

17. The negotiations resulted in a "Shell Oil Products - U.S./Motiva Enterprises/PACEWIU Sell Benefits Agreement" signed in June 2002 by representatives of labor and management of each of the Alliance refineries, including the Puget Sound Refinery (Joint Exhibit 9)

18. Former Alliance employees, including the employees at the Puget Sound Refinery, began receiving Shell benefits, in accordance with the Shell benefits Agreement, effective January 1, 2003.

19. In August 2002, Shell Oil Company reissued the "Dimensions" booklet and distributed it to all employees eligible for Shell benefits (Joint Exhibit 10)

20. During 2002 Shell Oil Products - U.S. and PACE began negotiations over a new collective bargaining agreement. The negotiations resulted in an "Agreement between Shell Oil Products, US and paper, Allied-Industrial, Chemical and energy Workers International Union (P.A.C.E.) Local 8-591 (AFL-CIO)" covering all employees of the Puget Sound Refinery (2002 SOP-US/PACE Labor Agreement) (Joint Exhibit 11)

21. On April 4, 2005 Shell Oil Products - U.S. and PACE signed a letter Agreement extending the 2002 SOP-US/PACE Labor Agreement through April 30, 2009. (Joint Exhibit 12)

22. Effective April 14, 2005 the United Steelworkers of America and PACE emerged to form the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied-Industrial and Service Workers International Union (USW).

23. On October 13, 2006 USW submitted Grievance No. PSR-22-06 to Shell Oil Products - U.S. (Joint Exhibit 13)

24. On October 27, 2006 Valarie Kultgen, Human Resources, on behalf of Shell Oil Products - U.S., responded to Grievance No. PSR-22-06. (Joint Exhibit 14)

25. In 2008 Shell Oil Company reissued the "*Dimensions*" booklet and distributed it to all employees eligible for Shell benefits. (Joint Exhibit 15)

26. On May 4, 2009 Shell Oil Products - U.S. and USW signed a Letter Agreement extending the 2002 SOP-US/PACE Labor Agreement through April 30, 2012. (Joint Exhibit 16)

Following an unusual set of circumstances that delayed the hearing of the matter, the grievance was ultimately submitted to Arbitrator Timothy Williams. Both Parties acknowledge that the grievance is properly before the Arbitrator to be heard and decided on its merits.

STATEMENT OF THE ISSUE

The Parties could not agree on a statement of the issue and thus empowered the Arbitrator to frame it. The Arbitrator states the issue as follows:

1. Did the Company violate any Letter Agreement or provision of a collective bargaining agreement, during the period of time covered by the grievance, by failing to pay 80% of the cost of the Regence Health Plan?
2. If so, what is the appropriate remedy?

The Parties further stipulated that the grievance was timely and properly before the Arbitrator, and that the Arbitrator may retain jurisdiction for sixty (60) days following issuance of his Award to resolve any issues over remedy.

APPLICABLE CONTRACT LANGUAGE

COLLECTIVE BARGAINING AGREEMENT, 2002 - 2006

Article I - BARGAINING

The Company will, through its appointed representatives, receive the bona fide representatives of the Paper, Allied-Industrial, Chemical and Energy Workers International Union, local 8-591, as the exclusive representatives of all of the said employees at Puget Sound Refinery for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

Article XIV - SETTLEMENT OF DISPUTES AND GRIEVANCES

* * ** * *

Expenses incident to the Board of Review procedure shall be borne equally as follows: (a) One-half by the Company and (b) one half by the complainant if acting on their own behalf, or by Paper, Allied-Industrial, Chemical and Energy Workers

International Union, P,A,C,E., Local 8-591, if it is acting as the employees representative, except that each party shall pay the expense of its own representative.

