THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

May 30, 2012

Hon. Michael McSweeney
City Clerk and Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 658-A, which would amend the New York City Collective Bargaining Law "in relation to the waiver of public employee organizations' rights when submitting grievances to arbitration under the New York city collective bargaining law." This bill would all but eliminate the longstanding statutory waiver requirement that is codified in the City's Collective Bargaining Law found in §12-312(d) of the Administrative Code.

In 1967, the New York City Collective Bargaining Law was enacted as a result of recommendations of a Tripartite Committee consisting of representatives of municipal unions, the City, and impartial members representing the public. It was an historic collaboration that reflected a carefully and delicately structured statutory compromise among the interests of the public, labor groups, and City agencies. One component of this historic legislation was a requirement that, in order for an employee to invoke the contractual grievance arbitration before the Office of Collective Bargaining, a waiver must be filed of the right to seek review of the underlying dispute in any other forum. In other words, an employee has always had a choice of remedies and may avail him or herself of the usual statutory rights or impartial arbitration, but not both. This was the original understanding and intent of the waiver requirement at the time of the first enactment of the New York City Collective Bargaining Law.

In accordance with this sound policy, the waiver requirement of the New York City Collective Bargaining Law has remained unchanged since the law was enacted in 1967. It is noteworthy that over time, courts have recognized that the waiver is inapplicable to civil rights claims. Now, however, Introductory Number 658-A seeks to effectively eliminate the waiver requirement by limiting it to contractual claims only. This amendment would render the provision functionally meaningless, and would permit a union or employee to pursue

simultaneously an arbitration based on the collective bargaining agreement and a court case based on a statutory or other legal claim concerning the same dispute and interposing the same issues. This will invite inconsistent decisions, outcomes and orders, and will result in unnecessary litigation and a waste of judicial resources. The language of the existing law does not prevent an employee or union from exercising their respective rights in either forum. It simply requires that, where the underlying dispute is the same, the employee or union make a choice between arbitration and court. This statutory scheme has served labor unions and City employers well for the past forty-five years and should not be disturbed.

For the foregoing reasons, I hereby disapprove Introductory Number 658-A.

Sincerely,

Michael R. Bloomberg
Mayor

Cc: The Honorable Christine C. Quinn