

**IN THE MATTER OF AN ARBITRATION BETWEEN:**

**Hamilton Health Sciences Corporation**

**(the “Hospital” or “HHS”)**

**-and-**

**Canadian Union of Public Employees, Local 7800**

**(the “Union” or “CUPE”)**

**And in the matter of two policy grievances alleging a violation of article 18.01 of the collective agreement and pertaining to extended health care benefits: compression stockings.**

**BEFORE**

**BOARD OF ARBITRATION**

Christine Schmidt, Chair  
Kelsey Orth, Employer Nominee  
Joe Herbert, Union Nominee

**APPEARANCES:**

**For HHS:** Rishi Bandhu, Counsel  
Tiffany Roblin, Employee & Labour Relations Lead

**For CUPE:** Nadine Blum, Counsel  
Dave Murphy, President, CUPE Local 7800  
Matt Alloway, CUPE National Rep  
Cathie Weaver, CUPE 7800 Grievance Chair  
Louis Rodrigues, 1<sup>st</sup> VP Ontario Council Hospital

This hearing was held at Hamilton on January 22, 2019

## AWARD

1. This award concerns two policy grievances pertaining to two CUPE bargaining units at HHS: the Service Office and Clerical Unit, and the Trades and Maintenance Unit. The grievances relate to HHS' unilateral decision to restrict where employees are able to purchase compression stockings under the HHS's extended health care benefit plan.

2. The provision for extended health care benefits is found at article 18.01 of the central portion of the collective agreement, which provides in part:

The Hospital agrees, during the term of the Collective Agreement, to contribute towards the premium coverage of participating eligible employees in the active employ of the Hospital under the insurance plans set out below subject to their respective terms and conditions including any enrolment requirements:

...

(b) The Hospital agrees to contribute 75% of the billed premium towards coverage of eligible employees in the active employ of the Hospital under the existing Blue Cross Extended Health Care Benefits Plan in effect as of September 28, 1993 (as amended below) or comparable coverage with another carrier providing for \$22,50 (single) and \$35.00 (family) deductible, providing the balance of monthly premiums is paid by the employee through payroll deductions ...

...

(e) The Hospital will provide equivalent coverage to all employees who retire early and have not yet reached age 65 and who are in receipt of the Hospital's pension plan benefits on the same basis as is provided to active employees for semi-private, extended health care and dental benefits. The Hospital will contribute the same portion towards the billed premiums of these benefits plans as is currently contributed by the Hospital to the billed premiums of active employees.

3. The matter proceeded by way of an Agreed Statement of Facts ("ASF") attached in its entirety as Schedule A to this award. The key facts are set out below. At the hearing, the parties proceeded straight to argument.

4. The Blue Cross Extended Health Care Benefits Plan (“Blue Cross Plan”) referred to in Article 18.01 (b) specifically provides for a maximum of six pairs of surgical stockings (“compression stockings”) per calendar year if prescribed by a physician. The Blue Cross Plan also sets out the following general provision in respect of features associated with all extended health care benefits:

Benefits apply anywhere in the world. Reimbursement for charges incurred outside of Ontario will be in Canadian Funds, based on the rate of exchange in effect on the date the services were rendered.

....

5. The current carrier of the extended health benefits plan (“Plan”) for HHS employees is Green Shield Canada (“GSC”). Under the GSC Plan, employees continue to be reimbursed for a maximum of six pairs of compression stocking per calendar year when prescribed by a physician, up to their “reasonable and customary” cost.<sup>1</sup>

6. In 2016, HHS observed, in consultation with GSC, a significant yearly increase in benefit costs pertaining to this particular extended health care benefit. Also, a significant percentage of the costs associated with providing compression stockings was concentrated in two particular suppliers (HHS is also a supplier of compression stockings). HHS’s audit committee recommended, and ultimately HHS decided, to make HHS pharmacies the sole supplier under the GSC Plan. It did so in an effort to address the escalating costs associated with providing this extended health care benefit.

