

**House Officers Association
Grievance #20-10680**

RESPONSE TO ASSOCIATION GRIEVANCE

I. Introduction

On December 9, 2020, the University of Michigan (“University” or “Employer”) received House Officers Association (“HOA” or “Union”) Grievance #20-10680, alleging that the University violated the parties’ collective bargaining agreement (CBA) by planning to change the future number of training slots in the Anesthesia Residency Clinical Training Program. The Union alleges a violation of:

Article XXX and all other implicated provisions of the Collective Bargaining Agreement (CBA) between the University of Michigan Regents and the University of Michigan House Officers Association (HOA).

II. Analysis

The University’s Anesthesiology Residency Clinical Training Program (hereinafter the “Program”) is one of over 100 clinical training programs offered by the University. The Program currently enrolls approximately 115 House Officers (or “Residents”). The Program requires four (4) years of training after medical school. The first year of training is an internship year, during which Residents complete various rotations considered foundational for general physician development and for a successful Anesthesiology training experience. The second through fourth years are focused Anesthesia training. The Program has previously allocated 28 first-year training slots for incoming Residents who apply to the Program as part of the nationally administered Match Program. For the second training year cohort, the Program has previously allocated 30 slots, in order to accommodate all of the Residents currently in the Program who successfully complete their first year of training and are being promoted to their second year of training, plus an additional two (2) physicians each year who “match” into the Program as second-year trainees transferring from another program or institution.

Pursuant to Article XXII of the Agreement, the University has reserved all management rights, except those expressly limited in the Agreement. This includes the exclusive discretion to manage its academic programs, including the number of new trainees to accept into a particular clinical training program in any given year. The right of the University to determine the appropriate number of training slots is not limited by the collective bargaining agreement and is thus within its exclusive discretion. In addition, the determine of the number of training slots is within the academic, not the employment sphere, and is therefore not subject to the collective bargaining agreement or to the University’s bargaining obligation overall.

The University recently exercised its discretion to set the number of trainees it will “match” for the upcoming academic year. For the 2021-2022 academic year, which begins in July 2021, the Program will match 27 first-year trainees, and one (1) incoming second-year trainee. This change was made after extensive review of the Program’s education and training rubric, with the express goal of continuing to optimize the academic experience for each trainee who is in the program. This change in recruitment goals affects only the number of new Residents the Program will accept into the Program in the future. No current Resident will lose their training slot or otherwise be impacted as result of this change.

The Union’s Grievance does not identify any provision of the CBA that has been violated by a change in training slots in the Anesthesia Department. It is therefore not arbitrable. Article XXX, Staff Reduction, cited by the Union, does not address this situation. Rather, it provides:

245 After commencing work, an employee shall not be laid off or terminated during the employee's current appointment year, except as provided by Article XVIII.

246 The Employer intends to make a good-faith commitment not to terminate a House Officer during the course of his/her training program because of economic issues. It is agreed that there shall be Association representatives on institutional committees considering residency number decreases. In the event of a reduction of employees or an elimination of bargaining unit positions that may affect an employee in any future appointment year, the Employer shall notify the Association and employees who could be affected as soon as practicable after the Employer has reason to believe the change may be implemented. In the event of application of this paragraph, the Employer would make every effort to provide notification by November 1, prior to a July 1 reduction. In this regard, the University, through the Graduate Medical Education Office, shall provide annual reports to the Association, giving any changes in the number of House Officer positions in each department or section. In the event of a House Officer being terminated because of external forces, out-placement (career counseling and support) services will be offered by the employer. The Association shall have the opportunity to advise the Employer of its position in regard to any such reduction of employees or elimination of positions prior to its implementation when this is possible.

Article XXX, by its plain language cited above, applies only to situations where an *existing* bargaining unit member is being laid off or terminated. Paragraph 245 provides that “*After commencing work, an employee shall not be laid off or terminated during the employee's current appointment year*” [emphasis added]. Similarly, paragraph 246 provides that “*The Employer intends to make a good-faith commitment not to terminate a House Officer during the course of his/her training program because of economic issues*” [emphasis added]. Thus, Article XXX has no applicability to *future* employees or bargaining unit members who do not exist at this time, or to situations where no bargaining unit member is being laid off or terminated.

The Program has not made a decision, nor is it even considering any change, that would result in a *current* bargaining unit member losing their employment in future academic years. Every Resident who is currently employed as a first-year trainee in the Program will have the ability to continue their employment as a second-year trainee in the 2021-2022 academic year,

provided they have successfully completed the requirements of their first-year academic program. For the 2021-2022 academic year, the Program will recruit one (1) less first-year trainee, and one (1) less second-year trainee seeking to enter Anesthesia from another program or institution. However, no current Resident would be laid off or terminated as a result of this change.

Because the Program has not implemented a plan for a “Staff Reduction” as defined by Article XXX, the University had no obligation to provide the Union with advance notice of its decision to reduce future training slots, or to afford the Union the opportunity to provide its position on the issue. Even if there was a Staff Reduction being implemented, paragraph 246 requires only that the University “make every effort to provide notification by November 1.” As of November 1, 2020, no final decision had been made. Regarding the Union’s allegation that the University failed to include a Union representative on a committee considering the change in the number of future training slots, because there was no Staff Reduction as defined by Article XXX, the University had no obligation to form such a committee or to include a Union representative on it. Even if there was a planned Staff Reduction as defined by Article XXX, the University still had no obligation to form a committee, but merely to afford the Union representation on such a committee if it was formed. In fact, the decision to eliminate the future training slots was made by University leadership and was within their discretion pursuant to Article XXII, “Employer Rights.”

Regarding the Union’s contention that the University failed to “provide annual reports to the Association giving the number of changes in the number of House Officer positions in each Department or section,” this requirement must be read in conjunction with the entire Article, which applies only to a “Staff Reduction” as defined by Article XXX. Because there was no Staff Reduction, and there is no planned reduction in current staff, this reporting requirement does not apply. However, even if this requirement did apply, the University has met the obligation to provide such information. The University provides the HOA with a list of incoming House Officers prior to the start of each academic year. The University also provides the Union with a monthly listing of all House Officers in the bargaining unit, with the department specified, and also provides a list of any current unit members who have separated employment during the previous month. The Union therefore has all of the information needed to determine how many positions exist in the unit, by Department.

III. Conclusion

The University recently announced that beginning with the 2021-2022 academic year, it was reducing the number of incoming trainees it will “match” into the Program. This decision was within the exclusive discretion of the University because it falls within the academic sphere and is not subject to bargaining and, even if it were, it is within the exclusive rights reserved to the University because it is not limited by the Agreement. This change has no impact on the employment of current bargaining unit employees, and therefore does not constitute a “Staff Reduction” within the meaning of Article XXX. This Grievance is therefore denied.

FOR THE UNIVERSITY REVIEW COMMITTEE: s/ Wade Baughman
Lead Labor Relations Advisor

Date emailed to the HOA: January 8, 2021