

RESOLUTION NO. 2001-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING A EMPLOYEE EMPLOYER RELATIONS POLICY

WHEREAS, City labor relations have been regulated by the Meyers-Milias-Brown Act (MMBA) and City promulgated employer-employee rules,

WHEREAS, with the passage of SB 739 in the last legislative session, and its subsequent signing by Governor Davis, City labor relations as of July 1, 2001, will be overseen by the Public Employee relations Board (PERB),

WHEREAS, PERB will have the power to enforce all rules adopted by a City concerning representation of rank-and-file employees, recognition and elections of unions or employee organizations, and determination of specific bargaining units,

WHEREAS, any changes to the Employer/Employee Relations Policy of the City adopted and effective before July 1, 2001 will be the policies enforced by PERB after July 1, 2001,

WHEREAS, the proposed Employer Employee Relations Policy before the Council provides the City the greatest amount of flexibility in this new labor relations environment.


WHEREAS, the proposed Employer Employee Relations Policy before the Council also allows the City to set the rules by which employee

organizations are organized and recognized consistent with state and federal law.


BE IT RESOLVED AND ORDERED, that the City Council of the City of Elk Grove does hereby adopt, effective this 27th day of June in the year 2001, the Employee Employer Relation Policies as set forth in that document entitled "City of Elk Grove Employer Employee Relations Policy" attached to this resolution and made a part hereof by this reference,

AND BE IT RESOLVED AND ORDERED, that the City Manager of the City of Elk Grove is hereby authorized and directed to implement the Employee Employer Relation Policies adopted this date, and to do and perform everything necessary to carry out the purpose of this Resolution.

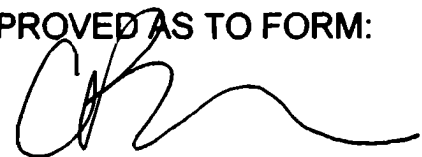
PASSED AND ADOPTED by the City Council of the City of Elk Grove on the 27th day of June 2001.


JAMES COOPER, MAYOR
CITY OF ELK GROVE

ATTEST:


PEGGY JACKSON, CITY CLERK
CITY OF ELK GROVE

APPROVED AS TO FORM:


ANTHONY MANZANETTI,
CITY ATTORNEY
CITY OF ELK GROVE

AYES: Briggs, Cooper, Leary
Scherman, Soares
NOES: None
ABSTAIN: None
ABSENT: None

City of Elk Grove



Employer/Employee Relations Policy

June 2001



CITY OF ELK GROVE

EMPLOYER/EMPLOYEE RELATIONS POLICY

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1.0 Statement of Purpose

It is the purpose of this policy to implement the provisions of Government Code §3500 et. seq., The Meyers-Miliias-Brown Act ("MMBA"), by providing orderly procedures for the administration of employer/employee relations and promoting full communication between the City of Elk Grove ("City") and its employee organizations. This policy also provides for the improvement of personnel management and employer/employee



relations within the City by providing a uniform basis for recognizing the right of the employees to join, or to refrain from joining, organizations of their choice and be represented, or not be represented, by such organizations in their employment relationship.

It is also the purpose of this policy to provide procedures for meeting and conferring in good faith with recognized employee organizations regarding matters that directly affect and primarily involve wages, hours and other terms and conditions of employment with appropriate units and that are not preempted by Federal or State law.

Nothing contained in this policy shall be deemed to supersede the provisions of State law, which establish, regulate, and provide for other methods of administering employer/employee relations. These rules are intended to strengthen all other methods of administering employer/employee relations through the establishment of uniform and orderly communications between employees, employee organizations, and the City.

2.0 Definitions

As used in this policy, the following terms are defined as:

Appropriate unit: a unit of employee classes or positions established or modified pursuant to this policy.

Confidential employee: an employee, who, in the course of their duties, has access to information relating to the City's administration of employer/employee relations or confidential information about the administration of the City.

City: the City of Elk Grove, and, where appropriate, refers to any duly authorized City of Elk Grove representative.

Day: a calendar day unless expressly stated otherwise.

