



# TRANSPORT WORKERS UNION

## OF GREATER NEW YORK • AFL-CIO • LOCAL 100

**Tony Utano**  
*President*

**Earl Phillips**  
*Secretary Treasurer*

**LaTonya Crisp**  
*Recording Secretary*

**Nelson Rivera**  
*Administrative VP*

VIA EMAIL

amiller@mtahq.org

Anita Miller, Esq.

Metropolitan Transportation Authority

Chief Employee Relations and Administrative Officer

2 Broadway

20<sup>th</sup> Floor

New York, New York 10004

RE: Tier VI Member Contributions

Dear Ms. Miller:

After many months of inquiry regarding Tier VI Member Contributions, I have had several productive conversations with MTA representatives and other State officials regarding the cessation of such contributions once a Member meets the FAS Earnings Cap (including overtime limitations). Essentially the issue is this: once a Tier VI Member's annual compensation meets the FAS earnings "cap" (his/her base pay plus overtime – which is capped by statute), Local 100's position is that the Member's contributions should cease. Much as employers discontinue withholding Federal Insurance Contribution Act (FICA) taxes once an employee reaches the statutory limit, the MTA should stop deducting Tier VI Member Contributions once a Member reaches the FAS CAP, on an annual basis, which is the base pay plus overtime pay. These are principles on there is no dispute.

It should be noted as well that the definition of wages also excludes: 1. wages in excess of the annual salary paid to the Governor of the State of New York; 2. lump sum payments for deferred compensation, sick leave, accumulated vacation or other credits for time not worked; 3. any form of termination pay; 4. any additional compensation paid in anticipation of retirement; and 5. in the case of employees who receive wages from three or more employers in a twelve month period, the wages paid by the third and each additional employer.

This letter is to inform you that Local 100 intends to determine whether and to what extent the MTA has overwithheld Tier VI Member Contributions from Local 100 members and will seek reimbursement of any such overpayments (with interest). As an initial step, Local 100 requests a written explanation as to the methodology the MTA employs in withholding Tier VI Member Contributions. Please provide, in addition to the methodology, redacted examples of instances in which the Member Contribution stopped being withheld because the Member reached the FAS earnings cap.

Once the requested information has been supplied, we will review the explanation and convene a meeting of representatives of the MTA and Local 100 to determine the appropriate course of action to take to reimburse those Members whose pay was wrongfully diverted to the NYCERS/MaBSTOA Pensions.

I look forward to your expedient reply.

Sincerely,

A handwritten signature in cursive script that reads "Anthony Utano". The signature is written in dark ink and is positioned above a horizontal line.

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Anthony Utano

President

Transport Workers Union Local 100