

**FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
July 3, 2012**

In the Matter of:

Teamsters Local Union No. 284

11-MED-09-1103

and

City of Upper Arlington, Ohio

**REPORT AND RECOMMENDATIONS OF FACT-FINDER  
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Mark J. Lucas, Sr., Negotiator  
Jeanine Hummer, City Attorney  
Joe Valentino, Assistant City Manager  
Catherine Armstrong, Finance Director  
Darryl Hughes, Service Director  
Thad Boggs, Law Clerk

For the Union:

Susan D. Jansen, Counsel  
Don Mann, Recording Secretary  
Troy Legg, Street Department  
Mike Corney, Utility Division

## **INTRODUCTION**

The undersigned was selected by the parties to serve as Fact-Finder in the matter of the City of Upper Arlington, Ohio (hereinafter referred to as "Employer") and Teamsters Local 284 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D), and was appointed by SERB by letter dated April 3, 2012. Hearing was held at Upper Arlington, Ohio on May 31, 2012. The Union was represented by Susan D. Jansen, attorney at law, and the Employer was represented by Mark J. Lucas, Sr., Negotiator. The Employer declined to mediate, and the parties therefore did not engage in mediation prior to the hearing. The parties were, however able to resolve some issues during the course of the hearing. The parties presented position statements, testimony and exhibits concerning the outstanding provisions of the Collective Bargaining Agreement. The parties agreed to extend the deadline for the Fact Finder's Report until July 3, 2012, agreed to waive service of the Fact-Finder's report via overnight delivery and agreed upon service via email.

To the extent presented and relevant, and pursuant to Ohio Revised Code §4117.14, the Fact-Finder has considered the past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of the issues submitted.

## **FACTUAL BACKGROUND**

The City of Upper Arlington is located in central Ohio in Franklin County. It is a land locked inner ring suburb of Columbus, Ohio, and while it does include some commercial and industrial enterprises, it is primarily a bedroom community. The Employer employs approximately 247 employees in total, approximately 20 of whom are in the bargaining unit represented by Teamsters

Local 284. This bargaining unit represents the employees in the Street and Utility Divisions. The Street Division is responsible for the fabrication and maintenance of City signage, street repair and maintenance, street sweeping, leaf collection and snow removal, and special event assistance. The Utility Division is responsible for monitoring and maintaining the Employer's sanitary and storm sewer systems, water distribution system and fire hydrants.

The Union and Employer have been party to successive Collective Bargaining Agreements since 1998. The most recent Agreement expired on December 31, 2011. They began bargaining for a successor Agreement in November, 2011, and met on eight occasions. The parties were able to reach agreement on a number of provisions which are listed in the attached Exhibit A and which are incorporated herein by reference. The Employer is also party to Collective Bargaining Agreements with the Fraternal Order of Police which represents communications workers and police, and the International Association of Firefighters, which represents firefighters and paramedics.

The evidence presented at hearing demonstrated that, as is the case with most local governments in Ohio, the Employer will experience a dramatic fiscal impact as a result of the State's elimination of the Local Government Fund and Estate Tax. It has annual operating revenues of \$29,000,000. Its Local Government Fund revenues will shrink to \$960,000 in 2013, down from as high as 2.5 million in 2007, and the Estate Tax will be entirely eliminated in 2014. This tax formerly resulted in income averaging more than 2 million dollars per year. The loss of the Estate Tax will have a significant affect on the Employer which has historically been in the top ten cities in receipt of annual Estate Tax revenues in Ohio. There is no question but that these are difficult economic times for Ohio local governments in general, and this Employer is no exception. The fiscal position of the Employer is no doubt difficult, but it is not entirely bleak. On the bright side, City income tax receipts were up moderately in 2011, but this increase is insufficient to make up the far greater losses resulting from State action. The revenue in the Employer's Consolidated Funds, from which the income for the Public Works and Utility Departments is in large part derived, as well as the Unrestricted Fund, have not been affected like the General Fund, and do provide some flexibility in

expenditures. It further appears that for at least 2012, the Employer will be operating without a deficit. The Employer has already taken some action to reduce expenses including a hiring freeze effective January, 2011, leaving vacated positions unfilled and some layoffs. Even with these efforts, the Employer anticipates a one million dollar deficit in 2013.