7. Effective November 1, 2017, HHS informed employees that only those compression stockings purchased through HHS’s pharmacies (or HHS mobile clinics) would be reimbursed.

8. CUPE submits that HHS is in violation of article 18.01 (b) because the Hospital has unilaterally changed coverage for compression stockings under the Blue Cross Plan by imposing a restriction that precludes eligible employees from reimbursement for compression stockings unless they are purchased through HHS pharmacies (or HHS

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<sup>1</sup> Nothing turns on the issue of reasonable and customary charges in this case.

mobile clinics). In CUPE's submission, this is not "comparable coverage with another carrier." The Blue Cross Plan specifically provides for reimbursement of extended health care benefits – including compression stockings – "anywhere in the world." Denying all claims except those processed through HHS pharmacies (or HHS mobile clinics) is a clear and substantial change to the Plan rendering it non comparable with the Blue Cross Plan in CUPE's submission.

9. In support of its position CUPE refers the Board to the following cases: *The Scarborough Hospital and Canadian Union of Public Employees, Local 1487*, 2014 Can LII 66059 (ON LA) (Goodfellow), *St. Joseph's Healthcare (Hamilton) and CUPE Local 798*, 2014 Can LII 42574 (ON LA) (Kaplan); *Labatt Brewing Co. and SEIU, Local 2 (Express Scripts Service)*, 2016 CarswellOnt 17207 (Surdykowski) ("*Labatt Brewing*"); *Labatt Brewing Company Limited v. Interior Brewery Workers' Union Local 308*, 2018 BCCA 108 (CanLII); *Essar Steel Algoma Inc. and USW, Locals 2251, 2274*, 2009 CarswellOnt 10705 (Herlich) and *St. Joseph's Hospital and ONA*, 2013 CarswellOnt 9500 (Stephens).

10. The Hospital highlights certain facts associated with its decision to mandate its Pharmacies and mobile clinics as the sole supplier of compression stockings. It directs the Board to certain information in the ASF and the exhibits attached thereto, which demonstrate the extent of the escalating costs associated with increased claims, the concentration of those costs being attributed to two vendors, and how effective the restriction imposed has been in curtailing the increased claims for compression stockings in both bargaining units, with a decreasing cost per claim and a decrease in total cost to HHS.

11. The Hospital says that the parties, in choosing the central language at issue – and specifically the commitment to provide a "comparable" as opposed to an equal or identical plan to the Blue Cross Plan – meant to allow local hospitals the flexibility to determine how to administer the extended health care plan it provides, including the level of benefit. The Hospital contrasts the use of the term "comparable" in article 18.01 (b) with the parties' use of the term "equivalent" coverage to retirees in article 18.01 (e).

There is a clear distinction, in the Hospital's submission, between these terms, the latter being much narrower in scope. Further, the change in restricting the choice of vendor does not, in the Hospital's submission, render the Plan non-comparable.

12. The Hospital argues there are two questions to which this Board must turn its mind. First, has the Plan been diminished, and if so, has it been diminished to the point of being no longer comparable to the Blue Cross Plan. Since "comparability" is a broad loose concept, meant to provide flexibility to local hospitals, the Hospital says it is CUPE's onus to demonstrate evidence of inconvenience attributed to the change in coverage for compression stockings, rather than to speculate on any impact the change may have on employees. Further, in exceptional circumstances, the Hospital says it is willing to ship compression stockings to employees. In any event, the Blue Cross Plan entitlement to extended benefits world-wide is not of particular use in the case of compression stockings, in the Hospital's submission. To hamper the Hospital's sound decision on this issue, will be lost were CUPE to be successful in this case. HHS also points to the fact that it has removed the need for a prescription for compression stockings (except for individuals under 25), which it submits offsets any diminishment in the overall benefit caused by the implemented change, and arguably improving the Plan.