Employee: a person who is paid from the City's budget and is subject to the City's right to control the manner and means of their work.

Employee organization: any bona fide organization that includes employees of the City and which has as one of its primary purposes representing such employees in their relations with the City.

Employer: the City of Elk Grove

Employer-Employee Relations Officer: The City Manager or the City Manager's designee shall be the Employer-Employee Relations Officer for the City of Elk Grove.



Exclusive recognition: formal recognition by the City of an employee organization to the exclusion of other employee organizations pursuant to a majority vote of the employees in an appropriate unit.

Exclusively recognized employee organization: an employee organization that has gained exclusive recognition in an appropriate unit pursuant to a majority vote of the employees in the unit.

Impasse: that the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a memorandum of understanding and matters which they are required to meet and confer on, remain so substantial and prolonged that further meeting and conferring would be futile.

Management employee: any employee having responsibilities for the formulation or administration of City policies and programs, as designated by the City.

Management representative: the City Manager or any persons duly designated by the City Manager to act as a representative of the City for employer/employee relations.

Mediation: the efforts of an impartial third person, or persons functioning as an intermediary to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestions, and advice.

Meet and confer in good faith: means that the City or its representatives and recognized employee organizations shall have the mutual obligation to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation.

Professional employee: an employee who is engaged in work requiring specialized knowledge and skills attained through the completion of a recognized course of instruction.

Proof of employee support: the documentation on forms approved by the City presented by an employee organization to the City indicating approval by the required number of employees in a representation unit whom the employee organization purports to represent. Only signatures of employees currently employed in authorized positions within the proposed representation unit on the date the petition is filed, and whose signatures have been executed within one hundred eighty (180) calendar days prior to the date the petition is filed, shall be accepted as proof of employee approval. The total number of employees in a proposed representation unit shall be determined by using the



Position Allocation List, adjusted to reflect the positions occupied as of the closing date of the payroll period immediately preceding the date on which the petition is filed.

Representation unit: a unit composed of City employees organized for the purpose of employee representation, and in accordance with this policy.

Scope of Representation: those matters relating to employment conditions and employer/employee relations. This includes wages, hours, and other terms and conditions of employment, except the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

Supervisory employee: any employee other than a management employee regularly having authority in the interest of the City to hire, transfer, suspend, layoff, recall, promote, discharge, assign, evaluate, discipline, assign work to, direct, adjust grievances or effectively recommend such action. The exercise of this authority must not be merely routine or clerical in nature, but require the use of independent judgment.

3.0 Employee Rights

Subject to the provisions of this policy, employees have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters within the scope of representation. Employees also have the right to refuse to join and participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of the exercise of these rights.

4.0 City Rights

Nothing in this policy shall be construed to restrict any legal or inherent exclusive City Rights with respect to matters of general legislative or managerial policy, which include, among others, the exclusive right to determine the methods, means, and personnel by which the City's operations are to be conducted. The City also retains the right to determine the mission, function, and necessity of all or part of each of its constituent departments and to take all necessary action to carry out its mission and functions, as well as set standards of service to the public.

The City retains the right to administer the City of Elk Grove Personnel Policies, to classify, reclassify, add, or delete positions or classes to or from the City budget. The City also retains the right to establish standards for employment and the selection and promotion of employees. The City retains the right to direct its employees, establish policies, take disciplinary action for proper cause, to establish work schedules and work



assignments, and to relieve its employees from duty for lack of work or other legitimate reasons. The City retains the right to be the sole judge of the qualification and competence of its officers and employees.

The City reserves the right to take whatever action may be necessary in an emergency. However, a recognized employee organization affected by the action shall be notified promptly of any such emergency that affects matters within the scope of representation.

5.0 Rights of Exclusively Recognized Employee Organizations

An Exclusively Recognized Employee Organization shall have the following rights:

To represent its members in their employment relations with the employer and to meet and confer in good faith with the employer representative on matters within the scope of representation.

To reasonable use of employer facilities for meeting upon timely written or oral application stating the purpose for such use. Such use shall not interfere with the regular course of doing business. The employer reserves the right to condition such use on payment of appropriate charges to offset the cost of such use of the facilities.