**ALIANCE COMPANY/OCAWIU
MASTER AGREEMENT
BENEFITS
August 21, 1998**

This Letter Agreement will confirm the agreement on the employee benefits plans to be made applicable to employees of Texaco, Star and Shell represented by OCAWIU and its various local Unions upon their employment by the Alliance Companies (i.e. Motiva and Equilon). The highlights of these benefit plans are outlined in the attached binder entitled "Alliance Benefits." These benefit plans will become effective and applicable on January 1, 1999, or as soon as practicable thereafter, for employees represented by the Union and shall be in lieu of all qualified benefit, health and welfare plans previously provided by Texaco, Star or Shell.

Pursuant to this agreement, the Alliance will make no attempt to unilaterally change the design or structures of the benefit plans referenced in the attached binder entitled "Alliance Benefits" for the duration of the labor agreements. However, as may be required from time to time to address inflation or other cost issues, the Alliance will continue the practice of adjusting.

- Premium levels for Company sponsored medical and dental plans
- Premium levels for other plans in which employees voluntarily participate and pay all or a significant portion of the premium, and
- The number of Health Maintenance Organizations the Company is willing to sponsor and subsidize.

Further with respect specifically to medical and dental plans, the Company will not reduce its contribution commitment during the term of the Agreement, but should circumstances require modifications to plan design to address overall plan costs, the Company agrees to notify the Union and engage in a bargaining process similar to the process utilized to reach the current agreement on benefits. Should the Parties fail to agree, the Parties will request the assistance of a mutually agreeable third party to mediate the dispute and make a recommendation for settlement. Should the Parties still be unable to reach an

agreement, the Company reserves the right to impellent the changes which have been subject to negotiation and which are generally effective in the Company.

This Letter Agreement shall be effective through the terms of the current Articles of Agreement and any extensions or renewals thereof. Either party may propose amendments to or termination of this Letter Agreement by giving separate notification of such intent at times concurrent with reopening requirements for the Articles of Agreement.

Letter Agreement

May 23, 2002

MEDICAL PLAN CONTRIBUTIONS

The Company renews and extends its current commitments that the Company's contributions toward premiums for the Alliance Medical Plan and approved alternate company sponsored medical plans for active employees will be based on an employee contribution of 80% of the premium and an employee contribution rate of 20% of the premium in accordance with all provisions of the Alliance Company/OCAWIU Master Agreement Benefits dated August 21, 1998

Letter Agreement

June 26, 2002

SHELL OIL PRODUCTS - U.S./MOTIVA ENTERPRISES/PACEWIU

SHELL BENEFITS AGREEMENT

This Agreement which is subject to ratification will confirm the understandings reached by the Parties on the employee benefit plans to be made applicable to employees of Motiva Enterprises LLC and Equilon Enterprises LLC represented by PACEWIU and its various local unions employed by Motiva Enterprises LLC and Shell Oil Products- U.S. The Shell benefits plans are described in the attached document entitled "Dimensions: which contain Summary Plan Descriptions of such plans, which govern their content and administration. The Shell benefits plans will become effective and applicable on January 1, 2003 for employees represented by the Union and shall be in lieu of all qualified benefit, health and welfare plans previously provided by Equilon and Motiva. The Alliance Company/OCAWIU Master Agreement

benefits dated August 21, 1998 is therefore cancelled effective January 1, 2003.

Letter Agreement

April 4, 2005

The Shell Oil Products US - Puget Sound Refinery (hereinafter referred to as the "Company") and the Paper, Allied-Industrial, Chemical and Energy Workers International Union and its Local 8-591 (hereinafter referred to as "the Union" and both hereinafter referred to as "the Parties") agree that the term of current contract (September 1, 2002 through April 30, 2006) and provisions therein will be extended and renewed through April 30, 2009 and will be an early settlement of the 2006 PACE national Oil Bargaining Program as well as all other issues in these negotiations subject to the following stipulations

POSITION OF THE UNION

The Union's position is that the Company failed to meet its obligations when it unilaterally reduced its medical premium contribution to less than 80%. The Union believes that the Company is bound by clear and unambiguous language requiring a full 80% contribution. The instant grievance represents a challenge to the Company's attempt to unilaterally impose a cap based on the premiums of the company-sponsored plan. The Union recognizes no agreement regarding such a cap and argues that its imposition constitutes a contractual violation.

