

RESOLUTION NO. 1303, SERIES 1973

RESOLUTION RELATING TO EMPLOYER-EMPLOYEE RELATIONS

ARTICLE I - STATEMENT OF PURPOSE

The purpose of this Resolution is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Public Employee Organizations", providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations and for resolving disputes regarding wages, hours, and other terms and conditions of employment.

ARTICLE II - AUTHORITY OF CITY MANAGER

The City hereby declares, as a matter of policy, that the City Council and its members will deal formally with employee organizations and their representatives solely through the City Manager or his designee except when otherwise expressly provided for by the terms of this Resolution.

ARTICLE III - DEFINITIONS

1. "Employee Organization" means any organization which includes as members employees of the City and which has as one of its primary purposes representing such employees in their relations with the City.
2. "Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as an employee organization that represents employees of the City, and that has been certified as hereinafter provided for.
3. "Confidential Employee" means an employee who participates in making or who has advance knowledge of decisions of the City affecting employee relations.
4. "Management Employee" means an employee having responsibilities for formulating, administering or managing the implementation of City policies and programs.
5. "Supervisory Employee" means an employee having responsibility for assigning and directing the work of other employees, or for rewarding or disciplining them, or for adjusting their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

6. "Professional Employee" means an employee engaged in work (a) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and (b) involving the consistent exercise of discretion and judgment in its performance, and (c) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (d) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental manual or physical processes.

7. "Employee Relations Officer" means the City Manager or his duly authorized representative.

8. "Proof of Employee Approval" is demonstrated under this Resolution by (a) an authorization card recently signed by an employee, or (b) employee dues deduction authorizations, using the payroll immediately prior to the date a petition is filed hereunder, except that deductions for more than one employee organization for the account of any one employee shall not be considered proof of employee approval for more than one employee organization, or (c) a verified authorization petition or petitions recently signed by an employee. The words "recently signed" means signed within sixty (60) days prior to the filing of a petition.

9. "Impasse" means a deadlock in discussions between a recognized employee organization and the Employee Relations Officer over any matters concerning which they are required to meet and confer in good faith, or over the scope of such subject matter.

10. "Scope of Representation" means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment; except however, that the scope of representation shall not include proposed amendments to this Resolution, nor shall it include consideration of the merits, necessity or organization of any service or activity provided by law as defined and delineated by Article V hereof.

ARTICLE IV - EMPLOYEE RIGHTS

Employees of the City shall have the right to form, join and participate in the activities of an employee organization of their own choosing for the purpose of representation on matters of employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment. Employees of the City also shall have the right to ~~refuse to join~~ or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City.

ARTICLE V - CITY RIGHTS

The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action for proper cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise control and discretion over its organization and the technology of performing its work. Provided however, that the exercise of such exclusive rights does not preclude affected recognized employee organizations from consulting or filing grievances with the City regarding the practical consequences that decisions on these matters may have on employees.

ARTICLE VI - REPRESENTATION UNITS

The representation units set forth in Exhibit "A" attached hereto are the appropriate units for representation by recognized employee organizations.

ARTICLE VII - RECOGNIZED EMPLOYEE ORGANIZATIONS

An employee organization that wishes to be certified as the recognized employee organization for a representation unit shall file a recognition petition with the Employee Relations Officer.

1. Petition - The petition shall be signed by the organization's duly authorized officers, and shall contain the following information and documentation:

- (a) The name and mailing address of the organization.
- (b) The names and titles of its officers.
- (c) Designation of those persons, not exceeding three in number, and their addresses, to whom notice sent by regular mail will be deemed sufficient notice to the organization for any purpose.
- (d) A statement that the organization does not discriminate or restrict membership or participation based on race, religion, color, creed, national origin or sex.
- (e) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.

- (f) A statement that the organization agrees to comply with the provisions and policy of this Resolution.
- (g) A copy of its constitution and bylaws, if any.
- (h) Identification of the representation unit for which petitioner seeks certification as the recognized employee organization.
- (i) Proof of employee approval of the employees within such representation unit.

A petition accompanied by proof of employee approval greater than fifty percent (50%) of the employees within the representation unit shall be certified as a majority petition; a petition accompanied by proof of employee approval of between thirty (30) and fifty (50) percent of the employees within the representation unit shall be certified as a minority petition; petitions accompanied by proof of employee approval of less than thirty percent (30%) of the employees within the representation unit shall not be acted upon.

