

**SENT VIA EMAIL**

December 12, 2011

William H. Pope  
Business Representative  
Operating Engineers, Local Union No. 3  
1654 The Alameda, Suite 110  
San Jose, CA 95126

**RE: Ballot Measure Negotiations**

Dear Bill:

I write in response to your email dated December 9, 2011. It is not our intent to pre-condition bargaining or mediation. To be clear, from the City's perspective, the City has fully satisfied its obligation to meet and confer and has completed impasse procedures with OE#3.

Let's review the history. On June 3, 2011, the City notified you of its proposal to place a measure on the ballot that would include various proposed changes to the Charter regarding retirement benefits for new employees, current employees and current and future retirees. The terms of the proposed ballot measure were delineated in the memorandum dated May 13, 2011, that we provided you on June 3, 2011. The City provided you drafts of the proposed ballot measure on July 6<sup>th</sup>, September 9<sup>th</sup>, October 5<sup>th</sup>, October 20<sup>th</sup> and October 27<sup>th</sup>. Since June 2011, the City repeatedly made its availability to meet and confer with OE#3 regarding any changes to the draft proposed ballot measure known through multiple correspondence dated June 3<sup>rd</sup>, June 8<sup>th</sup>, June 22<sup>nd</sup>, July 6<sup>th</sup>, July 19<sup>th</sup>, July 21<sup>st</sup>, September 9<sup>th</sup>, September 23<sup>rd</sup>, October 5<sup>th</sup>, and October 11<sup>th</sup>.

Because of OE#3's decision not to avail itself of the opportunity to meet and confer over the ballot measure, the City declared impasse or waiver on October 31, 2011, but indicated that it was nonetheless willing to participate in mediation. The City's impasse declaration was reiterated in a letter dated November 8, 2011.

The City and OE#3 ultimately did engage in mediation over retirement reform, including but not limited to, the ballot measure, on November 22<sup>nd</sup>. Unfortunately, the parties failed to reach any agreement during mediation.

OE#3  
RE: Ballot Measure Negotiations  
December 12, 2011  
Page 2 of 2

Based on the above, we have completed the meet and confer process as it pertains to the ballot measure. This process was completed prior to the January 1, 2012, effective date of AB 646, and therefore the fact finding provisions of this legislation are not applicable.

On November 22, 2011, the City provided OE#3 with the ballot measure that would be considered by the City Council on December 6, 2011. During the December 6<sup>th</sup> City Council meeting, the Council approved ballot measure language to be placed on the June 2012 ballot.

During the December 6<sup>th</sup> Council meeting, numerous unions asserted they believed that further progress could be made in mediation. IFPTE and its coalition, in particular, proposed in writing to resume mediation efforts, using the limited additional time now available to make additional efforts to break the impasse. We have accepted their proposal, and, in our December 7<sup>th</sup>, letter, asked if other groups would be prepared to join that mediation on the same terms.

It is apparent from your email that your organization is not prepared to proceed on the same terms as IFPTE. To clarify the intent of our letter dated December 7, 2011, the City is not seeking to place conditions on further bargaining, nor is the City willing to reopen negotiations regarding the ballot measure. However, the City remains amenable to meeting with OE#3 in mediation, with the understanding that further discussions do not constitute reopening of negotiations over the ballot measure or in any way prejudice our position that the parties have already completed any required impasse resolution procedures. Please let us know on or before Wednesday, December 14, 2011, if OE#3 would like to meet.

It is important to recognize that time is of the essence and the mediation process cannot be open ended. Consistent with the completion of impasse resolution procedures, the City Council approved the terms of the ballot measure on December 6<sup>th</sup>. Absent any agreement to the contrary, the measure (in its current form) is now scheduled to be placed on the June 3, 2012 ballot and, consistent with its "sunshine" requirements, the Council will be unable to introduce changes in the measure after February 21, 2012. Therefore, any further mediation or other procedures must be completed no later than mid February, 2012, to ensure that any agreed-upon changes to the measure can be made before ballots are printed.

We look forward to hearing from you.

Sincerely,



Gina Donnelly  
Deputy Director of Employee Relations

c: Alex Gurza, Deputy City Manager