

**House Officers Association
Grievance #23-11648**

RESPONSE TO ASSOCIATION GRIEVANCE

I. Introduction

On September 5, 2023, the University of Michigan (“University” or “Employer”) received House Officers Association (“HOA” or “Union”) Grievance #23-11648, alleging the Department of Neurology and the Graduate Medical Education Office (“GME”) violated the parties’ Collective Bargaining Agreement (“CBA”) by denying the use of vacation time for [REDACTED]. The HOA asserts these three House Officers had been working with the Department of Neurology “to use vacation time to offset any time required by the American Board of Psychiatry and Neurology (“APBN”) to become Board eligible and start fellowship on time,” but the GME Office intervened and would not permit Dr. Zachary London, the Department of Neurology Program Director, to schedule the vacations for purposes of offsetting a Leave of Absence (“LOA”), as permitted under the parties’ CBA. Each of the three House Officers had respectively taken LOAs during their intern year in the Internal Medicine Department. According to the Union, per its written grievance:

The grievance is regarding the four weeks of vacation all three House Officers are guaranteed by the contract, their ability to schedule their vacation, and whether the Employer and the Department have the authority to change schedules once they have already been agreed to or determined.

As its basis for the grievance, the Union cited both the ABPN training and leave policy that provides for House Officers to take an LOA for illness or maternity without an extension of training, as follows:

Also, training programs must allow, at least once during training, a minimum of six weeks of time away from training for purposes of parental, caregiver, and medical leave, without exhausting all other allowed time away from training and without extending training. Within ABPN and ACGME policy guidelines, it is up to the program director and the program clinical competency committee to determine whether a given resident has met training requirements or must extend their period of training.

Further, the HOA asserted the Employer violated Article XIII of the CBA, that reads:

Vacation shall be scheduled to meet the requirements of the Employer on a departmental basis with due consideration given to the Employee's wishes as to time and duration. The actual scheduling of vacations shall be the responsibility of the Program Director or equivalent level of supervision. Such vacations will be scheduled as a regular and routine part of service assignments over the course of the year. Once a vacation request is approved, the Employer shall not unilaterally change or cancel the approved vacation unless the Employer has implemented its Emergency Operations Plan pursuant to UMHS Policy 01-02-000. Either the Employee or the Program Director may initiate a request for a change to previously approved vacation, but any changes must be mutually agreed upon.

II. Analysis

The HOA claims the Employer violated the rights of its three members under Article XIII of the CBA, because it denied them the right to take and schedule their vacation time, after allegedly seeking to change or override the vacation time each of the House Officers had been approved to take. However, the Department of Neurology has never indicated these House Officers were unable to take their vacation time and the HOA has provided no evidence to suggest otherwise. Similarly, despite the HOA's claim Dr. London had already approved the use of vacation time for purposes of offsetting the training extensions for each of the three House Officers, it has produced nothing to indicate such formal approval had been provided. Dr. London had indeed explored the possibility of them using vacation time for such purposes, but he never provided approval. In fact, despite his role as Program Director for the Department of Neurology, Dr. London ultimately did not have jurisdiction or any decision-making abilities as it related to the IM training program, nor could he simply override the training requirements that have been delineated by the ABPN.

First, as noted by the HOA, each of the three House Officers utilized an LOA during their intern year within Internal Medicine. This year of training within IM is exclusively governed by the Department of IM. The Department of Neurology did not approve the LOAs any of the House Officers took during this intern year within their IM training. The Department of IM provided approval for each of these LOAs. However, these LOAs – to which the House Officers were contractually entitled and received - still resulted in the extension of training for each House Officer within their IM training, thus delaying their respective starts in their Neurology training programs. The extensions for the Internal Medicine training were determined by Internal Medicine, not the Department of Neurology.

The HOA is asserting the Department of Neurology now has the authority to retroactively offset the training extensions that occurred during each House Officer's training within IM, but the Department of Neurology has no such governing authority. Furthermore, the ABPN requires House Officers to fulfill 36 months of training within the Neurology training program. Dr. London and the Department must uphold this requirement – such a requirement is not discretionary. In fact, Dr. London even pursued this question with the ABPN to ensure there could not be any flexibility for each of these three House Officers. This thread of communication between Dr. London and the ABPN was in fact even shared with the HOA to further demonstrate the constraints with which the Department of Neurology was working in exploring potential options for these House Officers. In the end, the ABPN affirmed the requirement that trainees must fulfill 36 months in training for its program.

The location of the ABPN Leave of Absence policy is: <https://www.abpn.org/wp-content/uploads/2023/04/Policy-Regarding-Training.pdf> and states, *“The ABPN requires that all training programs allow, at minimum, an average of four weeks of leave time (including vacation, sick time, parental or caregiver leave, etc.) during training per year. Leave or vacation time may NOT be used to reduce the total amount of required residency training or to make up deficiencies in training.”*

At its foundation, this matter is purely academic and not subject to the grievance or arbitration procedures of the CBA. As previously noted, the ABPN requires 36 months of training. Therefore, each of these House Officers must fulfill that requirement, regardless of their proficiency and/or competency. Dr. London and the Department of Neurology does not have discretion to relieve a House Officer from their training premature of that 36-month requirement, even if in the Program's discretion a particular House Officer has demonstrated proficiency prior to that 36-month mark.

Despite the HOA's attempt to minimize the relevance of Paragraph 82 in the parties' CBA within its grievance, this provision is conclusive in nature as it relates to this matter:

Separately negotiated benefits contained within the collective bargaining agreement such as paid vacation during an appointment year may be used to off-set deficits in training due to leave time as defined in

Article XIII and Article XIV, to the extent by the individual’s national certifying Board and following the processes and procedures identified by the Employer. Reductions in training are not assured or guaranteed and are always subject to the applicable national certifying Board’s approval, upon request by the Program Director in his or her sole discretion. In no case may the Program Director be compelled to make the request of the national certifying Board. The request is made solely on the assessment of readiness for independent practice. The Program Director’s determination regarding reductions-in-training are not subject to the grievance and arbitration proceedings of the Parties’ Collective Bargaining Agreement.

Again, this circumstance was not one where Dr. London had discretion, as it relates to the cases of Drs. Stallard, Asher, and Louis-Gray. In consult with both the GME Office and the ABPN, Dr. London determined he could not approve vacation time for purposes of offsetting the extensions of training that resulted for each House Officer as a result of the LOAs they each respectively took during their intern year in Internal Medicine (“IM”).

III. Conclusion

Based upon the foregoing reasons, the grievance is denied. And, in fact, as articulated in Paragraph 82 of the parties’ CBA, this matter is not grievable nor arbitrable.

FOR THE UNIVERSITY REVIEW COMMITTEE: s/ Brian Sumner

Senior Labor Relations Specialist

Date emailed to the HOA: September X, 2023