To install a bulletin board for exclusive use by employee organizations. All material shall be posted upon the bulletin board and not upon walls, doors, file cabinets, or any other place. Posted materials shall not be obscene, defamatory, or of a partisan political nature, misleading, violative of any Federal, State, or local ordinance, law, statute or rule. Such material shall not pertain to public issues that do not involve the employer and its relations with employees. All posted materials shall be neatly displayed and bear the identity of the sponsor and the date of posting. Unless special arrangements are made, the materials posted will be removed thirty-one (31) days after the date of posting. The employer reserves the right to determine where bulleting boards may be used. Any employee organization that does not abide by these rules may forfeit its right to have a bulletin board.

To reasonable access to non-confidential information pertaining to employment relations as contained in the public records of the employer, subject to limitations and conditions set forth in this Rule and §§ 6250-6260 of the California Government Code. Such information will be made available during regular office hours and after payment of reasonable cost, where applicable. Nothing herein shall be construed to require disclosures that constitute an unwarranted invasion of privacy or are gathered pursuant to promises to keep the source confidential. Nor shall anything herein be construed to require disclosure of records that are working papers or memoranda not retained in the ordinary course of business, records pertaining to the litigation to which the employer is party, or to claims or appeals which have not been settled. The employer shall not be



required to do research or assemble data in a manner other than that usually done by the employer.

Except in cases of emergency as provided herein, to have reasonable written notice of any proposed ordinance, rule, resolution, or regulations directly relating to matters within the scope of its representation and the opportunity to meet and consult with the employer representative prior to the adoption of such proposal. In cases of emergency when the employer governing body determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting and conferring with an Exclusively Recognized Employee Organization, the employer representative shall provide such notice and opportunity to meet and confer at the earliest practical time following the adoption of such ordinance, rules, resolution, or regulation.

To have an employee representative who may contact members of his/her organization in employer facilities provided he/she has first made arrangements with the management or supervisory employee in charge and has arranged for a time not during regular work time. This right does not extend to contacting employer employees who are not members of the particular employee organization, and soliciting membership or representation rights in an employee organization and soliciting membership or representation rights in an employee organization that shall not be done in employer facilities.

To have a reasonable number of employee representatives allowed reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the employer representative about matters within the scope of representation.

Any other rights granted recognized employee organizations §§3500-3511 of the California Government Code.

6.0 Scope of Representation

Upon request, a recognized employee organization shall have the right to meet and confer in good faith to negotiate wages, hours, and other terms and conditions of employment with the appropriate level of management. Terms and conditions of employment are defined as wages, hours, health and welfare benefits, leave and transfer policies, safety conditions, procedures to be used for the evaluation of employees, layoff procedures, procedures for processing grievances and disciplinary appeals, and all other conditions as determined by law.

If the representatives of the City and a recognized employee organization reach agreement, the agreement shall be jointly presented to the City for its consideration and ratification of a written memorandum of such understanding.



The City may adopt reasonable rules and regulations after meeting in good faith with representatives of the recognized employee organizations concerning the administration of employer/employee relations under this policy.

The City shall give reasonable written notice to each recognized employee organization of any proposed rule or regulation relating to matters within the scope of representation set forth in this policy.

7.0 Filing of Recognition Petition

An employee organization seeking to be formally recognized as the exclusive employee organization representing the employees in an appropriate unit shall file a petition with the Employer-Employee Relations Officer containing the following information and documentation:

- A. Name and address of the employee organization.
- B. Names and titles of its officers.
- C. Names of employee organization representatives.
- D. A statement that the employee organization has as one of its primary purposes, representation of employees in their employment relations with the City.
- E. A statement concerning whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each organization.
- F. Copies of the employee organization's constitution and bylaws.
- G. A designation of those persons, not exceeding two, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice to the employee organization for any purpose.
- H. A statement that the employee organization has no restriction on membership based on race, color, religion, sex, age, national origin, marital status, sexual orientation, ancestry, physical or mental disability, medical conditions, political affiliation, veteran's status or citizenship, or on the basis of a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics.