13. In addition, the Hospital says CUPE's concern that this decision of the Hospital concerning the supply of compression stockings signals further interference in other extended health care benefits is misplaced. The Hospital reiterates that its self-appointment as the sole supplier of this one particular benefit was a very deliberate, measured and limited decision taken in response to a clear and legitimate concern about the exorbitant escalating claims of a specific type. There is no reason to extrapolate from this response a broader intention to take other measures on a broader scale.

14. In support of its position the Hospital argues that the legal framework through which to assess whether its decision renders the Plan no longer comparable to the Blue Cross Plan, is established by the “basket approach” analysis described in *Hotel Dieu Grace Hospital v O.N.A.*, 2005 CarswellOnt 2537 (“*Hotel Dieu*”), which dealt with identical collective agreement language to the language in article 18.01. The Hospital also directs the Board to several cases that followed *Hotel Dieu: Windsor Regional Hospital v. O.N.A.* 2006 CarswellOnt 5326 (Samuels); *Queensway Carleton Hospital v. O.N.A (Prescription Drug Benefits Payments)* 2008 CarswellOnt 10003 (Weatherill); *Air Canada and ACPA (Policy Grievance)* 2013 CarswellOnt (Knopf) and *Kirkland Lake Power Corp. and USW Local 2020(006/2016)*, 2017 CarswellOnt 19582 (Goodfellow).

15. In reply, CUPE says that the “flexibility” to which the Hospital refers, and about which the Arbitrator comments in *Hotel Dieu*, is not about “one sided” flexibility as argued by HHS. Moreover, in CUPE’s view, even on the “basket analysis,” the imposition of a condition that denies all claims unless employees use the Hospital provider when previously there were no limitations on employee choice of vendor, cannot be construed as “comparable” to the prior Plan. Finally, in respect of the post-grievance elimination by the Hospital of the requirement for a prescription for compression stockings at HHS Pharmacies (or HHS mobile clinics), CUPE says that that evidence ought not to be considered by this board of arbitration. And even if it is considered, that fact does not make the Plan comparable or arguably better than the coverage for compression stockings under the Blue Cross Plan.

## **Decision**

16. This Board is sympathetic to the predicament in which HHS found itself: a discernable pattern of escalating costs under the Plan for claims for compression stockings, driven largely by two vendors whose average cost was considerably higher than all other vendors. On a careful review of the material before the Board, it appears that the Hospital’s unilateral decision to appoint itself as the sole supplier of

compression stockings was an effective mechanism by which the suspect claims pattern has been curtailed. However, regardless of the effectiveness of the Hospital's strategy to deal with a very real and costly problem, the issue for this Board is whether, in implementing that strategy, the Hospital violated the collective agreement between the parties. In other words, did the Hospital's decision effectively to eliminate employee choice in the selection of the vendor of compression stockings make the existing Plan no longer comparable to the Blue Cross Plan?

17. The undisputed reality in this case is that because of HHS's change to the Plan, an employee who obtains compression stockings through any supplier other than the Hospital must pay 100% of the costs associated with the benefit and she or he will not be reimbursed by the Hospital.<sup>2</sup>

18. The Hospital urges that this Board find that on a "basket analysis" identified by Arbitrator Burkett in the *Hotel Dieu* case, the change made to the Plan does not render it non-comparable to the Blue Cross Plan.

19. In *Hotel Dieu*, the issue was whether the insurance carrier's change to the coverage for orthotics caused the existing extended health care benefits plan as a whole to no longer be comparable to the threshold plan identified in the centrally negotiated collective agreement covering nurses. The language of the collective agreement, like the collective agreement in this case, required maintaining "comparable coverage". The Arbitrator determined, at paragraph 7, that the requirement to maintain comparability means that the employer "is required to contract for an extended health care benefit plan that is at least as beneficial to the covered employees as the threshold or standard."

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<sup>2</sup> It would appear that Management's response to the Audit Committee's recommendation flagged the challenges the Hospital would face if it proceeded to appoint itself as sole supplier of compression stockings. At page 8 of the report, Management's response reads, in part: A Preferred Provider Network (PPN) is not something that can be implemented by changing the terms of the benefit provider contract nor is it at the sole discretion of HR.