## **ISSUES**

### **ARTICLE 1- AGREEMENT Section 1.4 - Past Practice**

Position of the parties: The Employer argues that the City Administration desires to remove any language from the Agreement which may be an impediment to changes which could be made to save money either through the regionalization of services or subcontracting. The past practice language is one of the provisions which could impede such efforts and it should therefore be eliminated from the Agreement. Further, in the event that the job classifications are combined as proposed, past practices could be difficult to maintain for each classification. The Union contends that the Employer is seizing upon the current fiscal difficulties to take things out of the Agreement which may not be necessary and will surely never be regained. In 2008 refuse collection, which was formerly performed by this bargaining unit, was sub-contracted. It is clear that the past practice language would not impede any efforts to subcontract or regionalize services, and practices can be readily eliminated through notice and meeting to provide input regarding the effects under the current language.

Discussion: The past practice language in the Agreement does not appear to present a realistic impediment to subcontracting or the sharing of services regionally. The language requires nothing more than notice and an opportunity to meet and provide input on the part of the Union in the event that the Employer seeks to modify a past practice. This does not present a realistic impediment, and the Employer retains significant flexibility to alter or eliminate past practices. The Employer must only provide notice and meet and confer. There is simply

insufficient justification for elimination of the language.

Recommendation: Article 1 Section 1.4 - Past Practice:

Current Language.

## **ARTICLE 2 - RECOGNITION & ARTICLE 9 - SENIORITY AND JOB ASSIGNMENTS**

Position of the parties: The Employer proposes a combination of the Street Worker and Utility Worker classifications into a new single classification called Service Worker which would be paid at the Utility Worker rate which is one and one half percent higher than the current Street Worker rate. The purpose in the consolidation of the classifications is to permit more flexible assignments of employees into various jobs. This would also allow the Employer to benefit from the cross training which it has already engaged in, to encourage more extensive cross training and to allow employees to perform more jobs on more types of equipment. The advantage to those in the current street worker classification would be a wage increase as noted above, while those in the Utility worker classification would be eligible for more overtime, which occurs primarily in the current Street Worker classification. The Union does not object to cross training or the combination of classifications, in general, but notes that the combination benefits one classification, but not the other. Its agreement is therefore not wholehearted. The Union's ability to agree to the proposed combination of classifications is linked to the Union's proposal in Article 9 which protects the most senior employees in each current division in order to prevent them from being placed in jobs which they are no longer physically able to perform.

Discussion: Clearly at a time when it is important to conserve funds and make every attempt to cut costs, cross training and utilization of employees in as many varied duties as possible is both advantageous and economical. The Employer's proposal clearly benefits Street Worker employees by providing them with a higher pay rate and providing them with additional training and skills. While the arrangement is of lesser benefit to those in the Utility Worker classification, its benefits in cost savings and efficiency to the Employer overall, outweigh the

desire which Utility Workers may have to not work in jobs in the Street Division. The Union's expressed concerns primarily revolve around the oldest employees in each division who fear that they may be physically incapable of performing more physically demanding work to which they are currently unaccustomed. The Union's proposal, formulated during hearing, appears to accommodate those concerns without placing an inordinate burden on the Employer's efforts to consolidate and economize. It is additionally, finite by its terms, and therefore does not create a long term impediment to the ultimate goal of having all employees fully cross trained and able to be placed on any required work.

Recommendation: Article 2 - The language should be changed to read as follows:

**2.1 - Add the following after the first paragraph:**

The Employer and Union agree that there shall be a single new classification of Service Worker. The persons currently in the bargaining unit employed by the City in the classifications of Street Maintenance Work or Utility Worker on the date this Agreement is executed and thereafter, shall be assigned to the Service Worker classification.

The parties will petition SERB to clarify or amend the bargaining unit to read as follows:

**INCLUDED:** All full-time and regular part-time employees in the classification of Service Worker.

**EXCLUDED:** All Supervisors, Clerical and Seasonal Employees.

**Article 9 - The following language should be added:**

9.5 The City will attempt to keep employees with 20 or more years of service as of the date of this agreement in the job duties which they have traditionally performed. This agreement shall expire as to each employee at the time of his retirement.