- I. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of employees therein.
- J. Proof of employee support, as defined by at least thirty percent (30%) of the employees in the unit claimed to be appropriate, that they desire the named organization to represent them in employer/employee relations.
- K. A request that the City formally recognize the petitioner as the exclusively recognized employee organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.
- L. The petition, and all other documents, shall be declared true, correct and complete under penalty of perjury by the duly authorized officers of the employee organization executing it.

8.0 City Review of Recognition Petition/Notice to Employees

Following receipt of the petition, the Employer-Employee Relations Officer shall determine whether:

- A. The petition complies with the requirements of this policy, and
- B. The proposed representation unit is an appropriate unit in accordance with Section 10.0.

If the Employer-Employee Relations Officer makes an affirmative determination, the petitioning employee organization shall be informed. The Employer-Employee Relations Officer will then give written notice of the request for recognition to the employees in the unit, and will not act on the request for the next twenty (20) workdays. Posting the request in conspicuous City locations shall constitute written notice to the employees.

If the Employer-Employee Relations Officer does not make an affirmative determination, an offer to consult with the petitioning employee organization shall be extended. If the determination of the Employer-Employee Relations Officer remains unchanged, the organization shall be informed of the reasons in writing. The petitioning employee organization may appeal the determination in accordance with Section 15.0.

9.0 Challenging Petitions/Overlapping Units

Within twenty (20) workdays of the date written notice is given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally recognized as the exclusively recognized employee organization of the employees in the same or in an overlapping



unit. An overlapping unit is defined as one that corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged.

The competing request must include documentation evidencing proof of employee support in the representation unit of at least thirty percent (30%) of the employees and otherwise in the same form and manner as set forth in Section 7.0. If such challenging petition seeks establishment of an overlapping unit, the Employer-Employee Relations Officer shall consult with the petitioning employee organizations for the purpose of ascertaining the more appropriate unit. The Employer-Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 10.0. The petitioning employee organizations shall have fifteen (15) days from the date notice of unit determination is communicated to them by the Employer-Employee Relations Officer to amend their petitions to conform to the determination or to appeal pursuant to Section 15.0.

10.0 Appropriate Units

The policy objectives used to determine the appropriateness of a unit shall be the effect of the proposed unit on:

- A. The efficient operations of the City and its compatibility with the responsibility of effectively and economically serving the public, and
- B. Providing employees with effective representation based on recognized community of interest considerations.

These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered are:

- A. The effect of the proposed unit on the efficient operation of City services and on employer/employee relations.
- B. Consistency with the organizational patterns of the City.
- C. The history of employee relations in the unit, among other employees in the City, and in similar public employment.
- D. Similarity of duties, skills, and working conditions of employees.
- E. No City employment classification title shall be included in more than one representation unit.



- F. Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization.
- G. Management employees may only be represented by an organization(s) that is composed solely of such employees and that does not represent other employees of the City.
- H. Confidential employees may not be represented in a bargaining unit together with nonconfidential employees.
- J. Elected and appointed officials shall not be members of any unit.

11.0 Procedure for Modification of Established Appropriate Units

Requests by employee organizations for modifications to established appropriate units may be considered by the Employer-Employee Relations Officer within 120 to 150 days prior to the expiration date of the Memorandum of Understanding. Such documentation shall be submitted in accordance with the requirements set forth in this Section and shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth herein. The Employer-Employee Relations Officer may, at any time, propose on his/her own that an established unit be modified. The Employer-Employee Relations Officer shall process unit modification requests as stated below:

- A. The Employer-Employee Relations Officer shall give written notice of the proposed modifications to all affected employee organizations and shall hold a meeting concerning the proposed modifications. All affected employee organizations shall be heard at that time.
- B. Thereafter, and within fifteen (15) workdays of the meeting, the Employer-Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 10.0 and shall give written notice of such determination to the affected employee organizations.
- C. The Employer-Employee Relations Officer may after notice to and meeting and conferring with affected employee organizations allocate new classifications and reallocate or delete classifications or positions in accordance with the provisions of Section 10.0.
- D. The addition of new classifications or the deletion of existing classifications may be done at any time and may not be considered a modification of the unit if, in the



determination of the Employer-Employee Relations Officer , such additions or deletions have no significant impact on the appropriateness of the unit.

