IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNILEVER CANADA INC.

(the "Employer")

-AND-

MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

(the "Union")

AND IN THE MATTER OF A POLICY GRIEVANCE CONCERNING PENSION PLANS

ARBITRATOR	**ROBERT J. HERMAN**

APPEARANCES

FOR THE UNION	**DENIS ELLICKSON** **TIM CADEAU** **MIKE RIHA** **ADRIAN SPIERING**
FOR THE EMPLOYER	**PAUL A. YOUNG** **JOSE LOPEZ** **ALAN MACNAB**

HEARINGS IN THIS MATTER WERE HELD IN TORONTO ON JANUARY 5, APRIL 10, AND OCTOBER 2, 2018

AWARD

1. This is a policy grievance objecting to the Employer's plan to move employees from the existing Defined Benefit Pension Plan ("DBP") to a Defined Contribution Pension Plan ("DCP"). It is agreed that I have jurisdiction.

The Facts

2. The Employer has both a DBP and a DCP. During bargaining in 2013 for renewal of the previous Collective Agreement, the Employer announced that it would be wrapping up the DBP then in effect, that there would no longer be any such plan available for employees, and that employees then enrolled in the DBP would have to transfer over to the existing DCP. The parties discussed this issue through the exchange of numerous proposals and in numerous discussions during bargaining, the Union strenuously objecting to the proposed transfer over. For a variety of reasons, the Employer ultimately concluded that the parties had in fact agreed that the DBP could be wrapped up, and the bargaining unit employees in it then moved over to the existing DCP, as long as the Employer provided sufficient notice in advance of the transition. From the Union's perspective, however, it never made any such agreement with the Employer. Bargaining concluded without the parties realizing that each had a different understanding of what they had agreed to with respect to existing DBP employees

transferring as of a later date to the DCP.

3. Further to its understanding, in October 2013 the Employer arranged for a presentation to the Union and the employees that indicated that the DBP would be ending as of June 30, 2017 and that for those employees still in the DBP as of that date, they would as of July 1, 2017 become part of the DCP. The Employer still remained unaware that the Union did not agree to this.

4. When bargaining for the current Collective Agreement took place, the Employer did not table amended pension language, as it believed new language was unnecessary since agreement had already been reached in this respect. However, the instant grievance was subsequently filed over the company's plan to move employees from the DBP to the DCP. Matters were further complicated by the sale in July 2018 of the margarine side of the plant to a third party, Upfield Canada Inc. (also known as the "Upfield Group"), whose employees would not be covered by the Unilever pension plans, and by the movement of numerous employees who had been in the Unilever bargaining unit to the Upfield Group, employees who under certain conditions might have an opportunity to return to the Unilever bargaining unit. Meanwhile, the numbers of employees in the DBP continued to decline.

<u>Decision</u>

5. Even though it does not appear that the Union ever actually made an express agreement with the company concerning the transfer of employees into the DCP, I am

satisfied that the company had reasonable grounds to believe that the Union had agreed to its proposal of how to deal with the DBP and the movement of employees in the future to a DCP. Further, it is not clear that the DBP will continue to be viable as a pension plan, given its dwindling numbers.

6. Nevertheless, it appears that the Employer would be in breach of the Collective Agreement were it at this time to force employees still covered by the DBP into a DCP. It is apparent, however, that even if there were a breach, that on the basis of estoppel, relief would be warranted to allow the Employer to require that employees in the DBP move over to a DCP plan once the current Collective Agreement expires.

7. In the circumstances, I make the following orders:

1. All Unilever employees currently in the DBP can remain there until the expiry of the current Collective Agreement.

2. After the expiry of the current Collective Agreement, these employees are to be placed in a DCP that the parties can agree upon, or failing such agreement, in the Unilever DCP existing at the time.

3. As former Unilever employees who went to work for the Upfield Group may have opportunities to return to Unilever, and therefore be subject to this Award, I remain seized of any issues that might arise from the exercise or purported exercise of any such options to return.

4. I also remain seized of any issues arising from the grievance and this

Award, including any remedial issues.

5. This matter will continue, if necessary, on January 24, 2019, as previously scheduled.

Dated at Toronto this 24th day of October, 2018

R Herman

Robert J. Herman - Arbitrator