

VOLUNTARY LABOR ARBITRATION

HOUSE OFFICERS ASSOCIATION

-and-

UNIVERSITY OF MICHIGAN
(HEALTH SYSTEM)

Gr. No. 23-11449
Issue: Supplemental
Pay in Pediatrics

Thomas L. Gravelle, Arb.
Dated: September 22 , 2023

OPINION AND AWARD

The hearing was held on July 21, 2023.

Present for the Union at the hearing were:

Robin L. Tarter
Dominic P. Barbato
Kyle A. McCoy, Esq.

Present for the Employer at the hearing were:

Brian Sumner
Wade Baughman
Hakim Berry
J. Sybil Biermann
Gloria A. Hage, Esq.

I have reviewed the record of this case including the parties' written arguments.

ISSUES

Did the Employer commit a breach of Section 18 of the parties' 2020-2023 collective bargaining agreement ("CBA") in denying discretionary supplemental payments for daily job duties assigned to some employees because of the resignation of a fellow employee in the same program? If yes, what is the remedy?

FACTUAL BACKGROUND

The Union in this class action grievance is the House Officers Association. Article I, Section 3 of the parties' CBA defines a House Officer as follows:

A House Officer shall be a physician or dentist who is in a recognized training program House Officers, collectively, shall be known as the House Officer Staff.

The Employer is the University of Michigan and its Health System. It includes many graduate medical education training programs.

On March 2, 2023, the Union filed a grievance charging that a dean of Graduate Medical Education denied any discretionary supplemental payments to House Officers in the pediatric cardiology fellowship training program without having the program director decide the issue. The Union requested that the Employer "cease and desist preventing the department from utilizing the rights available under ¶18" of the parties' CBA.

On March 31, 2023, the Employer denied the grievance and explained:

The HOA bargaining unit comprises approximately 1300 Employees, referred to as House Officers, who are physicians enrolled in one of the University's 113 accredited clinical training programs. House Officers are salaried, exempt professionals. . . .

There are 17 House officers currently enrolled in the University's three-year Pediatric Cardiology Fellowship training program (hereafter referred to as the "Program"). ██████, a House Officer in ██████ second year of the Program, resigned on short notice as of February 12, 2023. As a result of the unexpected resignation, to ensure continuity of care for pediatric patients, other House Officers in the Program were asked and agreed to assist by covering a limited number of additional clinical shifts. The patient care duties performed by the House Officers during the shifts they covered are identical to the patient care duties they perform every day in their Program.

. . . .

Supplemental payments pursuant to paragraph 18 are not intended, nor have they ever been used, to augment the base salary for an Employee's training program. House Officers are exempt, salaried professionals. 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. This salary schedule covers all work performed within the scope of a House Officer's training program. Salaries do not vary depending on the volume of work, as long as it is encompassed within their training program.

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.

The parties have been unable to resolve the grievance, which is now before me.

DISCUSSION

This is is a contract interpretation case. A leading treatise on labor arbitration, THE COMMON LAW OF THE WORKPLACE, T. St. Antoine, 2nd ed. (BNA Books 2005) explains at page 55:

In a contract interpretation case, the union is ordinarily seeking to show that the employer violated the agreement by some action it took; the union then has the burden of proof [or risk of non-persuasion].

The issue before me is whether the Employer has violated Section 18 of the parties' 2020-2023 CBA by denying any "discretionary supplemental payments" to several employees in a program who were assigned the work which had been performed by a fellow employee who resigned. It appears that the director of the particular program may have been receptive to the remaining employees receiving some payment for their added daily duties. However, an associate dean for graduate medical education denied any "discretionary supplemental payments."

Section 18 states:

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.

Under Article XXI, Section 205 of the parties' CBA, "[t]he arbitrator shall have no authority to add to, subtract from, or otherwise modify any of the terms, clauses, or provisions of the Agreement."

For the following reasons, I am denying the grievance:

First, under the CBA, "supplemental payments" are "discretionary." As to an act or duty, "discretionary . . . involv[es] an exercise of judgment and choice, not an implementation of a hard-and-fast rule." BLACKS LAW DICTIONARY, 7^h Ed. (West Group 1999) p. 479. A discretionary decision can be avoided if it is an "abuse of discretion." *Id.*

Second, the discretion in Section 18 is not open-ended. Section 18 illustrates its discretionary meaning by stating that "supplemental payments, rewards or reimbursements by their department . . . 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" or for "recruitment to faculty positions." The word "*may*" underscores the discretion of Section 18.

Third, what is involved in the present case are patient care duties of the departed employee which are identical to the patient care duties of the remaining employees who have assumed them. It is reasonable to believe that these additional duties are not instances of “professional growth and development.”

Fourth, the Union argues that an award in its favor would qualify as a “contribution in supporting the University of Michigan Health’s System’s goals and interests” because this “broad description” encompasses extra work in support of the entire System’s providing medical care. However, it is rational to decide that the additional patient care duties assumed by the remaining employees do not qualify as a “contribution in supporting the . . . System’s goals and interests.” If the System’s “goals and interests” encompassed ordinary daily job duties in a particular program, any increase in daily job duties would put in issue an increase of supplemental payments for employees assigned the additional daily job duties. It is reasonable to believe that this is too much to require of Section 18’s “discretionary” language.

Fifth, an award by Arbitrator Barry Goldman earlier this year supports the Employer’s position, at least if the payments sought would serve to affect the salary schedules set forth in Section 11 of the parties’ CBA. The Union argues that it is not seeking an increase in salary, but rather additional “payments.” The Employer states that the payments sought by the Union are “to augment the base salary for an Employee’s training program.” As the payments are sought as compensation for additional daily job duties, I do not find the Union’s distinction sufficient to avoid the Employer’s reliance on the Goldman award.

Finally, there is no past practice confirming the Union's position. Nor is there any bargaining history in support of the Union's position. Nor can it be said that the discretionary language of Section 18 is the result of a mutual mistake.

AWARD

For all of the above reasons, the grievance is denied.

Thomas L. Gravelle,
Arbitrator