IN THE MATTER OF ARBITRATION BETWEEN

The University of Michigan
House Officers Association,

Union

And

The Regents of the University
of Michigan,

Employer

______________________________/

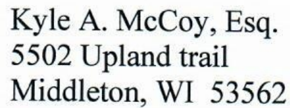
Grievance Involving:
Article XIII: Paid Time Away
and Other Relevant Provisions
October 11, 2023

DECISION AND AWARD

Appearances:

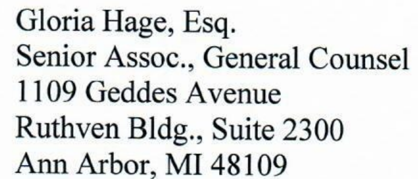
On behalf of Union

Kyle A. McCoy, Esq.
5502 Upland trail
Middleton, WI 53562



On behalf of Employer

Gloria Hage, Esq.
Senior Assoc., General Counsel
1109 Geddes Avenue
Ruthven Bldg., Suite 2300
Ann Arbor, MI 48109



James W. Statham, Esq.
Arbitrator

TABLE of CONTENTS

	PAGE
Introduction	1
Issues	1
Statement of Facts	1
Contentions of the Parties	5
Relevant Contractual Language (See Appendix A)	15
Opinion And Award	10
Award	14
Appendix A	15

INTRODUCTION

This matter concerns a dispute involving the University of Michigan Anesthesiology Department revision of its Residence Absence From Training Policy to make certain absences, even if covered by a contractual provision (ie. sick-time) result in an "extension of training" resulting in some residents graduating later than the date they were originally scheduled to matriculate. The HOA (House Officers Association) grieves this as a violation of the Collective Bargaining Agreement (CBA) in existence between the University of Michigan (Employer) and the HOA.

ISSUES

1. Was the HOA Grievance stating that Employers' actions violated Article XIII of Paid Time Away and all other relevant or implicated provisions of the CBA between Employer and the HOA timely filed?
2. Was Employers new policy a violation of the CBA in existence between the parties?

STATEMENT OF FACTS

Employer operates world class hospitals and health centers, including an academic medical center with more than 110 residency programs accredited by the Accreditation Council or Graduate Medical Education (ACGME).

The HOA represents a unit of 1400 medical and dental physician trainees (House Officers) at the University of Michigan Health System (Employer).

Employer and HOA are parties to a CBA. The ACGME requires that all programs appoint one faculty member as program director with authority and accountability for their specific overall program compliance with all applicable program requirements. The training program involved in this case is Anesthesiology (the Program).

The Program is four years. Approximately 25 trainees are admitted each year. There are 100

residents in the Program. Dr. Emily Peoples is the Program Director and is responsible for certifying successful completion of the Program for every House Officer, which enables those House Officers to sit for their certification exams (the Boards).

The Program is accredited by the American Board of Anesthesiology (ABA) which regulates all pertinent aspects of the Program, including certification requirements, certification examinations, subsequent certification, re-certification, and numerous other areas which include substance use, data privacy, and professionalism.

The ABA certification requirements establish the required time in training for all certified anesthesiology programs. Section 3.02 of the 2024 ABA Policy Book provides that the "training consists of a clinical base year followed by 36 months of approved training in anesthesia" for a total of four years.

The ABA requirements also include in detail the type of experiences and clinical rotations necessary for certification.

The ABA requirements outline the maximum time a resident can be away from training without extending the time on the back end of the Program. The ABA allows a resident to be absent from training for a total of sixty days during the three non-clinical base years of training for an average of 20 days per year. ABA policy goes on to identify other categories of absence (ie certificate meetings) that are considered to be "time in training" and will not result in an extension. The ABA also includes a limited additional category of 40 more days of allowable absences over the entire program, subject to ABA approval for only the following reasons: serious medical illness, military family leave, and parental or family leave covered by the FMLA (Family Medical Leave Act).