20. Though the Arbitrator acknowledged the “difficulties in measuring whole plans” he set out the three reasons for determining that the central collective agreement language before him was intended to require a “basket” type comparison between them. Those reasons are equally applicable here:

Firstly, article 17.01 (c) refers to the “plans,” not to the specific benefit configuration within each component of the plan. Secondly, whereas the parties could have provided for “identical” coverage as between carriers, they chose to instead to provide for “comparable” coverage, thereby in my view, evidencing an understanding that a basket-type comparison would govern. Thirdly, in the context of an extended health benefit plan under a centrally negotiated collective agreement, an item by item comparison would significantly diminish the capability to fashion an extended health care plan, that having regard to the age, gender and other demographics, would best suit the needs of the local employee population. ... so long as, on balance, the plan meets the comparative threshold or standard established under 17.01 (c).

21. As noted in the jurisprudence cited by the Hospital, Arbitrator Burkett proceeded to do a “line by line” analysis in the case before him. This Board understands that to have been the case because the only change that ONA argued rendered the extended health care plan deficient vis-à-vis the “comparable” threshold was one extended health care benefit - orthotics coverage. Hence the line-by-line comparison of orthotics coverage under the existing plan and the comparator plan to determine whether the existing plan was “at least as beneficial” to the comparator plan. Because Arbitrator Burkett found that the payment of the full cost of a pair of orthotics was not less beneficial than the prior coverage that provided for about half the cost of orthotics even though the comparator plan allowed up to two pairs of orthotics per year, he dismissed the grievance.

22. In the case before this Board, similar to the situation in *Hotel Dieu*, the parties agree that the only change to the Plan – that which CUPE says renders it non-comparable - is that employees under the current coverage are no longer permitted to purchase compression stockings from any supplier but only one supplier, whereas before there was no limitation on choice of supplier. Now, if employees purchase their compression stockings from a supplier other than the Hospital (or its mobile clinics) they



must pay 100% of the costs associated with the benefit, and those costs will not be reimbursed.

23. While the Board does not take issue with the Hospital's submission that comparability implies some level of flexibility in the fashioning of coverage, nevertheless as Arbitrator Burkett observed in *Hotel Dieu* the changed plan must be at least as beneficial as the comparator plan in addressing the needs of the local employee population.

24. As in *Hotel Dieu*, the basket in our case has only one fruit. As such, the comparison is done on a line-by-line basis. The change in the coverage pertaining to compression stocking is not at least as beneficial as the coverage for compression stockings available to employees under the Blue Cross Plan. Even if the Board were to consider the fact that many months after the introduction of the change limiting choice to one supplier only, the Hospital dropped the requirement of a prescription (except for individuals under 25), that "improvement" would not offset the denial of coverage to an employee who obtains compression stockings from a supplier other than the Hospital.

25. Having regard to the foregoing, and notwithstanding the sound business reason for proceeding as it did, this Board finds that the Hospital's appointment of HHS Pharmacies as the sole provider of compression stocking under the Plan violates article 18.01 (b) of the collective agreement. The Hospital must immediately instruct GSC to amend the extended health care plan rescinding the appointment of the Hospital's Pharmacies (and mobile clinics) as the sole supplier of compression stockings.

26. The Hospital may very well wish to continue to work with its Pharmacies (and mobile clinics) to provide incentives for employees to purchase compression stockings through them rather than other providers. It is the mandatory nature of the Hospital's program unilaterally imposed that now renders the Plan non-comparable to the Blue Cross Plan.

27. This Board remains seized to deal with any issues that may arise with respect to remedy or pertaining to the interpretation or application of this award.

Dated at Toronto on March 15, 2019.