- E. If a unit is modified pursuant to the decision of the Employer-Employee Relations Officer , employee organizations may file petitions for a new appropriate unit(s) pursuant to Section 7.0.
- F. There shall not be more than one election for bargaining unit representative in a twelve (12) month period affecting the same bargaining unit.
- G. Any determinations made by the Employer-Employee Relations Officer are subject to appeal as provided in Section 15.0.

12.0 Procedure for Decertification of Exclusively Recognized Employee Organizations

Proof of employee support that the incumbent exclusively recognized employee organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employer-Employee Relations Officer within 120 to 150 days prior to the expiration of the agreement. Such documentation may be filed by two or more employees, their representative or an employee organization and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

- A. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- B. The name of the established appropriate unit and of the incumbent exclusively recognized employee organization sought to be decertified as the representative of that unit.
- C. An allegation that the incumbent exclusively recognized employee organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts.
- D. Proof of employee support that at least thirty percent (30%) of the employees in the established appropriate unit no longer desire to be represented by the incumbent exclusively recognized employee organization. Such proof shall be submitted for confirmation to the Employer-Employee Relations Officer within the time limits specified in the first paragraph of this Section.



- E. Within fifteen (15) workdays of the submittal of the proof, the Employer-Employee Relations Officer shall initially determine whether the documentation was filed in compliance with the applicable provisions of this Section. If the determination is in the negative, an offer to consult with the representatives of such petitioning employees or employee organization shall be extended. If the determination remains unchanged, the documentation relating to the determination shall be forwarded to the employees or employee organization with a statement of the reasons in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 15.0. If the determination of the Employer-Employee Relations Officer is in the affirmative, or if the negative determination is reversed on appeal, written notice of the Decertification of Recognition documentation shall be given to the incumbent exclusively recognized employee organization and to unit employees. The Employer-Employee Relations Officer shall arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification. Such election shall be conducted in conformance with this policy.

13.0 Election Procedure

- A. If less than seventy percent (70%) of the employees in the unit claimed to be appropriate sign the petition, or in some other way demonstrate to the Employer-Employee Relations Officer support, an election shall be conducted pursuant to this section. Within twenty (20) calendar days of the last date that a recognition petition can be filed, as determined by the Employer-Employee Relations Officer or as decided by an appeal, the Employer-Employee Relations Officer shall arrange for a secret ballot election to be conducted in accordance with these provisions. All employee organizations that have filed petitions that have been determined to conform to Section 7.0 shall be included on the ballot. The choice of "No Organization" shall also be included on the ballot. Employees entitled to vote in the election shall be those persons employed in regular full and part-time positions within the designated appropriate unit who were employed during the pay period immediately prior to the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election.
- B. The election shall be conducted by the California State Mediation and Conciliation Service unless both parties agree on another entity referred to as the Election Supervisor.



