

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
GOVERNING EMPLOYER-EMPLOYEE RELATIONS

Section 1. Title of Resolution

This Resolution shall be known as the Employer-Employee Relations Resolution of the City of Pacifica.

Section 2. Statement of Purpose

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 et seq.) captioned "Local Public Employee Organization," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of State law, City ordinances, resolutions and rules which establish and regulate the merit system. This Resolution is intended, instead, to strengthen the City's methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees, employee organizations and the City.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with recognized employee organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include but shall not be limited to: The exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of government operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. None of the above shall be construed to preempt the rights of employees under Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 et seq.) or under other applicable State or Federal Laws.

Section 3. Definitions

The following terms shall have the meaning indicated when used in connection with this Resolution:

- A. City - The City of Pacifica, municipal corporation, and where appropriate herein, "City" refers to the City Council, the governing body of said City, or any duly authorized management representative as herein defined.
- B. Confidential Employee - means an employee who, in the course of his or her duties, has access to information relating to the City's administration of employer-employee relations. Such employees shall be those as specified by the City Manager.
- C. Consult or Consultation in Good Faith - means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions on matters within the scope of representation.

- D. Days - calendar days, unless specifically stated otherwise.
- E. Employee - means any person regularly employed by the City, except those persons elected by popular vote, and members of Boards and Commissions.
- F. Employee Organization - any lawful organization which includes as members regular employees of the City and which has as one of its primary purposes representation of such employees in their relations with the City; provided, however, that said organization has no restriction on membership based on race, color, creed, sex or national origin.
- G. Employee, Regular - an employee who works in a full-time, regular budgeted City position, regardless whether the employee is on an entrance or promotional probationary status, or he has earned regular appointment.
- H. Employee, Unclassified - means an employee employed by the City in a full-time position, but whose position is exempt from the requirements of the merit system.
- I. Employer-Employee Relations - means the relationship between the City and its employees and their employee organization, or when used in a general sense, the relationship between City management and employees or employee organizations.
- J. Impasse - means that the representatives of 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 concerning which they are required to meet and confer, remain so substantial and prolonged a deadlock exists.
- K. Management Employee - (1) any employee having significant responsibilities for formulating and administering City policies and programs, including, but not limited to, City Manager, department heads, assistant department heads, division heads, and supervisors; (2) any employee having authority to exercise independent judgment or to effectively recommend any action to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or adjust 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.
- L. Management Representative - the City Manager or any person, or organization duly authorized by the City Manager.
- M. Mediation - the efforts of an impartial third person, or persons functioning as intermediaries, to assist the parties in reaching a voluntary resolution of an impasse, through interpretation, suggestion and advice.
- N. Meet and Confer - means that representatives of the City and representatives of recognized employee organizations shall have the mutual obligation personally to meet and confer in good faith in order to exchange freely information, opinion, and proposals and to endeavor to reach agreement on matters within the scope of representation.
- O. Memorandum of Understanding - a written summary of items of agreement, if any, mutually resolved and certified by representatives of both parties, between the City and a formally recognized employee organization or association regarding employment conditions or employer-employee relations.
- P. Negotiate - to meet and confer in good faith.

Q. Proof of Employee Approval - when used herein means that employees or an employee organization submitting a petition as provided in Sections 7 and 8 herein to the City Manager have demonstrated proof of approval by the employees whom it purports to represent by means of any one or any combination of the following:

(1) Signed and dated signatures on a petition.

(2) Signed and dated employee authorization cards.

Only signatures of employees currently employed in positions within the proposed representation unit on the date the petition is filed and whose signatures have been executed within ninety (90) 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 adjusted to reflect the positions occupied as of the date of the petition.

R. Recognized Employee Organization - means an employee organization, or its duly authorized representative, that has been granted formal recognition by the City Manager as representing the majority of employees in a representation unit of employees.

S. Representation Unit - means a unit established pursuant to Section 7 of this Resolution.

T. Resolution - the Employer-Employee Relations Resolution of the City of Pacifica, unless the context indicates otherwise.

U. Scope of Consultation In Good Faith - All matters affecting employer-employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and representatives of recognized employee organizations.

V. Scope of Representation - 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 consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

Section 4. Employee Rights

Employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations; provided, however, that during negotiating sessions with the City, an employee filling a position allocated to a specific representation unit may be represented only by that recognized employee organization certified to represent that specific unit.

Section 5. City Rights

The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; 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 complete control and discretion over its organization and the technology of performing its work.

None of the above shall be construed to preempt the rights of employees under Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 et seq.) or under other applicable State or Federal Laws.

Section 6. Negotiations

- A. Only recognized employee organizations in established representation units shall be entitled to negotiate with duly designated management representatives on wages, hours, and other terms and conditions of employment for the employees in such units.
- B. Negotiations shall not be required on any subject mandated by Federal or State law, nor shall negotiation be required on City or Employee Rights as defined in Sections 2 and 5. Proposed amendments to this Resolution are excluded from the scope of negotiation, but shall be subject to consultation in good faith after reasonable notice.
- C. Agreements reached as a result of negotiations shall be included in a memorandum of understanding signed by the City Manager or authorized management representative, as well as the duly designated representatives of the recognized employee organizations. All signed memoranda of understanding will then be presented to the City Council for approval. Such memoranda of understanding shall not be binding unless approved by the City Council.