According to the Union, each refinery negotiates its own collective bargaining agreement locally, except where otherwise agreed. The Puget Sound Refinery did not agree to a cap on the employer contributions to medical premiums with Shell the way

that the Anacortes Refinery did. Thus, the Employer is bound by a Memorandum of Agreement signed in May 2002 which requires the Company to pay 80% of the premiums for authorized alternate medical plans.

The Union argues that the language of the MOA is clear and unambiguous and creates the obligation on part of the Company to contribute 80% towards medical premiums. The MOA makes no reference to the notion that the Shell Medical Plan is to be utilized in determining any maximum payment to be made by the Company. Although the list of benefits changed when the Parties terminated the Alliance Benefits Agreement, the May 2003 MOA remains intact.

In April 2005 the Parties agreed to extend all provisions of the 2002-2006 contract through April of 2009. Once again, the Parties made no reference to any limitation on the Company's obligation to pay 80% of medical premiums. Nor can the Company point to any portion of the Dimensions Contract booklet or any Memorandum of Agreement or other document as a basis for the finding that the Union agreed to cap the Employer's medical premium contribution to alternative medical plans based on the one sponsored by the Company.

By contrast, the Company's contract with Regence Medical for the Puget Sound employees specifies that the Regence Plan would be the only one for Puget Sound employees and that the

Company is obligated to pay 80% for the premium. The Arbitrator should discount the Company's attempt to downplay the importance of this contract. However, it contains clear indication that the Company intended to commit to 80% payment for the premium.

The Union cites Elkouri & Elkouri to the effect that words are to be given their ordinary and popularly accepted meaning in the absence of an indication that they were intended otherwise. The Union also cites Elkouri & Elkouri to the effect that the clear and unambiguous contract language is to be given full effect. The Union's position is that there is no ambiguity regarding the language which establishes the Employer's obligation to contribute 80% towards medical premiums. There can be no question that the Parties' intention, as best evidenced by the language, is to hold the Employer responsible for no less than 80%. No agreement is ever entered into by this Union and the employees it represents at the Puget Sound Texaco Refinery to cap or limit that obligation in any way. As the Shell Medical Plan is not even available to these employees, there has never been any intention on their part to use the plan as a base for calculating their negotiated benefits.

When the Company chose not to honor its obligation and unilaterally reduced its medical contribution to below 80% of the premium, it violated various agreements. The Union requests that the Arbitrator sustain the grievance and issue a remedy

requiring that all employees be made whole for any monies lost with interest.

POSITION OF THE EMPLOYER

The Employer's position is that the Union fails to meet its burden of proof in the instant case. The Union does not pursue its original allegation, denied by the Company, that it manipulated the premiums for the company-sponsored plan in order to pay less towards alternative plans. The Employer also argues that the Union fails to present evidence that any agreement was violated when the Company did not pay 80% towards the Regence Plan in 2007 and 2009. Rather, the agreement in effect is one which recognizes that company contributions to alternate medical plans are capped based on the cost of the company-sponsored plan. The Arbitrator should find that no violation or breach of contract exists.

The Employer dedicates a large portion of its brief to outlining the history of the Puget Sound and Anacortes refineries and their owners and operators, especially with respect to the medical benefits historically provided to their hourly employees. When Puget Sound Refinery was owned and operated by a subsidiary of Texaco, Inc., TRMI offered medical benefits through a company-sponsored plan (TCMP) or alternate medical plan. A 1996 Memorandum of Agreement between TRMI and

the Union capped the Company's medical contribution stating "In no event, however, will the Company's contributions to applicable plans exceed its contributions to the TCMP" (Ex. J-1). Similarly, Shell negotiated a cap on medical contributions at the Anacortes Refinery. That agreement states "The Company's monthly contribution will not exceed its monthly contribution to similar coverage under the HSM option" (Ex. J-4). The employees at the Puget Sound and Anacortes refineries chose to use the Regence Plan as an authorized alternate medical plan. Because the premiums for the Regence Plan did not exceed the maximum Company contribution, the cap never affected the 80/20 split on premiums between employer and employee.