The ABA published a series of questions and answers in order to further explain its absence from Training Policy (FAQ). The FAQ provides as follows:

> The ABA will consider requests for up to 40 additional days (8 weeks) away from training (over and above the 60 working days). -Such additional leaves of absence must be approved by the ABA as follows:

> Any request for such leave must be received by the ABA within four weeks of the resident's resumption of the residency program.
>
> The request shall be in writing from the program director, countersigned by the department chair (if that person is different than the program director) and the resident.
>
> The request must include (1) the reason for the absence training request (as an example, serious medical illness, parental or family leaves that are covered under the Family Medical Leave Act would be acceptable to the ABA) and (2) documentation about how all clinical experiences and educational objectives will be met.
>
> Absences in excess of those described above will require lengthening of the total training time to compensate for the additional absences from training. The additional training days required will be equal to the total number of working days missed beyond (1) the 60 working days (without the need for ABA approval) and (2) the additional 40 working days (approved by the ABA).

The ABA only permits a waiver of extension for absences exceeding the allowable 20 days per year for the limited reasons described in its policy (serious medical and other conditions and absences covered by FMLA). Vacations, routine appointments, or other short term absences which do not relate to a sessions health condition do not qualify for a waiver and must be taken as part of the 20 day allotment or they will result in a training extension. A waiver of extension is not automatic, it must be requested by the Program Director and approved by the ABA.

The COVID pandemic disrupted schedules of Employer. There was a national public health emergency. During that national public health emergency, days away from training due to COVID were covered by the additional absence policy for which a waiver of training extension could be sought. In May of 2023 the national public health emergency ended.

Due to COVID and the allowance of additional absences, strict adherence to the ABA attendance requirements, to a slight degree, fell off. In order to correct this the Anesthesiology Program published an Absence From Training Policy, for the purpose of complying with ABA requirements, and making the House Officers aware of what absences would and would not result in a training extension. The Policy

was effective July 1, 2023, on an interim basis, and became permanent in November of 2023.

[REDACTED] an anesthesiology House Officer testified that she incurred a ten-day absence related to COVID prior to the July 1 interim policy implementation without an extension of her training time.

[REDACTED] another Anesthesiology House Officer, testified that after she incurred six days away from training over and above those allotted times, (five days for COVID in September 2023, and one additional day in March of 2023) her graduation date was extended later than originally anticipated (from August 3, 2024 to August 9, 2024). [REDACTED] was, however, paid for all those days of absence.

On October 11, 2023, HOA filed a grievance alleging that Employer Anesthesiology Interim Policy on Resident Absence from Training was a violation of the CBA, after being informed by Employer representative Brian Sumner on October 3, 2023, that the policy would not be changed by Employer. The policy in Section D (2) reads as follows:

> Emergent Call In: The Program Director will not request a waiver of extension to training for short term notice absences of more than two (2) days per academic year. Any short term, short notice absences beyond the two (2) days per academic year will be defined as time away from training and will result in an extension of training to comply with the ABA revised Absence From Training Policy. It is always the resident's responsibility to email: Anes – Res-Call-In Sick 2med@Umich.edu when unable to fill their clinical assignments.
>
> A. A resident who calls in utilizing a short-term, short-notice absence will be considered as absent for every day that their clinical assignment covered. A call shift spanning two calendar days will be two days of short-term notice absence. This includes, for example, in-house call, home call, night float, and sick call.

The HOA grievance asks as a remedy that Employer rescind the policy and make any affected House Officers whole.

Effective May 11, 2023, the ABA no longer allowed days away from training due to COVID to

count under the Additional Absence From Training Policy. According to the ABA those days must be accounted for through the 60 days allowed away from training during the " CA 1- CA 3 training years."

CONTENTIONS OF THE PARTIES

HOA POSITION

In response to communication with the ABA in which the ABA espoused the opinion that any days absent due to COVID quarantining or other non-FMLA sick leave are no longer pardonable beyond the total 60 allowable days, Employer decided that residents who use their vacation and other permitted leave times (ie sick days), and yet exceed the 60 days, because of an Employer mandated quarantine, must extend their training, and will therefore graduate later than originally scheduled. There was no warning, or admonishment from the ABA relating to resident incompetency. In fact, Dr. Peoples, the Program Director, decided not to strictly follow the ABA direction in that the aggrieved policy grants two additional leave days per academic year without a training extension. Dr. Peoples admitted that there was no negative result from her granting more than the ABA number of allowable days without an extension and went on to state that the granting of the two additional days per year was within her discretion.