## **ARTICLE 13 - VACATION**

Positions of the Parties: The Employer proposes that vacation leave for new employees hired after January 1, 2012 be capped at three weeks. This would affect new employees only and would have no impact on the current bargaining unit. The vacation has been altered in this fashion for non-bargaining unit employees, although the City Manager has the ability to make exceptions. The change would result in a substantial cost savings in the future over the long

term. The Union argues that the language should remain the same. The Union has agreed that the only paid time off which will count as hours worked for purposes of overtime is vacation in an effort to help the Employer cut expenses. This proposal will create a morale problem and dissension within the bargaining unit since it is always at best, difficult to explain to new employees why they do not receive the same benefits as the employee beside whom they are working performing the same job. No other Collective Bargaining Agreement contains this language.

Discussion: While the Employer's proposal to cap vacation at three weeks would potentially save money over the long term, in view of the hiring freeze currently in place as well as the fact that employees do not reach the accrual until after five years of service, there is clearly no savings during the life of this Agreement from this proposal. The Employer did not provide specifics as to the amount of anticipated savings, and while there clearly will be savings at some point in the future, that future is simply too distant and vague to justify creating a two tier system with all of the difficulties which accompany treating similarly situated employees differently.

Recommendation: Article 13: Current language.

## **ARTICLE 17 - NEW/CHANGED JOBS AND SUBCONTRACTING**

Positions of the Parties: The Employer proposes language which provides unequivocally that once the parties meet and confer on the Employer's decision to subcontract, the Employer has met its obligation and may go forward to subcontract. The Employer argues that the language merely makes the Employer's obligations specifically clear so that there is no possibility of a contention that the Employer is obligated to bargain to impasse. Its purpose is to add security for the Employer to ensure that it has the ability to subcontract. The Union agrees that the Employer's obligation to meet and confer in the event of subcontracting is met without bargaining to impasse. In fact, the Union argues, the Employer subcontracted services in 2008 under the current language, and was not impeded by contractual language. The language is

simply unnecessary.

Discussion: As the Union notes, the proposed language appears to be repetitive and superfluous. The current contractual language already gives the Employer the ability to subcontract work. The Employer's obligation under current language is solely to provide thirty days' notice and meet and confer to consider proposed alternatives to avoid layoff. The new language adds nothing except to state that employees will be paid amounts owed under the Agreement or by law upon layoff, and to restate that the Employer's obligation is solely to meet and confer. As in the case of the language proposed in the recognition clause, the extant language already provides the Employer with the authority to subcontract, and the new language does little more than re-state what is already provided.

Recommendation: Article 17: Current language.

#### **ARTICLE 10 - TEMPORARY AND SEASONAL ASSIGNMENTS**

Positions of the Parties: Both parties have made proposals on this Article. The Employer proposes eliminating the Article entirely, while the Union proposes a language change from "lead person/crew chief" to "supervisory" and the elimination of reference to "classifications". The Union's proposal alters the language to make it consistent with the merging of the two classifications. Instead of receiving premium pay for working in a higher rated classification, the higher pay rate would apply if an employee is assigned to a supervisory position. The Employer argues that the language is no longer applicable in the event of combination of the two classifications. If an employee is assigned as a supervisor, the Employer would pay them at the supervisory rate pursuant to the personnel rules which provide for pay at the higher rate after 16 hours of work. The Employer argues, however that payment after only one hour of work is a luxury which the Employer can no longer afford. The Employer further notes that this has not happened in some time since there are four supervisors. The Union points out that personnel policy, unlike contractual language, is subject to unilateral change.

Discussion: While, as the Employer notes, it does not happen often that bargaining unit employees are assigned as supervisors, it apparently does happen on occasion. Further, as the Employer notes, payment for the higher rated work after only one hour is expensive both in cost and in payroll administration expense. On the other hand, as the Union notes, personnel policies can be changed at will and the elimination of contractual language in favor of the application of a changeable personnel policy creates insecurity which is anathema to the purpose of collective bargaining. The interests of both parties can be accommodated by maintaining the current language, but increasing the number of hours before the higher rated payment is required.

