

**OPINION AND AWARD
IN THE MATTER OF ARBITRATION BETWEEN**

UNIVERSITY OF MICHIGAN

-and-

**UNIVERSITY OF MICHIGAN
HOUSE OFFICERS ASSOCIATION**

Re: Supplemental Pay

Grievants

Hearing: February 7, 2023

Appearances: For the Employer – Gloria Hage
For the Union – Kyle McCoy

Briefs: The parties filed post-hearing briefs on March 15, 2023 .

BACKGROUND

The CBA between the parties contains the following provisions:

15. When determining the initial assignment of a House Officer to a salary level where the House Officer has received international training the GME Office will count these years of international post-graduate medical training if they meet the following criteria: 1) they have successfully completed the program (partial credit is not provided); 2) the training can be translated as an equivalent to US GME training (ACGME-I accredited or US accreditation is available through the ACGME/CODA/ABOG); and 3) the US Board accepts the training to apply for US Board certification (a copy of the correspondence with the Board, or copy of the Board specific guidelines, must be provided).

18. In addition to the House Officer salary and payment to encourage savings, an individual House Officer may be granted discretionary supplemental payments, rewards or reimbursement by their department. Such payments may be used as recognition of a House Officer's professional growth and development and/or contribution in supporting the

University of Michigan Health System's goals and interests. This may be used for recruitment to faculty positions. (Emphasis Added)

The Grievants, [REDACTED] both received their post-graduate medical training outside the US in programs that did not meet the criteria in paragraph 15. Consequently, the Employer did not count their years of post-graduate medical training when it determined their salary level.

The Union filed a grievance on July 19, 2022 alleging that Grievants' salary levels were improperly determined. That issue was withdrawn and is not before me.

The Union also argued that:

The University is also preventing the Radiology Department from granting these doctors supplemental payments, despite the parties agreeing at ¶18 that such payments are left to departmental discretion.

In its response to the grievance the Employer wrote:

Supplemental payments pursuant to paragraph 18 are not intended, nor have they ever been used, to increase the base salary for an Employee's training program. Salaries for the work performed by Employees in their training programs are negotiated with the HOA and included in Article III of the CBA, paragraph 11. Supplemental payments provided to Employees pursuant to paragraph 18 are intended to reward or recognize activities or achievements outside the scope of their training programs. Paragraph 18 provides illustrative examples of the types of activities that such supplemental payments, rewards or reimbursements may be used to support: activities that contribute to the House Officer's growth and professional development for support to the Employer's goals and interest. The Employer has therefore provided supplemental payments as reimbursement for travel expenses and registration fees for professional development opportunities, compensation for time spent working on a research project unrelated to the House Officer's training program, or an honorarium for assisting with recruitment of trainees to their Program. The Employer has no policy or practice of providing discretionary payments to supplement House Officer base salaries.

Regarding the HOA's assertion that the Employer is "preventing" the Department of Radiology from providing such supplemental payments to Grievants for their training programs, this assertion is without merit. The Department of Radiology, like all clinical departments and operating units within the University, is an

internal division of the Employer and is therefore one in the same with the Employer. Moreover, the reference to “departments” in paragraph 18 is intended to clarify that when such supplemental payments are appropriate, they will come from departmental funds not the institutional budget.

The issue before me is whether the Employer violated the CBA when it would not allow the Department of Radiology to use Paragraph 18 to increase the Grievant’s salaries.

DISCUSSION

The goal of an arbitrator in a contract interpretation case is to determine the intent of the parties. The first place to look for that intent is the language the parties negotiated. If the language is clear and unambiguous, the analysis is complete. If the language is subject to more than one interpretation, we must look further.

Paragraph 18 is subject to at least two interpretations. In the Union’s view, the department may use its discretion to grant supplemental payments to House Officers as it sees fit. In the Employer’s view, departmental funds may be used to provide one-off payments to House Officers only “to reward or recognize activities or achievements outside the scope of their training programs.” The language of Paragraph 18 alone is not sufficient to resolve the question.

The next place to look is the conduct of the parties. The Employer’s testimony in this regard is unrebutted. Paragraph 18 has never been used to increase an HO’s salary level. That is persuasive, but it is not dispositive. Perhaps this case is so compelling that it is time for the Employer to expand the scope of payments permitted under Paragraph 18.

So we must look to the principles of contract interpretation. The Employer argues that when there is a conflict between specific language and general language in a CBA the specific language governs. It argues that the salary schedule in Paragraph 11 is highly specific and should govern over the general language of Paragraph 18. I do not find this persuasive by itself, but I think it takes us some of the way toward a correct analysis.

It seems to me one could rationally argue that Paragraph 11 is the general rule and Paragraph 18 is the specific exception, in which case 18 would govern. We need another principle. Specifically, we need the principle that the document is to be read as a whole, and that it contains no “mere surplusage.” Applying that principle to the language of the CBA, every provision must be seen to be doing some work, and every provision is to be read as contributing to a coherent whole.

If Paragraph 18 can be used to bring HO salaries to whatever level an individual department deems to be appropriate, Paragraph 11 ceases to have meaning. The exception swallows the rule.

If, on the other hand, Paragraph 18 may only be used to reward activities or achievements outside the training program, the coherence of the CBA considered as a whole is preserved.

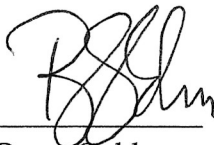
The Union also argues that the payment it proposed, in addition to providing “parity” with the Grievants’ “cohort,” was intended to serve as a recruitment tool. It points out that Paragraph 18 specifically provides, “discretionary supplemental payments... may be used for recruitment to faculty positions.”

The question is whether this provision of the CBA gives the Radiology Department the authority to make such offers. On my reading of the record, it does not. I am persuaded by the Employer’s statement that, “the reference to ‘departments’ in paragraph 18 is intended to clarify that when such supplemental payments are appropriate, they will come from departmental funds not the institutional budget.”

For these reasons I find the Employer did not violate the CBA when it did not permit the Department of Radiology to use Paragraph 18 to increase the Grievants’ salaries.

AWARD

The grievance is denied.

A handwritten signature in black ink, appearing to read "Barry Goldman", written over a horizontal line.

Barry Goldman

March 21, 2023