TIMELINESS OF GRIEVANCE

First

Employer waited until the Hearing on this case to raise the issue of timeliness asserting for that reason this Grievance is not arbitrable. The burden of proof lies with the party asserting lack of arbitrability. There is clear authority that the issue of timeliness must be raised at the first possible step of the grievance procedure. Employer never denied timeliness as an issue in the lower grievance steps, and, in fact, only raised this issue at the hearing on this Grievance. This inaction operates as a waiver of that defense.

Second

The HOA only received the final non-interim policy in October of 2023, being told verbally on October 13, 2023 that the previously described interim policy was in fact final. The grievance was filed

on October 11, 2023, even though the policy was not implemented until November 6, 2023.

Third

The new policy operates as a negation of sick time benefits and therefore is a continuing course of conduct and is therefore a series of continuing potential contractual violations.

Because HOAs claim is an ongoing grievance any doubt as to arbitrability must be resolved in favor of arbitrability since forfeiture should be avoided whenever possible.

For all the reasons previously stated the Grievance is timely.

No Provision in the CBA Allows Carte Blanche to Negate Contractual Benefits

Paragraphs 81, 82 and 197 do not allow Employer to do whatever it wants.

Admittedly, HOA is not in charge of academic training programs; however, the aggrieved policy is new. Employer claims that all it is doing is following the ABA mandate which it has to do. In spite of that the Program Director added two additional absences per academic year for short-term illness. This is more flexible and forgiving than the ABA policy. Program Director Dr. Peoples stated that this was "in the best interest of the residents," and was within her discretion.

Employers approach would allow it to void contractual benefits and block HOA from seeking relief.

This new policy penalizes House Officers from using contractually guaranteed leave and penalizes them for following Employers' quarantine policy. The policy is too broad and limits House Officers' ability to deal with family emergencies by punishing them with training extensions. A more targeted solution could remedy the problem.

The new policy encourages House Officers to work when "acutely ill" contrary to the purpose expressed in paragraph 84 of the CBA. Nowhere in the CBA did the HOA give up the right to challenge policies such as this which void a benefit. Far more explicit language indicating a mutual understanding of the parties is needed to void a contractual benefit.

EMPLOYER POLICY IS DISPARATE TREATMENT

For years House Officers were allowed to stay home when sick without the penalty of an extension, and attendance issues were never raised in negotiations. If Employer wants to change terms and conditions of employment it needs to bargain with the HOA.

This issue is important to HOA members. A training extension could affect issues such as starting a new job on time, moving issues, housing issues, child care, and related employment opportunities, and operates as a hardship upon HOA members.

The policy affects HOA members disproportionately as some were absent and received no training extensions, others were absent for the same reason and had their training time extended. This policy forces House Officers to either come to work surreptiously sick, or extend their graduation date, and in so doing it voids leave benefits guaranteed by the CBA.

For the previously stated reasons the Grievance should be granted.

EMPLOYER POSITION

A 1973 Michigan Supreme Court decision [Regents of the University of Michigan vs Michigan Employment Relations Commission, 389 Mich 96] held that House Officers are both students and employees. While House Officers are allowed to unionize under PERA this unionization cannot ignore the aforementioned dual status. For that reason the scope of bargaining by the HOA may be limited if the subject matter falls clearly within the educational sphere. Michigan law protects the rights of Employer in the educational sphere. The selection leading to this Grievance falls within the educational sphere, and is not covered by the CBA.

HOA does not claim that any House Officer has been denied time away from work due to illness nor does it claim that they have been denied pay for the time taken. Instead, it claims that they should be able to do so without an extension of their ABA required training time.

An arbitrator does not have jurisdiction to interpret or modify training requirements and the Michigan Supreme Court case previously stated denies such jurisdiction.

HOA agrees that any matter pertaining to a resident training program is not subject to the grievance and arbitration procedure and that the requirements of the national certifying board will always govern. Instead, HOA turns to the sick-pay provisions of the CBA to attempt to obtain what it could not get in negotiations. Employer cannot be required to modify the time in training for a resident.

GRIEVANCE IS UNTIMELY

The policy in question was implemented on July 1, 2023. The Grievance before the arbitrator was filed on October 11, 2023, more than 90 days later. At no time did the parties extend the time for filing the Grievance. Since the Grievance was filed more than 20 days after notification of the policy it is untimely and procedurally not arbitrable.