In 1998 when Shell, Texaco and Saudi Refining Inc. formed new companies, collectively known as the Alliance, the Alliance became owner and operator of the Puget Sound Refinery. The benefits offered by Alliance to the employees at Puget Sound were different from those previously offered, but they too specified a maximum contribution. The employees chose to stay with the Regence Plan which continued not to exceed the maximum Company contribution.

In 2002 Texaco left the Alliance with the result that Shell became the majority owner of the Alliance companies, one of which owns and operates the Puget Sound Refinery to the present day. All former Alliance employees began receiving Shell

benefits effective January 1, 2003. The benefits previously offered by the Alliance were cancelled by a comprehensive benefits agreement signed in June 2002 (Ex. J-9).

According to the new agreement, employees continue to be allowed to enroll in an authorized medical plan, the Regence Plan, and the Company continues to cap the contribution at the amount contributed to the company-sponsored plan. In this way, the Company is able to offer the employees the flexibility of choosing a plan other than the one sponsored by the Company, but does not take on the financial liability of enrollment in a plan which may be more expensive because it contains richer benefits or is smaller and therefore more volatile. The Company applies the same logic to the Enhanced plan which it does sponsor - the employee, not the Company, pays for the enhancement.

The instant grievance arose out of the fact that during 2007 and 2009 the premiums for the Regence Plan (as well as premiums for other alternate plans, also in 2008) actually exceeded the premiums for the company-sponsored plan, bringing the cap on company contributions into effect for the first time. Thus, Shell paid approximately 74% of the Regence Plan premiums in 2007 and approximately 78% in 2009. Company efforts to work with the Union to offer the less expensive HSM plan have not been accepted.

The Employer cites Elkouri and Elkouri to the effect that the Arbitrator should be guided by the wording of the grievance in his framing of the issue. The grievance alleges that the Company manipulated the benefits offered through the HSM plan in order to hold down the total premium and the maximum contribution to other plans. However, at the hearing the Union abandoned this allegation and made the claim that the Company breached an agreement when it paid less than 80% of the Regence Plan premiums. The Company's position is that regardless of how the Arbitrator frames the issue, the grievance is to be denied.

Firstly, the Company has not artificially held down premiums of the HSM plan. Rather, evidence on the record demonstrates that the HSM plan has undergone no significant change. Rather, the higher increase in the Regence Plan premiums is the result of a richer package of benefits and smaller plan size.

Secondly, the Employer argues that the Union cannot meet its burden of proof because there is no agreement in effect which binds the Company to pay 80% of the medical premiums regardless of the amount. Thus, no agreement can be found to have been violated. At hearing, the Union only identified one document upon which its case relies - the May 2002 agreement between the Union and the Alliance extending a previous agreement. However, this agreement is explicitly cancelled in

June 2002 when the Parties signed a new Shell Benefits Agreement which states "The Alliance Company/OCAWIU Master Agreement Benefits Dated August 21, 1998 is therefore cancelled effective January 1, 2003" (Ex. J-7).

In addition, the Union referred to the Company's contract with Regence. This contract, in the Employer's view, imposes no obligation on the Company beyond that found in labor relations documents. Appendix A states that "Employer contribution of 80% of the cost of the subscriber coverage and 80% of the cost of the dependent coverage towards all plans offered." This statement is made as part of an underwriting document and does not reflect any knowledge of the specifics of the agreement between the Company and the Union regarding how the premium is actually to be paid. It is only accurate to the extent that in most years, when the premiums for the Regence plan did not exceed those of the company-sponsored plan, the Company did pay 80%. The reason this cap is not acknowledged in Appendix A is because it is part of the agreement between the Company and Union, to which Regence is not a party. Moreover, the specifics are not necessary to the underwriter who is only concerned with the fact that the employee does contribute towards the premium.