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Christine Schmidt, Arbitrator

"I dissent" (see attached)

Kelsey Orth, Hospital Nominee

"I concur"

Joe Herbert, Union Nominee

**SCHEDULE “A”**

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**Agreed Statement of Facts – Phase 1 of Proceeding**

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**NOTE: THE PARTIES RESERVE THE RIGHT TO ARGUE WHAT, IF ANY, WEIGHT SHOULD BE GIVEN TO ANY OF THE FACTS LISTED OR DOCUMENTS ATTACHED HEREIN.**

**The Employer and Union**

1. The Employer, or “HHS”, operates a comprehensive healthcare system of seven (7) hospitals and research centers in Hamilton and West Niagara, Ontario, employing over 13,000 employees and having over 1,100 beds, including:

Juravinski Hospital and Cancer Centre  
St. Peter’s Hospital  
McMaster Children’s Hospital  
McMaster University Medical Centre  
West End Urgent Care Centre  
Hamilton General Hospital  
West Lincoln Memorial Hospital

The Employer is affiliated with a number of other healthcare centers in Hamilton, at which employees of HHS are also located, including:

Stonechurch Family Practice  
Criticall Ontario

2. A number of the Employer’s employees have a trade union as their exclusive bargaining agent. The employee groups with union representation are as follows:

<b>Employee Group</b>	<b>Union</b>
Nurses	ONA
Service, Office, and Clerical	CUPE

Trades and Maintenance	CUPE
Technologist and Technicians	OPSEU
Security Guards	OPSEU
Radiation Therapists	PIPSC
Medical Physicists	PIPSC

3. The Union represents 4,083 Service, Office and Clerical employees, and 132 Trades and Maintenance employees amongst other types of employees, whom are employed across the Employer's sites, including its administrative office at 100 King Street West in Hamilton, Ontario.
4. The Union's grievances are brought in respect of the Union's "Service, Office and Clerical" and "Trades and Maintenance" bargaining units. Their terms and conditions of employment are contained in collective agreements expiring September 28, 2017 (attached at **Tabs 1 and 2**).
5. CUPE and the Ontario Hospital Association bargain central language in respect of bargaining units at 54 hospitals across Ontario, of which HHS is one. Central language includes Article 18, the Health & Welfare provisions of the HHS Collective Agreement. A new "central agreement" was ratified in May 2018. There were no changes to Article 18.
6. Local provisions went to interest arbitration on December 18, 2018, and an award has not yet been released.

### **The Benefit Plan**

7. Article 18.01 of the Collective Agreements provide as follows in respect of extended health care benefits:

The Hospital agrees, during the term of the Collective Agreement, to contribute towards the premium coverage of participating eligible employees in the active employ of the Hospital under the insurance plans set out below subject to their respective terms and conditions including any enrolment requirements:

..

(b) The Hospital agrees to contribute 75% of the billed premium towards coverage of eligible employees in the active employ of the Hospital under the existing Blue Cross Extended Health Care Benefits Plan in effect as of September 28, 1993 (as amended below) or comparable coverage with another carrier providing for \$22,50 (single) and \$35.00 (family) deductible, providing the

balance of monthly premiums is paid by the employee through payroll deductions ...

(e) The Hospital will provide equivalent coverage to all employees who retire early and have not yet reached age 65 and who are in receipt of the Hospital's pension plan benefits on the same basis as is provided to active employees for semi-private, extended health care and dental benefits. The Hospital will contribute the same portion towards the billed premiums of these benefits plans as is currently contributed by the Hospital to the billed premiums of active employees.

8. The Employer's position is that the document attached at Tab 3 is the version of the Blue Cross Extended Health Care Benefits Plan that was in effect as of September 28, 1993. The Union has no basis to dispute this assertion.
9. The current carrier of the extended health benefits plan ("Plan") for HHS employees is Green Shield Canada ("GSC"). The Plan is self-insured and GSC administers the Plan. The "Outline of Benefits" in respect of the Service/Clerical unit is at **Tab 4**. The "Outline of Benefits" for the Trades/Maintenance bargaining unit is not included, but is identical to the document in **Tab 4**.
10. The Hospital's "benefit overview," summarizing the various benefits in effect for bargaining unit members (prior to November 1, 2017) is at **Tab 5**.
11. Prior to the current grievances, the Union had not grieved that the GSC Plan is non-comparable to the Blue Cross plan.