Recommendation: Article 20 - The language should be changed to read as follows:

Section 20.1. Assignment and Compensation. The City shall have the right to assign employees to supervisory positions or a position in a higher classification. Where the assignment is for four (4) hours or more ... (balance of section current language)

Section 20.2. Roster. The City shall maintain a roster of employees qualified to perform supervisory temporary assignments. The exclusion of an employee from this temporary assignment roster shall be subject to the grievance procedure.

## **ARTICLE 24 - DRUG AND ALCOHOL POLICY**

Positions of the Parties: The Employer proposes deletion of language in Section 24.11 which provides that negative test results and all documentation of supervisory observation from negative drug or alcohol tests will be removed from an employee's personnel file. The Employer argues that this contractual language is in violation of the applicable laws regarding retention of public records, and it should therefore be deleted from the Agreement. The Union acknowledges that the records should be retained, but argues that they can be maintained separately from the employee personnel file. In that way, a request for personnel file records would not include the negative test results and any accompanying supervisory observations.

Discussion: The Union concedes that the records which are removed from personnel files under the current contractual language are in fact records which are required to be maintained. While it is understandable that an employees would want to limit public access to such

information, legally they cannot. In the absence of some demonstration of a compelling need to protect this information from the public eye, there does not seem to be sufficient justification to retain language which violates state law or requiring that the documentation be removed from personnel files but maintained separately. This is particularly true since this solution does not prevent the information from being obtained upon request.

Recommendation: Section 24.11 Delete the following language:

If test results are negative, all documentation regarding supervisor's observation and testing will be destroyed. In regards to alcohol tests, if it is determined by the City Manager that the employee tested below the conclusive impairment level and that the employee was not impaired in the performance of his job, all documentation regarding supervisor's observations and testing will be destroyed. Prior to destruction of any of these records, the City Attorney shall review the records to determine whether the records have any relevance to any pending or possible litigation. If the City Attorney determines that the records have such value, the City Attorney shall take possession of the records. Records concerning negative tests shall not be maintained in an employee's personnel file.

## **ARTICLE 25 - INSURANCE**

Positions of the Parties: The Employer makes several proposals regarding insurance. The Employer proposes initially that the insurance language include a spousal exclusion so that in the event that the employee's spouse is or may be covered by other insurance through their employer, the spouse would be ineligible for coverage through the Employer. The Employer also seeks to add a requirement that in the event family coverage is elected, it is controlled by the birthday rule which requires that in the event that both parents are covered by insurance through their employer, dependent coverage is through the spouse with the birthday occurring earliest in the calendar year. The Employer has determined that many employees whose spouses have access to other coverage are opting for insurance for their spouses and dependents through the Employer. This is an area of significant cost in which significant savings could be reaped merely by applying the spousal exclusion and birthday rule. The Employer additionally proposes increases in the amounts employees pay on their insurance. The proposed contributions are the same as those already included in the FOP police and IAFF contracts for 2012 and 2013. Those being 9 percent or

\$105.00 per month in 2012 and 10 percent or \$120.00 per month in 2013. The Employer proposes that effective 2014, the bargaining unit employees pay the same premium contributions as non-represented employees, with no cap on employee contribution amounts. Currently increases are tied to increases in other bargaining units. The Employer's target is a 15% employee insurance contribution.

The Union argues that the spousal exclusion and birthday rules are not included in the language of any of the other collective bargaining units. This bargaining unit should not be singled out as the first to accept these limitations. The Union proposes that current language should be maintained which includes a cap of 9 percent of or \$90.00 per month. The Union does not oppose paying the same amounts as fire and police, but it is opposed to entirely eliminating a cap as proposed by the Employer. This bargaining unit, which is not eligible for conciliation, should not be the bargaining unit to be put on the front line of the issue. The elimination of the cap as proposed, should be presented to a conciliator for decision. The Union urges that if this were a truly urgent economic issue as argued by the Employer, it is unclear why the cost to non-represented has not been increased. Further, the premium increases have been less than the increases in the cap in the last few years.

