IN THE MATTER OF AN ARBITRATION

BETWEEN:

The Participating Hospitals

and

OCHU/CUPE

Before:	William Kaplan Sole Arbitrator
Appearances	
For the Participating Hospitals:	Craig Rix Hicks Morley Barristers & Solicitors
For OCHU/CUPE:	Steven Barrett Goldblatt Partners Barristers & Solicitors

The matters in dispute proceeded by written submissions, which were completed on April 30, 2026.

Introduction

In an award dated April 18, 2024, an interest arbitration board settled the terms and conditions of a collective agreement between the parties with a term of September 29, 2023, to September 28, 2025. The Board awarded a Health Care Spending Accounting (HCSA) making the following observations:

> … A Health Care Spending Account has been introduced. It is quite appropriate – and this is increasingly reflected in negotiated collective agreements – for employees to make their own crucial health care spending decisions. The introduction of this new benefit will assist them in doing so (at p. 12).
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> …
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> Benefits
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> …
>
> Introduce Health Care Spending Account for active employees at $100 annually (at p. 14).

As is normally the case, and at the request of the parties, the Board remained seized with respect to the implementation of its award. And, as it happened, an interpretation dispute did arise. That dispute first proceeded to a hearing on April 17, 2025, but was adjourned to the forthcoming round of collective bargaining. While discussed, it was not resolved and proceeded by written submissions in April 2026.

The Dispute

The dispute can be summarily stated: is the HCSA subject to the benefits contribution/cost sharing rules under the collective agreement; the rules that require employees to pay 25% of the premiums of their extended health care benefits? The OHA says yes, OCHU/CUPE says no.

OHA Submissions

In the OHA's view, like other benefits (encompassed within the same provision of the collective agreement), the HCSA was subject to the shared contribution cost. The OHA had in collective bargaining provided OCHU/CUPE with costings reflecting this shared allocation and referred to them in their submissions. Also notable was the application of the replication principle. This benefit was subject to contribution sharing in the OPSEU collective agreement (which was the first union in this sector to obtain an HCSA and it was awarded in accordance with the applicable split contribution rules). While OPSEU tried to improve the benefit by the employer assuming all costs, it never contested that the contributions were shared. There was also no reason to believe, the OHA argued, that OCHU/CUPE would have, or did, achieve a superior entitlement with the

introduction of this benefit. Indeed, the union submissions at arbitration indicated its desire to replicate the OPSEU benefit (which provided for cost sharing).

Notably, the OHA observed, at no point in collective bargaining did the union assert any understanding that its proposal for this new benefit was to be funded at the OHA's entire cost (which the OHA for replication and other reasons would have never agreed to in any event). OHA implementation materials – issued soon after issue of the award – made the split contribution distribution completely clear and the Implementation Agreement the parties subsequently executed did not modify or amend the contribution rates for this, or any other benefit.

Simply put, the employer argued, there was no ambiguity, no misunderstanding, but clear bargaining history reflecting replication and providing for the established contribution split. The agreement was clear and, the OHA argued, an after-the-fact attempt to renegotiate what was previously agreed to should be rejected. For all these reasons and others, the OHA asked for a declaration that the HCSA be subject to the established contribution split.

OCHU/CUPE Submissions

In OCHU/CUPE's view, there was nothing in the awarded language to support the OHA's – erroneous – view that the HCSA was subject to any premium split. The language was clear: $100 was awarded, and it was not awarded subject to a split. As the language of the provision was clear, collective bargaining history was both unnecessary and inappropriate. It was trite law, OCHU/CUPE observed, absent any ambiguity, that the terms awarded by an arbitration board should be interpreted in accordance with their plain meaning and in a purposive manner. Applying this governing legal principle, OCHU/CUPE asked that a declaration be issued finding the employer 100% responsible for funding the HCSA.

This conclusion was required for several other reasons, in OCHU/CUPE's view.

All that occurred here, OCHU/CUPE argued, was that a pool of money was created for health care spending. It would defeat the entire purpose of that pool to reduce its value by requiring employees to shoulder any part of the cost. Had the Board wished to award a $75.00 HCSA it could have done so; significantly, it had not. The award made clear in the context of other benefit improvements that they were subject to splits, e.g., subject to "50-50 co-insurance." But not this benefit improvement, and that was both legally and factually significant. Moreover, in seeking a HCSA, OCHU/CUPE had never proposed, much less implied, that the new benefit would be subject to a split. Importantly, the OHA had never, OCHU/CUPE submitted, elaborated in its costings that this new benefit was costed based on a split. It was true enough that OPSEU had earlier been awarded a health care spending account, but that award was "in accordance with all the applicable rules." This was not that case because the award, in marked contrast to OPSEU, was not subject to any qualifier. Finally, OCHU/CUPE rejected any suggestion that OHA

implementation materials were in any way material to the adjudication of this case. Post-award self-serving interpretations are not relevant to the straight-forward inevitable interpretation of clear and unequivocal language, which OCHU-CUPE argued, was the task in this case. For all these reasons, and others, OCHU/CUPE sought a declaration that the HCSA was not subject to a premium split.

Award

Having carefully considered the submissions of the parties, it is my view that the HCSA is subject to the same contribution sharing arrangement as is the case with other extended health care benefits. It was an awarded benefit, and there is no reason to believe that there was any intention that it be excluded from the general application of the long-established contribution sharing. Moreover, as the union knew from bargaining, it was not costed on the basis that it would be entirely paid by the employer. As well, the HCSA was awarded to give effect to the replication principle; the OPSEU health care spending account is also a premium split. There is nothing in the awarded language, or any of the context, that would lead one to conclude that the HCSA should be segregated from other similar benefits, not to mention sector norms, and subject to an alternative funding arrangement.

Conclusion

Accordingly, and for the foregoing reasons, the union's grievance is dismissed.

DATED at Toronto this 8th day of May 2026.

"William Kaplan"

William Kaplan, Sole Arbitrator