

Behind the current TMU pension dispute: An abuse of employer power

A bargaining update from CUPE and TFA

April 6, 2023

It has now become common knowledge on our campus that three of the Unions representing TMU employees have been in difficult contract bargaining with the University Administration – CUPE, OPSEU, and the Toronto Metropolitan Faculty Association (TFA). One of the issues in dispute is pensions, this bulletin aims to provide some background on these pension disputes.

Recent TMU pension history

On November 4, 2020, the University announced publicly that they faced a requirement to increase contributions to the pension plan. This was because of changes to Ontario pension law requiring a larger cushion, which resulted in a new valuation that revealed that plan costs had moved higher than the combined contribution rates by about 0.8%. However, their description of the consequences was highly misleading. As they put it in a website statement:

*Contributions to the plan need to increase in order to meet regulatory requirements. **As a result**, member contribution rates will increase by about 0.4%.*

This was very misleading because the pension plan **does not require** member rates to change when the cost goes up in this way. This additional cost is an employer-only liability under the terms of the plan and pension law.

Rather than engaging in a proper negotiation with the Unions over the increased employer pension obligations, the University Administration chose to unilaterally impose a member rate increase on all participating employees on January 1, 2021. They did this without respecting the prior history of negotiating over such contributions. The TFA filed a grievance over this action, arguing that it violated both past practice and their collective agreement. In April 2022 an independent grievance arbitrator issued a ruling that found that **the University Administration had violated the TFA collective agreement** and ordered that they remedy their mistake.

With this serious legal sanction the University Administration should have quickly returned the contribution rates for **all** plan members to their prior level. Instead, in December 2022 they chose to restore the prior contribution rate **only for faculty association members** and left the rates of the members of CUPE and all other non-faculty employees at the higher

level. As a result, for the first time in the history of the plan the University Administration has effectively imposed a two-tier pension structure with different contribution rates from different plan members – for the same level of benefits.

This unequal funding structure is a direct result of the Administration's unwillingness to respect a consistent past practice of fairly negotiating over such issues with all of its Unions. This is also the reason that both CUPE and OPSEU brought proposals into the recent contract negotiations – to ensure that their members have the same security and bargaining rights over pension issues as faculty colleagues.

CUPE and the TFA view collective bargaining over our pension plan as a fundamental right. We know that such rights are a basic standard for nearly all pension plans of the same type at other Ontario universities. The wages of CUPE members may be lower than other categories but our work is equally vital to the success of TMU students, staff, and overall operations.

The Danger of Employer Control: TMU's secret credit account

In the midst of the recent contract negotiations we obtained a copy of a new actuarial valuation report for the pension that was filed with provincial regulators this past December. This valuation report describes the current state of the pension plan. There were two key details in this valuation that have provoked serious concern for all three of our Unions. First, under this report the minimum required funding level has been adjusted downward by more than 1.3% of payroll. The University Administration chose to quickly file that valuation with government regulators without any formal discussion with the Unions about its content. The reduced required funding level was, in fact, an opportunity to return the contribution rates for both the employer and the plan members to the level it was at prior to the contested rate increase in 2021. The Administration did not even raise this possibility with us.

But, it gets worse. On closer analysis, we also see that since 2017 the University Administration has been quietly directing its actuary to track any dollar amounts contributed to the plan that are above the minimum required level as an employer "overcontribution" to an obscure mechanism known as a "**Prior Year's Credit Balance**" (PYCB) account. Through this scheme the University Administration is building up a "credit account" from which they can draw contributed funds back in the future through an employer-only refund known as a "contribution holiday". Of course, doing so would ignore the fact that members were also contributing more than was legally required and provide **no equivalent credit to them**. As of March 31, 2022 this PYCB credit account held over \$8 million and, with the new lower cost level now reported, the "overcontribution" discussed above is adding millions more to the employer's credit account every year.

This practice of recording an employer-only "PYCB" credit has never been raised by the Administration with any of its Unions. It is simply outrageous. The TMU pension fund and all contributions made to it belong to plan members – not the University. It is entirely improper for TMU to even consider the use of such a refund mechanism and it raises very serious questions about the lack of good faith negotiation over the new valuation report and its implications.

These practices are completely unacceptable to us and we are determined to protect our members' interests on this issue.

Resolving the Pension Dispute

The good news is that the disputes described above can be resolved very quickly with a commitment by the University Administration to respect the pension bargaining rights of all of its Unions – at no immediate cost. We are all fully prepared to negotiate a new framework for a proper pension advisory committee that works for us on the basis of mutual respect and an end to the Administration's unilateral moves to change our pension plan without our agreement.

Having said that, CUPE and TFA are also prepared to use the collective bargaining process to defend our rights to bargain and to protect the terms of our pension plan. We stand ready to bargain a resolve to these serious issues.

Update for Thursday, April 6

We acknowledge that OPSEU 596 has reached a tentative settlement. The pension framework that was agreed to at their bargaining table as we understand it does not address our issues of fairness, bargaining rights, and unilateral employer control over our pension plan.

CUPE 233 and TFA will pursue these priority issues at our respective bargaining tables.

In the event that the Administration refuses to respect our rights and reach a fair resolve to these concerns, CUPE is fully prepared to exercise our right to withdraw our labour as of the mandated deadline of 12:00am on Thursday, April 13. TFA supports CUPE in its efforts, and CUPE in turn fully supports the TFA in its pension bargaining agenda.

CUPE233