Discussion: Health insurance has been a source of economic pain both for employers and employees for some years now. While employers seek to control premium costs which are in great part out of their control, unions seek to minimize the economic impact of changing benefits and higher costs on their members. The cycle has continued now for some years unabated, and this case is no exception. The Employer here seeks relief from its increasing insurance costs and its overall fiscal difficulties in part by increasing the burden on employees by increasing the employee share of premium payments and by shifting some spouses and dependents off of the Employer's plan where other coverage is available.

There does not seem to be any significant reason for these employees not to pay the same rates as those currently paid by the police and fire units, and the Union has expressed a

willingness to pay premium contributions at those rates for 2012 and 2013. The problem is presented in 2014 when this contract is still in effect while the police and fire contracts are expiring. As the Union point out, these two bargaining units, which are presumably larger than this one, additionally are subject to conciliation. In these economic times where strike is a weapon which is unlikely to be used, conciliation evens the bargaining power of the parties to negotiate an acceptable level of insurance contribution. While the Employer has stated that its target for insurance premiums is a 15% contribution by employees, if the cap is removed in its entirety as proposed, clearly that target is subject to change entirely within the Employer's discretion. In these circumstances, it seems appropriate to permit the FOP unit, whose contract expires in 2012, to be the driver in bargaining insurance contributions for 2014 and beyond.

With regard to the spousal exception and birthday rule, it does appear that these two provisions are appropriate avenues for savings in insurance for the Employer. The problem, however, is that it does not appear that the parties have thoroughly explored the ramifications of the rules. In the event that an employee's spouse is eligible for coverage for herself and dependents through her employer, there is a distinct possibility that that coverage may be either less thorough or significantly more expensive, or both. There are also possibilities of the exclusion of pre-existing conditions or denial of coverage for some dependents. It does not appear that the parties have either considered or thoroughly discussed these or other issues which may arise if the spousal exception and birthday rule are included in the contractual language. Based upon the numbers presented by the Employer, however, it does appear that the inclusion of these two provisions has the potential to reap some significant needed savings for the Employer. That savings, however, should not be generated without some protection for employees for unclear and unanticipated costs. The Fact-Finder therefore recommends language which includes the spousal exclusion and birthday rule, but includes some protection for employees which is not included in the Employer's proposal.

Recommendation: Section 25.1 - Current language with the addition of the following

sentences at the end:

In the event the employee's spouse is eligible for health or dental insurance coverage through his or her employer, the employee's spouse will not be eligible for coverage through the City if that insurance is comparable to that provided by the City in cost and coverage. In the event that the employee elects family coverage which includes dependents and the employee's spouse is eligible for insurance through his or her employer, the insurance "birthday rule" shall apply to coverage of dependents so long as the insurance is comparable in coverage and cost, and all dependents are accepted for coverage.

Section 25.2 - first paragraph current language with the exception that 2009 shall be changed to 2012, seven percent (7%) changed to nine (9%) percent and seventy-five dollars (\$75.00) changed to one hundred five dollars (\$105.00).

Second paragraph to read as follows:

In the event that all other eligible City employees covered by insurance incur an increase in contributions, employees will incur the same increase that all other City employees incur; provided that for year 2012 the premium will not exceed the lesser of nine percent (9%) or one hundred five dollars (\$105.00) per month, and on or after January 1, 2013 until December 31, 2013, the premium shall not exceed the lesser of ten percent (10%) or one hundred twenty dollars (\$120.00) per month.

## **ARTICLE 28 - WAGES AND BENEFITS**

Positions of the Parties: The Employer proposes a 1% pay increase in each of the first two years of the Agreement, and no increase in the third year. The Employer's budget simply cannot support greater wage increases, particularly in the third year of the Agreement when the Estate Tax will be eliminated in its entirety. In reviewing area comparables, these employees fall close to the middle, indicating that not only is this an affordable increase, but a fair one. The Union notes that its proposal of a 3% increase of each year of the Agreement is its initial proposal, and is in line with the increases these employees have historically received. It should be born in mind that much of the funding for these employees does not come from the General Fund, but from other designated funds. The internal comparable increases for non union employees were predominantly 1% with an available additional 1% lump sum increase for performance. Some groups, however, appear to have received additional increases in either wages or benefits based

upon overall increases in wages and benefits. The Employer's own comparables indicate that this group is below average. An increase greater than that proposed by the Employer is therefore justifiable and appropriate. Finally, it should be noted that while the Employer proposes no increase for the third year of the Agreement, it also proposes to eliminate the insurance cap in that year, posing a real risk of a pay decrease for the employees in that year.