2. Challenge - The Employee Relations Officer shall give written notice of his certification of a majority or minority petition to the petitioner, to the employees involved and to any employee organization that has filed a written request for receipt of such notice with him. Within thirty (30) days of the date of such notice, other employee organizations may file a challenging petition seeking to become the recognized employee organization within the representation unit.

3. Certification without Election - If no challenging petition is filed against a majority petition, and unless the Employee Relations Officer has reasonable doubt as to the regularity of the petitioner's proof of employee approval, the Employee Relations Officer shall certify the petitioner as the recognized employee organization of the representation unit.

4. Election.

(a) Challenged Majority Petitions: If a challenging petition is filed against a majority petition and is accompanied by proof of employee approval equal to at least thirty percent (30%) of the employees within the representation unit, the Employee Relations Officer shall request the State Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations and the election procedures as hereinafter set forth.

(b) All Minority Petitions: If only a minority petition is filed, the Employee Relations Officer shall, whether or not a challenging petition is filed, request the State Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations and pursuant to the election procedures as hereinafter below set forth. If a challenging petition is filed against a minority petition and is accompanied by proof of employee approval equal to at least ten percent (10%) of the employees within the representation unit, the State Conciliation Service shall include the challenging employee organization on the ballot.

5. Election Procedures - Whenever the State Conciliation Service calls an election pursuant hereto, it shall include the choice of no organization on the ballot. Employees entitled to vote in a representational election shall be those employees within the representation unit whose name appeared on the payroll immediately prior to the date of election. An employee organization shall be certified by the Employee Relations Officer as the recognized employee organization within the representation unit if:

- (a) that employee organization has received the vote of a numerical majority of all the employees eligible to vote in the unit in which the election is held; or
- (b) More than fifty percent (50%) of the total number of employees in the unit eligible to vote have voted in the election, and the employee organization receives a numerical majority of all votes cast in the election; or
- (c) in an election involving three or more choices, where none of the choices receives a majority of the ballot votes cast, and where more than fifty percent (50%) of the total number of employees in the unit eligible to vote have voted in the election, a run-off election shall be conducted between the two choices receiving the largest number of ballot votes cast; the rules governing an initial election being applicable to a run-off election.

6. Decertification Procedures - a decertification petition may be filed with the Employee Relations Officer by employees or an employee organization to determine whether or not a recognized employee organization continues to represent a majority of the employees in the representation unit. Such petition must be accompanied by proof of employee approval equal to at least thirty percent (30%) of the employees within the representation unit. Such a petition may be received by the Employee Relations Officer only within a thirty (30) day period commencing one hundred and

eighty (180) days prior to the second or succeeding annual anniversary date of recognition hereunder or prior to the termination date of a Memorandum of Understanding then in effect, whichever occurs later. No decertification petition for the same unit shall be entertained by the Employee Relations Officer more frequently than every two (2) years. When such a valid petition has been filed, the State Conciliation Service shall be requested to conduct an election to determine whether or not the incumbent recognized employee organization shall be decertified, and where filed by an employee organization, whether such organization shall be recognized. Such election shall be in accordance with the procedures and regulations of the State Conciliation Service, and the election procedures as hereinabove set forth.

7. In the event that the State Conciliation Service is unable or unwilling to provide any of the services required of it by paragraphs 4 through 6 above, the American Arbitration Association, or another impartial third party agreed to by the City and the concerned employee organization(s), shall perform said services.

8. Costs of conducting elections, if any, shall be borne equally by the City and the employee organization(s), challenging a majority petition under paragraph 4 or challenging a recognized employee organization under paragraph 6 of this Article.

9. Recognized employee organizations shall annually, on or before the anniversary date of recognition, file a written statement with the Employee Relations Officer, indicating changes in items (a) through (g) as they appeared in the recognition petition filed pursuant to paragraph 1 of this Article, or as subsequently amended by a written statement hereunder, or, as appropriate, shall indicate that there has been no change in such information. The statement shall be signed by the duly authorized officers of the recognized employee organization.

ARTICLE VIII - MEET AND CONFER

Upon request, a recognized employee organization shall have the right to meet and confer in good faith regarding matters within the scope of representation with the Employee Relations Officer and/or his designees. Provided however that nothing herein shall require meeting and conferring between parties to a Memorandum of Understanding during the term of such Memorandum regarding matters to take effect during such term, except that such parties may meet and confer during such term on a matter within the scope of representation where (a) the matter was not covered by the Memorandum or expressly raised as an issue during the meeting and conferring process out of which such Memorandum arose, and (b) there shall have arisen a significant change in circumstances with respect to such matter, which could not have reasonably been anticipated by both parties at the time they signed such Memorandum.

