

**House Officers Association
Grievance #2023-200**

RESPONSE TO ASSOCIATION GRIEVANCE

I. Introduction

On October 11, 2023, the University of Michigan (“University” or “Employer”) received House Officers Association (“HOA” or “Union”) Grievance #2023-200, alleging the Department of Anesthesiology Interim Policy on Resident Absence from Training violated the parties’ Collective Bargaining Agreement. The policy allows for “up to 2 short term absence/sick days per year” without the need to delay graduation.

Contrary to what the HOA’s written grievance indicates, Employer representative Brian Sumner had shared the Department of Anesthesiology’s (“Department”) intent to make changes to its Absence from Training Policy. And, in fact, an updated version of the policy was provided to the HOA on November 6, 2023. However, Brian Sumner did acknowledge in the same conversation that the new policy would not reflect any changes to the Department’s original interim policy related to short term absences, the subject of this grievance. Specifically, the union alleges the following as it pertains to the short term absences in its grievance:

The policy of the Anesthesiology Department penalizes House Officers for utilizing their contractually guaranteed leave. It actively harms the goal of House Officers being “encouraged and supported by their programs and colleagues to not work when acutely ill” as stated in the CBA. Moreover, it is overly broad, limiting the ability of House Officers to deal with family emergencies that would require FMLA or Paid Caregiver Leave by punishing them with training extensions.

The policy has little to do with the academic prerogatives of the department. There is no clinical or educational reason for the limits placed on emergent call. Those justifications are merely pretextual and an attempt avoid the HOA agreement and impose a no-fault attendance policy on House Officers. The Department already has latitude under the CBA to discipline those who violate existing attendance policies or abuse various leaves. The proposed changes to the Interim policy far exceed that authority in ways that are wholly related to House Officers’ standing as employees and violates the CBA. This policy is facially unreasonable and voids benefits provided by the parties’ labor contract.

As its basis for the grievance, the Union cited the Employer violated the following portions of the parties’ Collective Bargaining Agreement:

Article XIII: Paid Time Away and any and all other relevant or implicated provisions of the current Collective Bargaining Agreement (CBA) between the University of Michigan Regents and the University of Michigan House Officers Association (HOA).

II. Analysis

As previously shared with the HOA in discussions, the Department of Anesthesiology’s Absence from Training Policy that includes the limitation of two emergent calls or short term absences per year was in response to changes to the American Board of Anesthesiology’s (“ABA”) training requirements, per the ABA’s Absence

from Training Policy. This change was made to ensure compliance with the ABA's policies and overall training requirements. The ABA policy provides for the following, in part:

The ABA has established certain training requirements for a candidate to enter its exam system. The following outlines permissible absences that will not result in delay in a candidate being eligible to enter the exam system:

- Without prior approval from the ABA, a resident may be absent from training up to a total of 60 working days (12 weeks) during the CA 1-3 years of training.

This provision that provides for "up to a total of 60 working days (12 weeks)" of absence from training would include vacation time to which the residents are contractually entitled.

The ABA policy then continues by discussing how additional absences from training beyond the 60 working days, as covered above, are to be managed:

- 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 leave of absence time 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 leave that are covered under the Family and Medical Leave Act would be reasons 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 need for ABA approval); and (2) the additional 40 working days (approved by the ABA).

The new Department of Anesthesiology Absence from Training policy aligns with the ABA policy, and in fact the two additional absences the Department is providing for short term illness is in fact more flexible and forgiving than the ABA Absence from Training Policy itself.

Furthermore, under the Department's new policy, House Officers are still entitled to take Paid Caregiver Leave and, despite the union's assertion, other "leaves that mimic the Family Medical Leave Act (FMLA)." Additionally, House Officers are still able to take leave under Paragraph 84 of the contract when acutely ill. The Department of Anesthesiology is not denying House Officers their contractual right to these various leaves, and the HOA has not identified any instances in its written grievance when a House Officer in the Department of Anesthesiology was denied their contractual right to take a leave under Article XIII – Paid Time Away.

However, while a House Officer has a contractual right to utilize these leaves, it does not mean such a right directly coincides with the training requirements of a given program, be it the Department of Anesthesiology or some other program sponsored through the Accreditation Council of Graduate Medical Education (“ACGME”). Training requirements for each program are determined by the national certifying Board for the given program or specialty. For example, as with this particular case, the American Board of Anesthesiology determines the program training requirements for residents in the Anesthesiology program, just as, by way of example, the American Board of Internal Medicine determines the program training requirements for those residents in the Internal Medicine program. The HOA contract acknowledges the authority of the national certifying Board as it relates to total training time and that reduced training is only permitted in instances when it is allowed by the specific national certifying Board. For context, Paragraph 81 of the CBA reads:

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.

In this specific case, the ABA has outlined very specific training requirements by which the Department of Anesthesiology has created an Absence from Training Policy to seek compliance with these very requirements. In so doing, the Department has not denied the contractual rights of House Officers to any of their paid leaves, as delineated in Article XIII – Paid Time Away. The union has failed to identify any violation of the CBA by the Department of Anesthesiology.

III. Conclusion

Based upon the foregoing reasons, the grievance is denied.

FOR THE UNIVERSITY REVIEW COMMITTEE: s/ Brian Sumner

Senior Labor Relations Specialist

Date emailed to the HOA: November 9, 2023