Discussion: In reviewing the wage proposals for this bargaining unit, it is first important to note that the recommended combination of the Street and Utility Divisions will result in a 1 ½ percent increase for thirteen of the twenty bargaining unit employees. The cost of that increase and the cost of a 1% increase for the entire bargaining unit is \$10,000 each. The Employer will attain some measure of economic relief based upon the decreased overtime costs generated by the agreement regarding computation of hours worked, through increased insurance contributions, and the application of the spousal and birthday rule recommendations above. It is not expected, however, that that relief will balance the budget cuts necessitated by the State's elimination of Local Government and Estate Tax funds. As previously noted, while the Employer's situation is not entirely bleak, it is clearly of serious concern, and warrants a conservative approach to wage increases. Reference to the wages of employees in comparable jurisdictions indicates that these employees are, as the Employer notes, about in the middle, again indicating that a large increase is not warranted to make their wages competitive.

Recommendation: Article 28 - 1% wage increase effective January 1, 2012, 1% wage increase effective January 1 2013, 1% wage increase effective January 1, 2014.

## **ARTICLE 32 - RETIREMENT**

Positions of the Parties: The Employer notes that some years ago, the Employer and Union agreed that the Employer would pay the employee's share of pension costs. This pension pick up has become an issue with the public which notes that private sector workers must pay part of their pension while public sector workers often do not. Further, the financial reasons for this

pension pick up are in significant part, no longer valid. The Employer therefore proposes to eliminate the pension pick up and to shift the employee pension contribution back to the employees over the course of the Agreement. This is already in process for the non-bargaining unit employees, and in 2012 those employees are paying 4% of their pension, with the remaining 6% being phased in over the next two years. The Union does not disagree with the Employer's proposal so long as the employees are compensated for absorbing the expense of this transference of pension expense. If not, the employees will be taking a significant wage reduction in order to pay the pension funding which they have not been required to absorb for some years. The Union notes that even if the Employer pays the percentage which is being shifted in wages, there may be a small decrease in wages to the employee.

Discussion: As the Employer notes, the citizens who pay taxes to support public services have taken note of the fact that public employees receive generous pensions to which they frequently have no responsibility for contribution. Clearly it is not unreasonable for these employees to pay a portion of their pension contributions as private sector employees do. On the other hand, it must be born in mind that the reality is that a sudden requirement that these employees pay a significant percentage of their pension is effectively a significant wage decrease, particularly in light of the conservative 1% annual wage increase recommended above. It is simply not reasonable to expect these employees to absorb this additional cost without a concomitant pay adjustment.

Recommendation: Article 32 - Amend the Article as follows:

Section 32.1. Method of Payment of Salary and Benefits. The City's method of payment of salary and the provision of fringe benefits to the employees covered by this Agreement who are participants in the Ohio Public Employees Retirement System (OPERS) are as follows:

1. In addition to the total annual salary and salary per pay period which is otherwise payable to each full-time and regular part-time employee, the amount of the statutorily required employee contributions to OPERS that shall be picked up and paid as a fringe benefit by the City is set forth in Subsection 32.1(2) below. The remaining amount of the statutorily required employee contributions to OPERS shall be withheld from the employee's gross pay and picked up by the City, commonly referred to as a salary reduction pick up.

2. Effective Date of Revised Pickup: Revised Pickup:	% of Employee's "Salary" City Will Pay to PERS as Fringe Benefit:
Start of 1st full payroll following ratification of this CBA by the parties	six percent (6%)
Start of pay period that includes January 1, 2013	three percent (3%)
Start of pay period that includes January 1, 2014	zero percent (0%)

3. The amount assumed by the City shall not be included in the employee's total annual salary for purpose of computing daily rate of pay, for determining paid salary adjustments to be made due to absence, or for any similar purpose.