- C. The costs of conducting elections, if any, shall be borne in equal shares by the City and each employee organization appearing on the ballot. If the election is called at the request of the City, the City shall bear all normal election expenses.
- D. The Election Supervisor shall have the final authority to make such arrangements and ruling as deemed necessary to carry out the election. No later than twenty (20) days before the election, the Election Supervisor shall meet with the eligible employee organizations to discuss the election arrangement and rules. The rules shall be made available to the organization no later than ten (10) days before the election.
- E. An employee organization shall be formally recognized as the exclusively recognized employee organization for the appropriate unit following an election or runoff election if it receives a numerical majority (more than 50%) of valid votes.
- F. In an election where there are more than two choices on the ballot, including the choice of "No Organization," and none of the choices receive a majority of the votes cast by the employees, a runoff election shall be conducted between the choices receiving the largest and second largest number of votes.
- G. Each eligible employee organization shall submit to the Employer-Employee Relations Officer the designation it desires on the ballot no later than twenty (20) calendar days before the election. Such designation shall be the official name of the organization as submitted in their bylaws pursuant to Section 7.0 or an abbreviated version. If any organization fails to submit a designation, the Employer-Employee Relations Officer shall prepare a designation for use on the ballot. The order in which the eligible choices appear on the ballot shall be determined by lot.
- H. The ballots shall include the question "Do you wish to be represented in respect to wages, hours, and other conditions of employment by?" Following the question the eligible choices shall be listed on the ballot in the order determined by lot. The eligible choices shall also include the choice of "No organization."
- I. A notice of election in a form approved by the Elections Supervisor shall be posted at locations serving employees in the unit involved at least five (5) days prior to the election.
- J. If agreed to by the organizations appearing on the ballot and the Employer-Employee Relations Officer, each eligible employee organization and the City are authorized to provide one observer at each polling place. A party desiring observers shall provide for those observers at its own expense. Each party shall



be responsible for the presence of their observers and no balloting or counting shall be delayed due to the absence of one or more observers.

- K. Any authorized observer may challenge the eligibility of a voter. It shall be the duty of the Election Supervisor to place the challenged ballot in a sealed envelope indicating that the voter in question has cast a challenged ballot.
- L. The Election Supervisor shall subsequently determine the eligibility of the voter and either count or reject the vote. The decision of the Election Supervisor shall not be subject to appeal and shall be final and binding on all parties. The Election Supervisor may employ, at no expense to the eligible registered organizations, assistants in the conduct of the election. These assistants must be persons normally employed as election officials by the City who are not City employees. The Election Supervisor may also use the services of the Registrar of Voters and their staff. Persons who are used by the Election Supervisor are charged with strict neutrality in the conduct of their duties.
- M. Voting locations shall be agreed to by the parties or designated by the Election Supervisor after consultation with the parties no later than fifteen (15) days before the election. The election will be by secret ballot and voters will vote without fear, restraint, or coercion.
- N. At the conclusion of the election and after disposing of the challenged ballots, the Election Supervisor shall count all the ballots and certify the results of the election. These results shall be final and binding on the parties.
- O. The Election Supervisor is hereby authorized to make such administrative and procedural rulings as deemed necessary to carry out the elections. A violation of these rules by a party may serve to void the election. The Election Supervisor shall have the sole authority to make a ruling under this section.
- P. Any of the above election procedures as set forth in paragraphs B through O may be altered or waived by mutual agreement of the parties.

14.0 Granting Exclusive Recognition

Upon a determination that an employee organization has received a majority of ballots cast in an election, the City shall, by resolution, grant exclusive recognition for the appropriate bargaining unit. A new exclusively recognized employee organization shall assume the terms and conditions of any existing memorandum of understanding.

15.0 Appeals



An employee organization aggrieved by a recognition petition, an appropriate unit or decertification determination may, within ten (10) days of notice, appeal such determination to the City Council for final decision.

16.0 Meeting and Conferring

- A. Only recognized employee organization(s) in established representation units shall be entitled to meet and confer with the designated management representatives on wages, hours, and other terms and conditions of employment for such units.
- B. The City is under no obligation to meet and confer with employee organizations who willfully violate any of the provisions of this policy, or who are engaged in any illegal action against the City. The City shall give written notice to employee organizations describing any alleged illegal activity and the City's proposed resolution. The employee organization shall have five (5) workdays from receipt of the notice to cease and desist the illegal activity or to request a meeting for the purpose of discussing resolution of the matter.
- C. Meeting and conferring shall not be required on any subject preempted by Federal or State law, rule, or regulation. Proposed amendments to this policy shall be subject to consultation after reasonable notice.
- D. Agreements reached as a result of meeting and conferring shall be incorporated in a written memorandum of understanding signed by the City representative and the designated representative of the recognized employee organization. Signed memorandums of understanding shall be mutually submitted to the City and the recognized employee organization, but shall not be in effect or binding on the parties until formally approved by the City.

