

EXHIBIT 12-E



October 11, 2005

MPWMD Board
5 Harris Court, Bldg. G
Monterey, CA 93942-6085

Re: Response to LIUNA submittal in Grievance of opt out medical payments

Dear Members of the Board:

This letter is in response to the letter brief filed by LIUNA counsel relative to the submission made on behalf of the General Manager by my office in the above-referenced matter.

The letter brief provided to your Board in the prior matter was akin to an appellate brief. It did not provide additional facts that were not introduced at the hearing, but rather made a legal argument, based on the record presented at the hearing and the hearing officer's decision, as to why the decision itself should not be upheld based on the lack of factual support for the decision in the record and as contrary to established labor arbitration principles. The grievance procedure itself does not prohibit written or oral argument from either party to the proceeding to the Board who is tasked with the final decision making authority. The case of Vollstedt v. City of Stockton (1990) 220 Cal App. 3d 265, cited by LIUNA found that due process was not followed in an instance in which a City Manager, the final decision-maker following a Civil Service decision, overturned a Commission decision which was not in writing as required by the ordinance and where such decision was based on information provided by the City Personnel Director to the City Manager in the absence of the appellant. This holding is not relevant in the instant matter, as no new factual evidence was presented to the Board in the letter brief filed on behalf of the General Manager, nor was the information presented to the Board ex parte, but rather was attached to the public agenda packet provided to all parties prior to the hearing.

The General Manager respectfully requests that this Board, as required by the grievance procedure, review the decision of the hearing officer after consideration of the written and oral arguments already provided by both sides to this appeal. For the reasons set forth in the September 13, 2005 letter brief, the General Manager respectfully requests that his grievance decision become the findings of the Board and the recommendation of the Hearing Officer be rejected as not supported by the facts or the law.

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Respectfully Submitted,

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Cc: Tim McCormick
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