The Employer's position is that there is an agreement between the Union and Company that acknowledges the cap on employer contributions, which is the May 4, 2009 Letter

Agreement which extends the collective bargaining agreement.

That letter states under "Health Care":

The Company renews and extends its current commitments... The Company's contributions toward premiums for approved alternative company sponsored medical plan options for active employees will be based on an 80% contribution, but in no case will it exceed its monthly contribution to the Hospital Surgical Medical (HSM) option.

The Company submits that the opening words of this section reflect a recognition by the Union that this is not a new proposal but a commitment to continue calculating Company contributions as in the past, including the cap. Evidence of past practice shows that the Company contribution was never fixed at 80% regardless of the relationship to the Company plan. Rather, the Company paid 80% prior to 2007 because the Regence Plan premiums never exceeded those of the Company plan and the cap was never reached.

The agreement which currently binds the Parties offers the same benefits to the employees at the Puget Sound Refinery as all other Shell employees. This agreement provides for a cap based on the amount contributed for coverage under the HSM plan - the same cap the Company has had in effect elsewhere since 1996. There is no additional agreement to serve as the basis for treating the Union's members differently from all other Shell employees. The Union has failed no evidence to prove that the cap was improper or improperly applied.

For all of the reasons presented above, the Employer requests that the grievance be denied.

ANALYSIS

The Arbitrator's authority to resolve a grievance is derived from the Parties' collective bargaining agreement (CBA) and the issue that is presented to him. The issue before the Arbitrator is whether the Company violated any Letter Agreement or provision of a collective bargaining agreement during the period of time covered by the grievance, by failing to pay 80% of the cost of the Regence Health Plan. By inference, the statement of the issue indicates that there is a lack of clarity as to what provision of a Letter Agreement or CBA is controlling. This question will, therefore, be a central point of discussion in the analysis.

The Arbitrator begins his analysis by noting that in a grievance arbitration proceeding, the employer is generally assigned the burden of proof in any matter involving the discipline or discharge of an employee. In all other matters, the union is assigned the burden of proof. The instant grievance does not involve an issue of discipline, but rather concerns the interpretation and application of negotiated language regarding compensation in the form of medical insurance benefits. The burden of proof, therefore, lies with the Union.

In bringing forth the instant grievance, the Union makes the allegation that the Employer failed to comply with the contractual or otherwise agreed-upon requirement that it contribute 80% of the Regence medical insurance premium. The Employer acknowledges that in 2007 and in 2009, as a result of a payment cap, it did contribute less than 80% towards the Regence premium. The Union questions whether there was a negotiated cap. Therefore, in challenging the Employer's decision to pay less than 80%, the Union carries the burden of proof to demonstrate that there was not a cap in place and thus the Employer's actions constitute a violation of an agreement.

The Arbitrator carefully reviewed the testimony, the documentary evidence and the Parties' briefs. Ultimately, he concludes that the Union did not meet its burden of proof and thus the grievance must be denied. The Arbitrator's findings and reasoning as related to this conclusion is set forth in the following multipoint analysis.

First, the evidence clearly establishes that in 2007 the Company paid 74% of the Regence medical premium and in 2009 the Company paid 78% of the premium (C 2). The terms of a new collective bargaining agreement took effect on May 1, 2009 (J 16). The Regence medical insurance premium is renewed annually effective January 1 through December 31 of the calendar year (U 1, 2 & 3). Thus, the first year that the new agreement had an

impact with regard to the medical insurance premium was January 1 through December 31, 2010. Therefore, this award is specifically limited to the 2007 and 2009 medical insurance premium payment as it impacted the instant bargaining unit. Since the original grievance was filed in 2006, the Arbitrator notes that the evidence indicates that the Company did pay 80% of the premium in 2006 and in 2008 (C 2).