SUBSTANTIVE ARGUMENT

The policy conforms to the ABA absence from training requirements, as well as the CBA. The HOA does not contend otherwise. HOA's issue is with Section 3 of the policy titled Implications of Leaves of Absence (LOA) on Training Time. All this section does is follow ABA requirements and provides that any trainee who takes leave exceeding the four weeks of allotted annual vacation must extend their training. It provides a narrow criteria for a waiver of training extension of up to 40 additional days and requires that such exception must be approved by the ABA, at the request of the Program Director. The Policy sets out additional time off (Sec. D) that counts as "time in training." They are conference days, up to 2 days of emergent call-in, exam time, interview days (up to 4 half days), preventative care, (8 hours per year) and one personal day.

The impetus for this policy resulted from a House Officer with multiple short-term absences. There was no limit on the number of short-term absences a House Officer could take without incurring a training extension. The two-day allowance for emergent call-in time which did not exist prior to the inception of this policy was frequently exceeded.

It is a fact that [redacted] incurred a ten-day absence related to COVID without an extension in training time. This absence occurred prior to the inception of the new policy and was during the time the national COVID emergency was in effect. During that time the ABA did not require an extension of training time for absences due to COVID.

[redacted] graduation time was extended as a result of a COVID absence in September of 2023 after the national COVID emergency had expired, and COVID absences were no longer exempt from training extensions by the ABA.

Doctors [redacted] were both paid for all sick time they incurred because of COVID.

The CBA recognizes that the House Officers presence at the University is part of their participation in a national accredited training program and the CBA only governs their terms and conditions of employment while in that training program. The CBA is clear that the training program is paramount and, therefore, no matter related to it is subject to the CBA, to negotiation, or to the grievance and arbitration provisions of the CBA (par. 197).

The Paid Time Off section of the CBA mirrors the ABA requirements for time in the training program. The Vacation Article allows for the maximum time away from training allowed by the ABA. Therefore, when a House Officer uses short-term sick time he or she needs to use their allotted vacation time to offset the absences in order for it not to result in an extension of training unless the absence qualifies for a waiver, in which case the Program Director, in his or her discretion, may apply to the ABA for such a waiver of extension.

The Anesthesiology Department interprets "time in training" requirements of the ABA to include up to two days of emergent call-in, exam time, immediate emergency relief, up four half days to interview, eight hours of preventative care, and one personal day per year because it deems it in the best interests of the House Officers to do so. Because those days are covered as time in training, their utilization does not require an extension of training time and does not involve a waiver of extension.

COVID absence occurred after the national COVID emergency had expired, and it was total time away that caused the extension of her training time. If had not taken vacation earlier in the year would have had the vacation days remaining to use for an unexpected illness. It was a combination of all absences that led to training extension.

The Program Director has the discretion to interpret and apply its ABA policy and has the responsibility to do so. Her interpretation and application of ABA policy is not subject to the grievance procedure.

Assuming in arguendo that the Arbitrator holds that this application of the Policy resulted in a breach of the CBA, changing completion date lies outside the jurisdiction conferred by the CBA. Sole discretion to certify completion of the Program lies with the Program Director and this will happen on August 9, 2024.

For the previously stated reasons the Grievance should be denied.

OPINION AND AWARD

This is a contract interpretation case and, therefore, the burden of proving a contract violation by the preponderance of the evidence, lies with HOA.

Article XX par. 221, Pg 46 of the CBA states as follows:

> The arbitrator shall not have any authority to add to, subtract from, or otherwise modify any of the terms, clauses or provisions of the Agreement.

This paragraph expressly limits my authority as an arbitrator to interpreting what is expressed in the CBA.

Article XX Employer Rights

Paragraph 226, Pg 47 of the CBA states as follows:

> All employer rights, powers discretion, authority, and prerogatives are retained by and shall remain exclusively vested in the Employer, except as clearly and specifically limited by this Agreement.

This language requires me, as the arbitrator, to look for what limitations of the Employer's rights are imposed by the CBA in effect between the parties.

TIMELINESS OF GRIEVANCE

Grievance Procedure Par. 202, Pg. 43 of the CBA requires Employer to respond to a written complaint of the HOA provided that it is received within twenty (20) calendar days following knowledge of the facts giving rise to the complaint.

Employer maintains that HOA did not comply with this provision and for this reason the Grievance before me is not timely and, therefore, is not arbitrable.