### **Compression Stockings**

12. Under the Plan, members are entitled to a maximum of six (6) pairs of compression stockings each calendar year.
13. Compression stockings (also known as "surgical stockings") are used to relieve symptoms of venous insufficiency and to help prevent related complications. They are available in different classes, which vary by the level of compression they exert (ranging from about 15 – 60 mmHg). Sometimes, custom-made stockings may be required. The level of compression needed is determined by a doctor (See overview of "compression stockings" at **Tab 6**).
14. Until June 1, 2018, the Plan required an initial prescription for all stocking claims with a compression factor of 20 mmHg or higher. For individuals under 25, a prescription was required. Prescriptions did not have to be

renewed if claims were made within 12 months of the previous approved claim (**Tab 7, p. 9**)

15. Measurements for the stockings needed to be taken by a qualified fitter before purchase. Fittings are generally performed at the store from which the stockings are being purchased.
16. Until November 1, 2017, there were no restrictions on where Plan members could purchase their compression stockings.

### **Employer's Concerns Over Rising Costs for Compression Stockings**

**NOTE: With respect to paragraphs 17-19 below, the Employer asserts these facts. The Union has no knowledge of these facts but does not challenge or oppose them for the purposes of this Phase of the hearing. The Union reserves the right to cross-examine/challenge these facts should this case proceed beyond Phase 1.**

17. In or about 2016, in consultation with GSC, the Employer observed significant year over year increases with respect to benefit costs in the compression stocking category.
18. For example, in 2011, the total cost of compression stocking claims across all employees was \$658,738.70. In 2016, that cost had increased to \$1,832,388.96.
19. A significant percentage of the cost related to compression stockings was concentrated in two (2) particular vendors. The Employer's Internal Audit committee, responsible for analyzing compression stocking usage and recommending solutions to control costs, found as follows with respect to the top two vendors for compression stockings between the years 2012 and 2016:
  - a. They represented between 31% and 40% of all claims from 2012 to 2016.
  - b. Of the 460 additional claims in 2015 versus 2014, 316 were claims from them;
  - c. \$287,412.00 of the \$347,412.00 increase from 2014 to 2015 (83%) were from the top two (2) vendors
20. Prior to November 1, 2017, the Employer was also a supplier for compression stockings.

## **Employer's Decision to Make Employer Sole Provider of Compression Stockings**

21. The Employer's Internal Audit committee recommended to make the Employer the sole provider of compression stockings through its retail pharmacy operations in order to control escalating costs associated with compression stocking claims. See the Hamilton Health Sciences Internal Audit report at **Tab 7**.
22. The Employer's decision to make its pharmacies the sole provider of compression stockings, effective November 1, 2017, was communicated to all of its employees on or about September 29, 2017. In this communication, employees were advised that "only compression stockings purchased through HHS Retail Pharmacies will be reimbursed by Green Shield Canada." [**Tab 8**].
23. The change applies to all HHS employees and retirees and their dependents who are enrolled in the Extended Health Care (EHC) benefits plan.
24. The Employer also prepared a PowerPoint presentation about the initiative in or about September 2017 [**Tab 9**].
25. On or about October 5, 2017, the Employer provided further clarifying information to the Union about the initiative [**Tab 10**].

## **HHS Pharmacies**

26. The Employer has pharmacies at the following locations:

- Hamilton General Hospital
- McMaster University Medical Centre
- Juravinski Cancer Centre

27. The applicable parking rates for each of these sites are at **Tab 11**.

28. In addition to permanently situated pharmacies, the Employer operates mobile fitting clinics for compression stockings at scheduled times, which are posted on the Employer's intranet. The mobile fitting clinics operate at the following locations:

- St. Peter's Hospital;
- West Lincoln Memorial Hospital;
- 100 King Street West offices;
- Juravinski Hospital.

