

SENT VIA EMAIL

October 31, 2011

William H. Pope
Business Representative
International Union of Operating Engineers, Local Union No. 3 (OE#3)
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: Draft Proposed Ballot Measure

Dear Bill:

On June 3, 2011, the City notified you of its intent 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 6th, September 9th, October 5th, October 20th and October 27th. Since June 2011, the City has been available to meet and confer with OE#3 regarding any changes to the draft proposed ballot measure.

The City and OE#3 met three (3) times on July 29th, August 31st and September 27th. During our meeting on Tuesday, September 27, 2011, OE#3 indicated that you would see if you could put something together for our meeting scheduled for Friday, September 30th. We were confirmed to meet on September 30th, however; OE#3 did not attend the session, nor call our office to cancel the meeting.

On October 11, 2011, the City sent you a letter requesting to establish a biweekly schedule to ensure that you had an adequate opportunity to meet and confer over the ballot measure proposed by the City to be placed on the ballot for a March 2012 election. On October 18, 2011, OE#3 sent a letter indicating that it was "amenable to discussing the proposed ballot initiative, as long as the City is amenable to including any proposals that have been mutually agreed to during retirement reform negotiations currently in progress." As you know, OE#3 has been participating in non-charter retirement negotiations in a coalition setting with four unions. This coalition has indicated that negotiations over the ballot measure would not be a subject

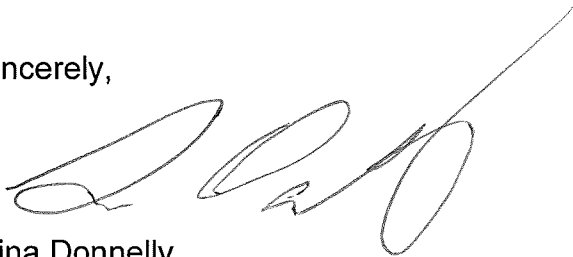
matter covered in the coalition setting. As such, the negotiations over the proposed ballot measure have remained separate, and the City has continuously offered to meet with OE# regarding the proposed ballot measure.

As we have repeatedly noted, the retirement reforms contemplated by the City Council are designed to address a critical financial problem which, if not addressed in time for the coming fiscal year, will result in devastating cuts to public services and loss of jobs. For that reason, the City Council has determined that the retirement measure will be considered by the voters at a special election in early March 2012. Based on state and local election laws, the measure must be finalized and submitted approximately 90 days before the election. This requires the meet and confer process to be completed by the end of October and any impasse procedures requested to be completed in early November. This is an immutable deadline given the urgency of the measure and the planned special election timelines.

Despite our continuous efforts to meet with OE#3 to discuss the ballot measure, the City and OE#3 only met three times to discuss the ballot measure. During those sessions, no agreements were reached on the proposed ballot measure.

Based on the above, it appears that OE#3 has waived its right to meet and confer over the proposed ballot measure or the parties have reached impasse. In either event, the City is amenable to participating in mediation. The City intends to schedule mediation sessions utilizing the State Mediation and Conciliation Service for November 1, 2011 through November 14, 2011. If OE#3 wishes to participate in mediation, please notify me no later than Thursday, November 3rd by 5:00 p.m. and provide your availability for mediation during the dates referenced above. If you fail to do so, we will assume that you intend to waive mediation as well.

Sincerely,



Gina Donnelly
Deputy Director of Employee Relations

c: Alex Gurza, Deputy City Manager