I disagree for the following reasons:

First

It is true that Employer did communicate notice of the policy to HOA on July 1, 2023. The title of the policy was "Anesthesiology Resident Absence From Training Policy– Interim. The word "interim" when used as an adjective means "temporary" or "provisional" (ie an interim arrangement). This terminology used by Employer, sent a message to HOA that the policy could possibly be altered, and, therefore, held out the hope to HOA that it could possibly convince Employer to change the policy at some future date, so there was no need to file a grievance at that time. This hope ended on October 3, 2023, when HOA was verbally told by an Employer representative that the policy in question was no longer "interim" and would be implemented on November 6, 2023.

The Grievance before me was filed on October 11, 2023, within eight (8) days of Employer's notification, well-within the 20 (twenty) days limitation spelled out in paragraph 202 of the CBA.

Second

The Grievance before me was filed on October 11, 2023, following that date the parties agreed to arbitrate the grievance and jointly selected an arbitrator. The arbitration hearing on this case occurred on January 17, 2024.

Employer never raised the issue of timeliness from October 11, 2023 until the date of the hearing on January 17, 2024.

Regardless of the procedure followed during the steps leading to arbitration, if a party does not timely object to the arbitrability of a grievance, but instead waits until the hearing or shortly before the hearing, that party waives the objection.

Employer did not raise this objection from October 11, 2023, until January 17, 2024. Its failure to raise the timeliness defense during that period of time effectively waives it.

For the two reasons previously stated, I hold that the Grievance is timely and is therefore arbitrable.

SUBSTANTIVE ISSUE

Articles XIII and XIV of the CBA address sick leave, short-term Disability Leave, Bereavement Leave, Jury Duty, Preventative Care and Personal Days, Maternity Leave, Parental Leave, Caregiver Leave, Vacation Leave, Military Leave, and Family Medical Leave.

Article XII Par. 81, Pg 22 discloses that if any of these leaves result in interruption of required training such that the training cannot be completed within the training time required for any specific program, the Program Director of that particular program may, seek on the behalf of the particular resident involved a reduction in training to the extent allowed by the national certifying board of that specific specialty but only if that particular training director can attest that the resident in question has achieved the required competence.

This language gives the Program Director not only the sole option of seeking the reduction in training time, but also leaves up to that Training Director the decision to assess whether the resident involved had achieved the required level of competence the program requires.

There is no mandate in this language requiring the Training Director to exercise either of these two options:

In fact, Paragraph 82 specifically states:

> ....Reductions in training are not assured or guaranteed and are always subject to applicable national certifying Boards approval, upon request of 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 Program Director's determination regarding reductions in training are not subject to the grievance and arbitration proceedings of the Parties' Collective Bargaining Agreement. (Emphasis added)

The language of both paragraphs 81 and 82 clearly leave the request for a reduction in training time within the sole discretion of the Training Director. There is no provision in the CBA which limits the power of Employer to issue the Anesthesiology Resident Absence From Training Policy. In fact, Article XIX Discipline paragraph 197 states:

> It is understood that the Collective Bargaining Agreement addresses the terms and conditions of employment but does not extend to oversight a House Officer's academic training program. (Emphasis added)

It is clear to me that the time required by the ABA to complete its anesthesiology program is part of an academic program and is, therefore, .outside the scope of the CBA, and beyond my jurisdiction.

The CBA does guarantee in Article XIII Sick Leave Par. 84, Pg 23

paid sick leave with no limitation, along with encouragement of House Officers not to work when they are ill.

There is no evidence that Employer failed to pay any House Officer for sick leave taken. There is also no evidence that Employer forced any House Officer to work when they were ill.

Vacation Section 1 Par 104 Pg 28 guarantees a certain number of vacation days for each 12-month period to House Officers. There is no evidence that any House Officer was deprived of any guaranteed vacation days.

There is no language in the CBA which prohibits Employers Anesthesiology Program Director from interpreting "time in training" to include up to 2 days of emergent call-ins, based on what he or she believes is in the best interest of House Officers. I must add that in light of the email from a

representative of the ABA declaring that as of May 11, 2023 the ABA no longer permits days away from training due to COVID under their Additional Absence From Training Policy and that those missed days must be accounted for, through the 60 days allowed away from training, the refusal of the Training Director to ask for a reduction in training days for Dr. Vanderwall as a result of COVID absences following May 11, 2023, certainly was not arbitrary. The difference in treatment between Doctors [redacted] was not disparate since the ABA is no longer excusing COVID absences from training extensions, thereby creating the circumstances resulting in the change.