The number of City employees that may represent a recognized employee organization at meeting and conferring sessions without loss of compensation or other benefits shall not exceed two (2) — or two percent (2%) of the total number of employees in the representation unit or units being represented by such recognized employee organization, whichever is greater.

City employees who shall represent a recognized employee organization at such meeting shall give reasonable advance notice thereof to their immediate supervisor, which shall be at least one full working day or shift before the meeting unless the Employee Relations Officer and the recognized employee organizations have jointly scheduled meetings on shorter notice; except, however, that the Employee Relations Officer may, in his discretion, waive this requirement for advance notice.

If agreement is reached on matters subject to approval by the City Council, the parties shall jointly prepare a written memorandum of such understanding, and present it to the City Council for determination. If agreement is reached on matters not subject to such approval, the Employee Relations Officer and the recognized employee organization(s) shall, at the request of one of the parties, prepare a written memorandum of such understanding.

ARTICLE IX - PAYROLL DEDUCTIONS

Only recognized employee organizations shall have the right to have the regular membership dues of its members deducted from employees paychecks upon the written authorization of each such employee member on a form provided for such purpose by the City.

ARTICLE X - COMMUNICATION WITH EMPLOYEES

Reasonable access to employee work locations shall be granted to officers of recognized employee organizations for the purpose of processing grievances or contacting members of the organization concerning business within the scope of representation. Such officers shall not enter any work location without previous notice to and consent from the Department Head or his designee, and access may be restricted so as not to interfere with departmental operations or with established safety and security requirements. Campaigning for office, conducting meetings or elections, and other internal employee organization business of a similar nature shall not be carried on during working hours.

ARTICLE XI - USE OF CITY FACILITIES

City buildings and other facilities may be made available for use by City employees or employee organizations in accordance with administrative procedures promulgated by the City Manager.

ARTICLE XII - ADVANCE NOTICE

Except in cases of emergency as provided in this Article, the City Council or its designee shall give reasonable written notice to each recognized employee organization affected by any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council, and shall give such recognized employee organization the opportunity to address the City Council thereon. The Council shall, upon the request of the Employee Relations Officer or a recognized employee organization, delay consideration of the matter proposed to be acted upon for such period of time deemed to be reasonable by the Council, to give the parties an opportunity to meet and confer thereon in order to endeavor to agree upon a joint recommendation to be made to the Council.

In cases of emergency when the City Council determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice to a recognized employee organization, the City Council shall cause such notice to be given and shall give such opportunity to address the Council at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

ARTICLE XIII - EMPLOYEE ORGANIZATIONS

Employee organizations may represent their individual employee members in individual employment relations, including grievances, to the extent required by the Government Code.

ARTICLE XIV - INDIVIDUAL EMPLOYEES

Nothing in this Resolution shall be construed to modify the right of an individual employee to present matters involving his individual employment relationship to the appropriate level of management, provided that any action taken is not inconsistent with the terms of a memorandum of understanding then in effect, and that before any action is taken which could affect the terms and conditions of employment of other employees in the representation unit, such proposed action is communicated to the recognized employee organization for its opinion on the merits and the effect on the proposed action.

ARTICLE XV - PROHIBITION AGAINST DISCRIMINATION

No appointing authority or his representative shall discriminate for or against any employee organization, or in any way coerce or influence any employee in his free choice to join or refrain from joining any employee organization.

It is the policy of the City to affirmatively support and encourage equal opportunity of employment for women and for members of racial, religious and other minority groups. If evidence of such discrimination by any officer, employee or an employee organization comes to the attention of the Employee Relations Officer, it shall be his duty to refer such evidence to an appropriate legal authority.

ARTICLE XVI - APPLICATION OF LABOR CODE SECTION 923

The enactment of this Resolution shall not be construed as making the provisions of Section 923 of the Labor Code applicable to employees or employee organizations.