Second, the Company notes that the original grievance alleges that the Company manipulated the benefits offered through the HSM plan in order to hold down the total premium and the maximum contribution to other plans. The Company contends that the Union should be held to this statement of the grievance. The Arbitrator is not persuaded by this argument and, previously in this decision, focused the issue on whether or not the Employer was obligated by either a Letter Agreement or the terms of a CBA to pay the full 80% of the medical premium. The Arbitrator is convinced that the Company knew from the outset that the Union's concern was whether the full 80% would be paid. This is specifically expressed in that portion of the grievance that described the appropriate remedy (J 13). Moreover, in the statement of the grievance the Union reserved the right to clarify the actual point of dispute.

However, while the Arbitrator is convinced that the grievance is best focused on the 80% payment, the original

grievance document does clearly indicate that the Union was aware of the Employer's practice of using the payment to the HSM medical benefit as a cap for the other medical programs in which the Company participates. Most importantly, what is clear from the grievance document is that as early as September 19, 2006 the Union was concerned that the cap would result in a less than 80% payment to the Regence medical insurance plan (J 13).

Third, the single most significant element in the Arbitrator's ultimate conclusion that the grievance should be denied is the wording in the Letter Agreement dated June 26, 2002. Specifically, in the section titled *Shell Benefits Agreement*, the Arbitrator notes that the language voids all prior agreements. The pertinent part reads:

The Shell benefits plans will become effective and applicable on January 1, 2003 for employees represented by the Union and shall be in lieu of all qualified benefits, health and welfare plans previously provided by Equilon and Motiva. The Alliance Company/OCAWIU Master Agreement Benefits dated August 21, 1998 is therefore cancelled effective January 1, 2003. (J 9)

The above language provides insight into the instant dispute in two different ways. For one thing, it expressly makes clear that the Shell benefits plans became fully operational on January 1, 2003. For another, it significantly undermines the reliance of the Union on the agreement that was reached a month earlier, May 23, 2002 (J 5). The May 23 agreement specifically links itself to the Alliance

Company/OCAWIU Master Agreement Benefits dated August 21, 1998 which is now cancelled by the new agreement.

The Arbitrator emphasizes his conclusions that the Shell benefits plans are completely separate from the Alliance Medical plan and that, as of January 1, 2003, the Alliance plan is defunct and the Shell benefits plans are the replacement. Thus, the 80%/20% language found in the May 23, 2002 agreement can have no bearing on the outcome of the instant grievance.

Fourth, the Arbitrator takes specific note of Company exhibit #2 which sets forth all of the different medical insurance programs that Shell subscribes to across the country. What is clear from this document is that the premium payment to the HSM plan provides that cap for the payment on all of the other plans. Moreover, the evidence further indicates that the cap has been consistently applied since 2003. The Arbitrator carefully reviewed the evidence, both testimonial and documentary, to determine if there was any evidence to contradict information found in Company exhibit #2. He found no contrary evidence. In other words, when the Union agreed to implement the Shell benefits plans on January 1, 2003, that agreement inherently contained the cap on premium payment as described above.

Fifth, the Arbitrator gave careful thought to the Union's argument that the Company recognized a commitment to pay the

full 80% of the premium in its paperwork with Regence. The Union relies on Appendix A of the group contract which notes that the premiums are split 80/20 between the Company and the employees. The Union's position is that the Company is under obligation to pay the 80% mentioned in Appendix A. For a number of reasons, the Arbitrator has concluded that the Union's argument is not relevant to the issue in arbitration.

The primary reason for the Arbitrator's conclusion is the fact that the Union is not party to the group contract which contains the 80/20 language in Appendix A. That contract is an agreement solely between the Company and Regence - it is not an instrument which binds the Company and the Union. Not being a party to the contract, the Union lacks the position from which to allege its violation. The language in Appendix A of the group contract does not create any obligation between the Company and the Union because it is not a labor management document.