4. The pickup shall be designated as public employee contributions and shall be in lieu of contributions to OPERS by each employee. No person subject to this pick up shall have the option of choosing to receive the statutorily required contribution to OPERS directly instead of having it picked up by the City or of being excluded from the pick up. The City shall, in reporting and making remittance to OPERS, report that the public employee contribution for each person subject to the pick up has been made as provided in the statute. Therefore, contributions, although designated as employee contributions, are employer-paid, and employees do not have the option to receive the contributions directly. All contributions are paid by the employer directly to OPERS.

3. If the pick-up of employee retirement contributions should no longer be permitted by state and federal law or regulations, employees shall be paid in cash for the amounts that otherwise would have been picked up under this provision.

The following related language to be added to Article 28:

Effective the date the fringe benefit PERS pick up being paid by the City to PERS for the bargaining unit employees is reduced from ten percent (10%) to six percent (6%), the pay scale shall be increased by four percent (4%). That date is anticipated to be the beginning of the first full pay period following ratification of this Agreement by the parties. See Article 32 Retirement herein. The resulting pay scale shall be:

[Insert pay scale here as calculated by the City's payroll system.]

Effective the date the fringe benefit PERS pick up being paid by the City to PERS for the bargaining unit employees is reduced from six percent (6%) to three percent (3%), the pay scale shall be increased by three percent (3%). That date is anticipated to be the beginning of the pay period that includes January 1, 2013. See Article 32 Retirement herein.

[Insert pay scale here as calculated by the City's payroll system.]

The foregoing wage adjustments shall be added to annual wage increases, but not compounded.

Dated: July 3, 2012

  
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Tobie Braverman, Fact-Finder

**CERTIFICATE OF SERVICE**

The foregoing Report and Recommendations was served upon Susan D. Jansen, Doll, Jansen, Ford & Rakay, [sjansen@dfjlawfirm.com](mailto:sjansen@dfjlawfirm.com), 111 West First Street, Suite 1100 Dayton, OH 45402-1156, Counsel for Teamsters Local 284 and Mr. Mark J. Lucas, Sr., Clemans, Nelson & Associates, Inc. , [mjlucas@clemansneson.com](mailto:mjlucas@clemansneson.com), 6500 Emerald Parkway, Suite 100, Dublin, OH 43016, Counsel for City of Upper Arlington, via email this 3d day of July, 2012.

  
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Tobie Braverman

EXHIBIT A

ARTICLE 3 - DUES DEDUCTION

ARTICLE 4 - LABOR/MANAGEMENT COMMITTEE

ARTICLE 5 - PROBATIONARY PERIOD

ARTICLE 6 - MANAGEMENT RIGHTS

ARTICLE 7 - DISCIPLINE

ARTICLE 8 - GRIEVANCES

ARTICLE 10 - HOURS OF WORK AND OVERTIME

ARTICLE 11 - LAYOFF AND RECALL

ARTICLE 12 - INJURY LEAVE

ARTICLE 14 - SPECIAL LEAVE

ARTICLE 15 - SICK LEAVE WITH PAY

ARTICLE 16 - CALL-IN PAY

ARTICLE 19 - HEALTH AND SAFETY

ARTICLE 21 - NO STRIKE/NO LOCKOUT

ARTICLE 22 - CONFLICT, AMENDMENT, PRACTICE & SEVERABILITY

ARTICLE 23 - RESERVED

ARTICLE 26 - DISABILITY SEPARATION

ARTICLE 27 - SHORT TERM AND LONG TERM DISABILITY

ARTICLE 29 - FAMILY & MEDICAL LEAVE

ARTICLE 30 - CDL ALCOHOL AND DRUG TESTING POLICY

ARTICLE 31 - UNION REPRESENTATION

ARTICLE 33 - SERVICE CREDIT COMPENSATION

ARTICLE 34 - ENTIRE AGREEMENT

ARTICLE 35 - DURATION

ARTICLE 33 - SERVICE CREDIT COMPENSATION

ARTICLE 34 - ENTIRE AGREEMENT

ARTICLE 35 - DURATION