ARTICLE XVII - IMPASSE PROCEDURES

1. Initiation of Impasse Procedures - Impasse procedures may be invoked only after the possibility of settlement by direct discussion has been exhausted. Any party may initiate the impasse procedures by filing with the other party or parties a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled by the Employee Relations Officer forthwith after the date of filing of the written request for such meeting, with written notice to all parties affected. The purpose of such impasse meeting shall be two-fold:

- (a) To permit a review of the position of all parties in a final effort to reach an agreement on the disputed issues; and
- (b) If agreement is not concluded, to discuss arrangements for implementing the specific impasse procedure or procedures to which the dispute shall be submitted.

2. Impasse Procedures - Impasse procedures are as follows:

- (a) If the parties so agree, the dispute shall be submitted directly to the City Council for determination.
- (b) If they do not so agree within a reasonable period of time, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues. If the parties are unable to agree on a mediator after a reasonable period of time, they shall select the mediator from a list of three (3) names to be provided by the State Conciliation Service, or

if that body for any reason shall fail to provide such list, by the American Arbitration Association. The recognized employee organization or organizations shall first strike one name, the Employee Relations Officer shall then strike one name, and the name remaining shall be the mediator.

- (c) If the parties have failed to resolve all their disputes through mediation within fifteen (15) days after the mediator commenced meeting with the parties, the parties may agree to submit the unresolved issues on which they have not expressly reached unconditional final agreement directly to the City Council. In that event the City Council shall finally determine the issues after conducting a public hearing thereon and after such further investigation of the relevant facts as it may deem appropriate.
- (d) If the parties fail to agree to submit the dispute directly to the City Council, the said unresolved issues shall be submitted to fact-finding.

The parties may agree on the appointment of one or more fact-finders. If they fail to so agree, a fact-finding panel of three (3) shall be appointed in the following manner: One member of the panel shall be appointed by the Employee Relations Officer, one member shall be appointed by the recognized employee organization, and those two shall name a third, who shall be the chairman. If they are unable to agree upon a third, they shall select the third member from a list of five names to be provided by the American Arbitration Association, the one to serve to be determined by the alternate striking of names, with the party who is to strike the first name to be determined by chance method.

The following constitute the jurisdictional and procedural requirements for fact-finding:

- (1) Fact-finders shall not have served as mediator in the same impasse under subparagraph (b), and shall not be employees or officers of the City or members of one of the City's employee organizations.
- (2) Fact-finding is authorized hereunder in connection with all unresolved issues; i.e., issues on which they have not expressly reached unconditional final agreement, that are within the scope of representation.

- (3) The fact-finder(s) shall, to the extent they are applicable, determine and apply the following standards to the unresolved issues in making recommendations:
- (i) City job classifications shall be compared to comparable job classifications in private employment in the Davis labor market, and in public employment in the jurisdictions listed in Exhibit "B" attached hereto and made a part hereof.
 - (ii) In determining job comparability, the following factors will be considered: The nature and complexity of the duties involved; the degree of supervision received and exercised; the educational, experience and physical qualifications, and the special skills required; the physical working conditions; and the hazards inherent in the job.
 - (iii) Comparisons shall be in terms of total compensation and benefits of employment, and, to the extent feasible, shall be measured in monetary terms.
 - (iv) The comparison data as hereinabove provided for shall, to the extent feasible, be adjusted as appropriate for the benefit of job stability and continuity of employment; difficulty of recruiting qualified applicants; and equitable employment benefit relationships between job classifications in City employment.
 - (v) The financial resources and the expenditures of City government shall be considered.
- (4) The fact-finder(s) shall make written findings of fact and recommendations for the resolution of the unresolved issues, which shall be presented in terms of the standards specified in (3) above. The fact-finder or chairman of the fact-finding panel shall serve such findings and recommendations on the Employee Relations Officer and the designated representative of the recognized employee organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, and in no event

later than ten (10) days prior to the final date set by law for fixing of the tax rate, the fact-finder or the chairman of the fact-finding panel shall make them public by submitting them to the City Clerk for consideration by the City Council in connection with the Council's legislative determination of the issues.

- (5) Costs of mediation and fact-finding shall be divided one-half (1/2) to the City and one-half (1/2) to the recognized employee organization.

PASSED AND ADOPTED by the City Council of the City of Davis this 26th day of June, 1973, by the following vote:

AYES: Councilmen Holdstock, Poulos, Weinstock and Mayor Skinner.

NOES: None.

ABSTAIN: Councilman Black.

MAYNARD C. SKINNER
Mayor

ATTEST:

HOWARD L. REESE
City Clerk