Another reason for the Arbitrator's conclusion that Appendix A is not relevant to the issue of whether the Company failed to meet its obligation to the Union when it paid less than 80% of the Regence premiums is that Appendix A is exclusively an underwriting document intended to set down the underwriter's understanding of the employees' contributions towards their medical insurance. In other words, the document

has nothing to do with how Regence actually receives compensation from the Company. Rather, it is generated to determine the overall cost of the program, which considers employee contributions as a factor. Significantly, Appendix A is not generated to determine the dollars and cents of each individual employee's contribution. Nothing in the document leads the Arbitrator to believe that it was intended to preclude a cap on insurance premium contributions made by the Employer.

The Arbitrator's consideration of this point lastly took into account the language of the collective bargaining agreement negotiated for 2010. Clear new contract language has placed a cap on Employer contributions to health care premiums based on the cost of the company sponsored plan. There is no dispute, under this language, that the Company will not pay the full 80% of the premium when the alternative plan is more expensive than Company sponsored plan. The evidence indicates that in 2010 the Company paid only 72% of the Regence premium.

Although it was not submitted into evidence, the Arbitrator's conjecture is that this change to the negotiated contract language was not in any way reflected in Appendix A to the group contract between Regence and the Company. The Arbitrator expects that the 2010 group contract contains the exact same language regarding the 80/20 split on premiums as the 2007 group contract submitted as Union Exhibit #3, or the 2008

(U 1) or the 2009 (U 2). The Arbitrator expects that the language remains identical because, from the perspective of the underwriter, it is not a relevant item to the costing out of the overall program. The underwriter need only know that the employees are contributing a significant amount towards their health care premiums.

In summation, the Arbitrator finds that since the implementation of the Shell benefits plans on January 1, 2003, the cap that is part of those plans has been in effect for the Regence medical insurance plan. Fortunately, the cap has only had an impact on this bargaining unit in 2007 and 2009.

CONCLUSION

The Arbitrator was asked to determine whether the Employer violated any provision of the collective bargaining agreement or a Letter of Agreement when it failed to pay 80% of the Regence premium in 2007 and 2009. Ultimately, the Arbitrator found that an agreement signed on June 26, 2002 voided all prior agreements with regard to the payment of the medical insurance premium and placed the members of the bargaining unit under the Shell benefits plans. The Arbitrator further found that the Shell benefits plans have consistently provided a cap equal to the HSM payment. That cap reduced the company's premium payment in 2007 and 2009 for the Regence plan to less than 80%. Since that cap

functions as a direct product of the June 26, 2002 agreement, it cannot be said that the less than 80% payment is a violation of the CBA or any other Letter Agreement. Thus, the grievance must be denied. An award is entered consistent with these findings and conclusions.

IN THE MATTER OF THE ARBITRATION)	ARBITRATOR'S
)	
BETWEEN)	AWARD
)	
UNITED STEEL WORKERS LOCAL 12-591)	
)	
"LOCAL" OR "THE UNION")	
)	
AND)	
)	
SHELL OIL COMPANY)	
)	
"THE EMPLOYER")	CALCULATIONS OF MEDICAL PREMIUMS PAID BY COMPANY

After careful consideration of all arguments and evidence, and for the reasons set forth in the Opinion that accompanies this Award, it is awarded that:

1. The Company did not violate any Letter Agreement or provision of a collective bargaining agreement, during the period of time covered by the grievance, by failing to pay 80% of the cost of the Regence Health Plan
2. The grievance is denied.
3. Article XVI provides that expense of the Arbitrator shall be borne equally, one-half by the Company and one-half by the Union. Accordingly, the Arbitrator has split his fees between the two Parties.

Respectfully submitted on this, the 16th day of July, 2010 by

Timothy D.W. Williams
Arbitrator