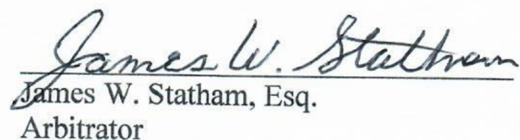
I appreciate the problems this policy causes for House Officers and add that despite the fact that their position was well-represented by Counsel, I have no authority under the CBA to hold that Employer's Anesthesiology Resident Absence From Training Policy is a violation of the CBA. HOA is unable to sustain its burden of proof.

For all the reasons previously stated, the Grievance is denied.

AWARD

Grievance Denied.

Dated: February 27, 2024



James W. Statham, Esq.
Arbitrator

APPENDIX A

ARTICLE XII. LEAVES AND IMPACT ON TRAINING

81 The HOA and the Employer recognize that due to leaves, as addressed in Articles XIII and XIV, delays or interruptions may arise during training such that the required training cannot be completed within the required total training time established for each training program and that the requirements vary between training programs. In such circumstances, if the trainee's Program Director and Clinical Competency Committee attest that the trainee has achieved required competence, the Program Director may seek on the resident's behalf, a reduction-in-training, to the extent allowed by the individual's national certifying Board.

82 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 allowed 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 of 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.

83 This language is applicable only to deficits in training time that result from leaves. It does not apply to deficits that may result from other actions, such as extensions due to remediation or probation.

ARTICLE XIII. PAID TIME AWAY SECTION

SECTION A. SICK LEAVE

84 When a House Officer is unable to work due to illness or injury and certain criteria are met, certain paid sick leave shall be available. The parties share a mutual interest that House Officers are both encouraged and supported by their programs and colleagues to not work when acutely ill

SECTION I. VACATION

104 Except as provided in paragraph 106, House Officers shall be entitled to twentyeight (28) days of vacation time per twelve (12) months of employment, inclusive of weekends (Saturday and Sunday). Therefore, a maximum of twenty (20) of these twenty-eight (28) days will occur on a Monday through Friday schedule. In the event a Program assigns and schedules vacation time by the month, no more than thirtyone (31) days of vacation time, inclusive of weekends, will be provided.

110 Paid vacation time may be used to off-set deficits in training due to a Leave of Absence (LOA), to the extent allowed by the national certifying Board and following the processes and procedures identified by the Employer.

197 It is understood that the collective bargaining agreement addresses the terms and conditions of employment but does not extend to oversight of a House Officer's academic training program. (Jt. Ex. 1; emphasis added)

ARTICLE XX GRIEVANCE AND ARBITRATION PROCEDURE

201 SECTION A DEFINITION OF GRIEVANCE

A grievance is a disagreement, arising under and during the term of this Agreement, between either (1) the Employer and any Employee concerning (a) the Employee's employment and (b) the interpretation or application of the provisions of this Agreement or (2) the Association and the Employer concerning the interpretation and application of this Agreement on a question which is not an Employee grievance or which concerns mor than one Employee, and involves a common fact situation and the same provision(s) of the Agreement.

202 In the event that the Association has a grievance, it shall begin at Step Three of the grievance procedure, provided the written complaint is received by the Director of Labor Relations or designee within twenty (20) calendar days following knowledge of the facts giving rise to the complaint. Such a grievance shall be submitted by the Association President, or the president's designated representative, on behalf of the Association or on behalf of more than one Employee involving a common fact situation and the provision(s) of the Agreement.

220.... The jurisdictional authority of the arbitrator is defined as, and limited to, the determination of any grievance (as defined above) submitted to them consistent with this Agreement and considered by them in accordance with this Agreement.

221 The arbitrator shall not have any authority to add to, subtract from, or otherwise modify any of the terms, clauses, or provisions of the Agreement.

225 The time limits set forth this Article may be extended only by mutual agreement of the parties. Whenever time limits are used in this Article actual electronic email receipt or a postmark, if mailed, will control.

226 All employer rights, powers, discretion, authority, and prerogatives are retained by and shall remain exclusively vested in the Employer, except as clear and specifically limited by this Agreement.