

**House Officers Association
Grievance #22-11091**

RESPONSE TO ASSOCIATION GRIEVANCE

I. Introduction

On February 2, 2022, the University of Michigan (“University” or “Employer”) received House Officers Association (“HOA” or “Union”) Grievance #22-11091, alleging that the Employer violated the parties’ Collective Bargaining Agreement by “not making timely payments to house officers for holidays worked.” The Union alleged a violation of Article III (Compensation – Salary) and “any and all other implicated provisions of the Collective Bargaining Agreement.”

II. Background

The HOA bargaining unit consists of nearly 1300 residents and fellows (House Officers). House Officers are exempt, salaried employees. Paragraph 22 of the CBA recognizes 10 named Holidays for House Officers. Paragraph 24 of the CBA provides that “to the extent practicable, the Employer will try to schedule these days free of responsibilities for House Officers.” In the event, however, that a House Officer is required to work on one of the named Holidays, Paragraph 25 provides a fringe benefit as follows:

In the event that a House Officer is assigned any responsibilities by their training program (including on-call, inpatient service coverage, clinics, rounding, jeopardy, home call, back-up, etc.) on a House Officer holiday as defined in paragraph 22, they will receive an additional 1/365th of their annual salary as compensation. The House Officer will receive this compensation regardless of total number of hours worked or location. House Officers are eligible for holiday pay for each House Officer holiday worked throughout the year.

To receive Holiday Pay, a House Officer must submit a written request, which serves to notify the Program staff that the House Officer worked on the Holiday and is due the Holiday Pay benefit. Paragraph 28 provides:

House Officers are responsible for ensuring work hours are reported...and must submit a notice of eligibility for holiday pay to their Program Director or designated program official within sixty (60) calendar days of a House Officer holiday when they were assigned responsibilities by their training program.

Once a House Officer submits a Holiday Pay request, the Program staff retrieves and reviews the request, verifies that the request meets CBA guidelines and that the House Officer has clinical or educational work hours entered for the date they requested Holiday Pay, and communicates as needed with the House Officer to rectify any discrepancies. The staff member then either creates a PAR (personnel action request) to initiate the payment in the Employer’s data processing system or submits a batch request to the University’s Shared Services Center (SSC) to have PARs created. Each individual Holiday Pay request must have a PAR entered, and each PAR must then be approved by the Graduate Medical Education Office staff, before it goes into payroll and the payment appears on the House Officer’s paycheck.

On or around January 25, 2022, HOA made the Employer aware that certain House Officers in two clinical training programs, the Pediatric Core Residency Program, and the Internal Medicine Core Residency Program, had not received payment on their pending January 31, 2022, paychecks for Holiday Pay requests they had submitted covering Christmas Eve, Christmas Day, New Year's Eve 2021, and New Year's Day 2022. The HOA requested that off-cycle checks be issued for the Holiday Pay. The Employer responded by noting that the CBA contains no deadline for paying Holiday Pay, that due to volume and institutional payroll cutoffs it is not always possible to process all Holiday Pay requests before institutional payroll cutoff the following month, and that the Holiday Pay due to these House Officers for December/January holidays worked would be paid on their February paychecks. The HOA subsequently submitted this grievance, based on the timeliness of the payment.

III. Analysis

The timing of a House Officer receiving Holiday Pay is influenced by several factors, starting with the date the House Officer submits the Holiday Pay request, which may be as long as sixty (60) days after the Holiday worked. For some larger Programs, such as Pediatrics or Internal Medicine, the Program staff may process hundreds of these Holiday Pay requests in a month, particularly for the November and December holidays. Because a House Officer cannot make the Holiday Pay request until the hours are actually worked, there is often a short turnaround times for these requests to be processed before the institutional payroll cutoff date in the following month. Although Programs attempt to make Holiday Pay payments the first month following the Holiday worked, and are often able to, it is not always possible for them to do so.

HOA asserts that pursuant to the Michigan Payment of Wages and Fringe Benefits Act ("Act"), MCL 408.472, Holiday Pay is a form of wages which must be paid within 15 days after the end of a monthly pay period. The CBA does not address violations of law and therefore a claim that the Act has been violated is not arbitrable. Notwithstanding this objection, however, the statute specifically defines holiday pay as a type of fringe benefit (MCL 408.472, Section 1(e)) and further provides that "An employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy." (MCL 408.472, Section 3). The CBA contains specific provisions regarding how Holiday Pay is paid, and it does not include any specific time frame for issuing Holiday Pay. Accordingly, the payment of Holiday Pay is in accordance with the "written agreement" (e.g. the CBA) as defined by the Act.

The HOA also asserts that Holiday Pay constitutes the House Officer's wages for working on a holiday as defined in the CBA, because Holiday Pay is included under Article III, Compensation. This assertion is incorrect for several reasons. First, the law defines what is included in the definition of Wages vs Fringe Benefits and under the law Holiday Pay is a fringe benefit. Second, House Officers are exempt, salaried employees. House Officers are not paid by the day; rather, they are paid an annual salary for all of their work over the course of the year. This is evidenced by the fact that Holiday Pay, when applicable, is calculated as "1/365th" of the House Officer's annual salary, pursuant to paragraph 22 of the CBA. Third, as explained above, House Officers must request the Holiday Pay in writing in order to receive it, pursuant to paragraph 28 of the CBA. If Holiday Pay constituted wages, it would be payable by the Employer regardless of whether the House Officer requests it. The Holiday Pay provided in the CBA therefore is not the House Officer's base wages for working on a specific day of the year but is instead a benefit provided for the inconvenience of being assigned work on a holiday identified in the CBA.

IV. Conclusion

Holiday Pay is a benefit afforded to House Officers by the CBA and is therefore governed by the terms of the CBA. Contrary to HOA’s assertion, Article III does not provide a time frame in which Holiday Pay must be remitted. The Employer continues to endeavor to remit Holiday Pay as soon as possible after the request is submitted, but is not obligated by the CBA to remit the payment by a specific deadline.

The grievance has failed to establish a violation of Article III or any other provision of the CBA. To the extent the grievance alleges a violation of the Wages and Fringe Benefits Act, it is not arbitrable. Notwithstanding this objection, the Union has failed to sustain its burden of demonstrating a violation of the Act.

For the foregoing reasons, the grievance is denied.

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

Date emailed to the HOA: March 3, 2022