17.0 Initiation of Impasse Procedures

If the meet and confer process has reached impasse as defined in this policy, either party may initiate the impasse procedures by filing a written request for an impasse meeting and a statement of its position on all disputed issues with the City. The City shall then schedule an impasse meeting within ten (10) workdays. The purposes of such impasse meeting shall be as follows:

- A. To identify and specify in writing those issue(s) that remain in dispute.
- B. To review the position of the parties in a final effort to resolve the disputed issue(s); and



- C. If the dispute is not resolved, to discuss arrangements for the utilization of the impasse procedures provided.

18.0 Mediation

- A. After a declaration of impasse, either party may request mediation. The mediator shall be selected from a panel provided by the California State Conciliation Service unless both parties agree to another mediator. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issue(s).
- B. If the parties fail to resolve the dispute through mediation within fifteen (15) workdays after the mediator commences meeting with the parties, the parties may mutually agree to submit the impasse to fact-finding.

19.0 Fact-Finding

The parties may submit the impasse to fact-finding and may agree on appointment of one or more fact-finders. If they fail to agree on one or more fact-finders, a fact-finding panel of three shall be appointed. The panel will be composed of one member appointed by the City, one member appointed by the recognized employee organization, and a third member appointed by the other two, who shall be the chairperson. If they are unable to agree upon a third, they shall select the third member from one or more lists of names provided by the California State Conciliation Service. The following constitute the jurisdictional and procedural requirements for fact-finding:

- A. The fact-finders shall consider and be guided by applicable Federal and State laws.
- B. Subject to the stipulations of the parties, the fact-finders shall determine and apply the following measures and criteria in arriving at their findings and recommendations:
 - 1. As relevant to the issues in dispute, the fact-finders shall compare the total compensation, hours, and conditions of employment of the employees involved with the total compensation, hours, and conditions of employment of other employees performing similar services in public employment in at least five comparable cities. "Total compensation" shall mean all wage compensation, including but not limited to, premium, incentive, minimum, standby, out-of-class and deferred pay, all paid leave time, all allowances, and all benefits.



2. The fact-finders shall then adjust the results of the above comparisons based on the equitable factors of relationships between job classifications and positions within the City, the benefits of City job stability and continuity of employment, and the difficulty, or lack thereof, of recruiting and retaining qualified personnel.
 3. The fact-finders shall then determine recommendations based on the comparisons as adjusted above subject to the financial resources of the City to implement them. The fact-finders shall also take into account other legislatively determined and projected demands on City resources, assurance of sufficient and sound budgetary reserves, and statutory or other limitations on tax and other revenues and expenditures.
- C. The fact-finders shall make written findings of fact and recommendations for the resolution of the issue(s) in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairperson of the panel shall serve such findings and recommendations on the City and the designated representative of the recognized employee organization.
- D. The parties can either agree to the fact-finders' recommendations, agree to resume meeting and conferring, or to take such action as permitted by law.

20.0 Cost of Impasse Procedures

The costs, if any, for the services of a mediator and fact-finding panel use by the parties and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and the recognized employee organization. The cost for the fact-finding panel member selected by each party and other separately incurred costs shall be borne by the party.

21.0 Construction

This policy shall be administered and construed as follows:

- A. While this policy shall prevail over any other policy, resolution, rule, or memorandum of understanding, nothing in this policy shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by Federal or State law.
- B. This policy shall be interpreted to carry out its purpose as set forth in Section 1.0.



- C. The employees and their recognized employee organizations may be given reasonable access to City facilities for the purpose of performing their authorized activities as provided herein and in the memorandum of understanding.

22.0 Illegal activity.

Nothing in this policy shall be construed as making the provisions of California Labor Code § 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sick-out or other total or partial stoppage or slowdown of work. In the event employees engage in such actions, they shall be subject to possible disciplinary action up to and including termination and may be deemed to have abandoned their employment. If an employee organization is found by the City, after a public hearing, to have engaged in such activity, the City may withdraw all rights accorded the organization under this policy for a period up to one year from commencement of such activity.

22.0 Severability

If any provision or application of this policy is held invalid, the remainder of this policy, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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