29. The hours of operation for the pharmacies and mobile clinics are at **Tab 12**.
30. To obtain their compression stockings, employees, their dependents and retirees under the plan must be fitted by one of the HHS fitters at one of the HHS pharmacies or mobile clinics to get their measurements before purchase of the compression stockings.
31. The Employer asserts that since implementing the change, it has received two (2) requests for accommodation from Bargaining Unit Members in relation to the change in policy, as follows:
- a. On October 25, 2018, the Employer approved the purchase of a specific form of compression stocking that was unavailable through approved suppliers, in relation to a retiree's spouse [**Tab 13**].
  - b. On February 27, 2018, the Employer approved a Member's external purchase of compression stockings in November, 2017, because the Member was unaware of the change in policy because of a leave of absence [**Tab 14**].
32. The Union has no knowledge of whether or not the Employer received any other requests for exemptions.
33. The Employer's position is that it remains amenable to considering any requests for exemption from the requirement to buy compression stockings directly from its pharmacies.

### **Post-Grievance**

34. Effective June 1<sup>st</sup>, 2018 the Employer removed the requirement for most employees to obtain a prescription for compression stocking purchases. In most cases, an employee seeking to purchase compression stockings would only need to attend an Employer pharmacy, or mobile fitting clinic, for a fitting. For individuals under 25, a prescription is still required. See **tab 15**.
35. In the first twelve month period since the change was implemented, compression stocking usage has declined, total cost to the Employer has declined and the cost per claim to the Employer has declined. Data reflecting these trends across the organization are reflected at **Tab 16**.
36. Analogous usage within the Bargaining Units is reflected at **Tab 17**.
37. The Union has no knowledge of the data referred to in **Tabs 16** and **17** and reserves the right to challenge these data should this case proceed beyond Phase 1.



## **DISSENT OF EMPLOYER NOMINEE**

1. I have read the majority award (the “Decision”) in this matter and, with respect, I must dissent.
2. While the Decision does capture accurately the situation existing between the parties, I cannot agree that the change to the current Green Shield Plan implemented by HHS rendered the Plan “non-comparable” to the original Blue Cross Plan.
3. In my view, the change from multiple providers to one provider for compression stockings is more administrative than substantive; no doubt there have been other changes in procedure in the administration of benefit plans over time that have not been similarly challenged, but in this instance the challenge was made relying on one particular statement that is, respectfully, a red herring – convenient for Union counsel’s well-presented argument, but misleading nonetheless with respect to the actual issue to be decided.
4. In that regard, I note that the Decision references at paragraph 5 the statement in the original Blue Cross Plan that “benefits apply anywhere in the world”; however, rather than simply blindly applying that to our analysis, I agree with Mr. Bandhu’s suggestion, that there must be some consideration given to the practical application of that statement.
5. For instance while the parties would no doubt expect that coverage to apply to emergency medical care or acute care needs, it cannot be an expectation that it would apply so literally to medical items that,

ostensibly, would seem to be for regular/daily life and in particular – as in this case – items that require a specific fitting and the filling of an order.

6. Given the majority's recognition of the sound business reasons for implementing the change, it stands to reason that this modification to the administration of the plan be viewed through that lens as a practical solution that maintains a comparable benefit plan.
7. As set out in the ASF and recognized in the Decision, the only change here was a change in access to what is otherwise a straightforward benefit. Recognizing that HHS is not required to maintain identical coverage – which is an entirely different standard that would require a different focus in our analysis – I cannot agree that this change was so significant as to render the Green Shield Plan non-comparable to the original Blue Cross Plan, especially when considering the “anywhere in the world” statement in the context I have set out above.

Dated at Toronto this 11<sup>th</sup> day of March 2019

Kelsey Orth, Employer Nominee