Section 7. Establishment of Representation Units

Classifications of employment with the City for which recognition of an employee organization might be appropriate will be assigned to representation units. Whenever a new classification is adopted by the City, other than a management or confidential classification, the City Manager after discussion with the affected employee organization(s) may allocate it to an appropriate representation unit or not allocate it to any representation unit. The decision of the City Manager shall be final.

- A. An appropriate unit shall be that unit determined by the City Manager to be the broadest feasible grouping of positions that have a community of interest.
- B. The following factors, among others, are to be considered in making such determination:
 - (1) Which unit will assure employees the fullest freedom in the exercise of rights set forth under this Resolution.
 - (2) The history of employer-employee relations in the unit, among other employees of the City, and in similar public employment; provided, however, that no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.
 - (3) The effect of the unit on the efficient operation of the City and sound employer-employee relations.
 - (4) The extent to which employees have common skills, working conditions and job duties.
 - (5) Management and confidential employees shall not be included in a representation unit with non-management and non-confidential employees.
 - (6) No classification and no employee shall be included in more than one representation unit.

Section 8. Modification of Representation Units

- A. An employee organization may request the modification of an established representation unit by submitting to the City Manager a petition accompanied by proof of employee approval of the proposed modification signed by not less than sixty percent (60%) of those employees who, if the proposed modification should be granted, would be moved from one representation unit to another. A unit modification request may not be submitted until at least thirty-six (36) months have elapsed from the most recent date of certification of the unit from which positions would be removed should the modification request be granted. No such request shall be processed unless it is filed no sooner than one hundred fifty (150) calendar days and no later than ninety (90) calendar days before the expiration of the then current memorandum of understanding or agreement between the City and the employee organization which is then presently certified as the representative of the unit from which one or more positions would be removed if the request were granted. All petitions for modified units shall be accompanied by a list of all classifications to be included in the modified unit, the number of employees in each classification, as well as the divisions and departments to which they belong.
- B. The City Manager shall give notice of the request for modification of an established representation unit to the employees who would be affected by the proposed modification, to the employee organization which is then currently certified as the representative of the unit from which one or more positions will be transferred, and to any recognized employee organization that has filed a written request for such notice. Such notice shall be given within five (5) days following receipt by the City Manager of the request for modification, excluding Saturday, Sunday and holiday.
- C. The City Manager shall make the final determination on the appropriateness of all units after consultation with employee organizations who request such consultation. In making such determination, the City Manager shall not be limited to consideration of the unit or units requested. The City Manager shall consider the factors of Section 8 B.
- D. Should the decision of the City Manager have the result of moving one or more employees from one representation unit to another, such employees will continue to work at the rate of pay, and under the same terms and conditions of employment which they had in the unit from which they were transferred until such time as the memorandum of understanding concerning the unit from which they were transferred which was in effect at the time of said transfer shall expire.
- E. Notwithstanding any other provision of this Resolution, the City Manager may modify any representation unit when, in the City Manager's opinion, the present representation unit is no longer appropriate. The representation unit from which the City Manager removes any classification may appeal such decision by utilizing the grievance procedure in its Memorandum of Understanding.

Section 9. Certification and Decertification of a Recognized Employee Organization

- A. An employee organization which seeks recognition as the recognized employee organization for a representation unit which has been requested or already established shall file a petition with the City Manager. The petition shall contain:

- (1) Name and address of employee organization.
- (2) Names and titles of its officers.
- (3) Names of the employee organization representatives who are authorized to speak on behalf of its members.
- (4) Information as to whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner with, a regional or state, or national or international organization and, if so, the name and address of each such regional, state, national or international organization.
- (5) Copy of the employee organization's constitution and by-laws.
- (6) A statement that the employee organization has no restriction on membership based on race, color, creed, sex, or national origin.
- (7) A designation of the names and addresses of no more than two (2) persons to whom notices sent by regular United States mail or personally delivered will be deemed sufficient notice to the employee organization for all purposes unless otherwise specified herein.
- (8) Description of the representation unit for which the employee organization seeks certification, including job classifications or titles of employees in the unit claimed to be appropriate.
- (9) A statement by the employee organization to the effect that it has been designated as a representative by at least thirty percent (30%) of the employees in the representation unit.

The petition shall be accompanied by proof, as defined in Section 3 R, that the organization represents at least thirty percent (30%) of the employees in the representation unit. The City Manager shall give notice of the request for certification or decertification to the employees in the unit and to the employee organization, if any, which is then currently certified as the representative of the unit. Such notice shall be given within seventy-two (72) hours following receipt by the City Manager of the request for certification or decertification, excluding Saturday, Sunday and holidays. Upon determining that the petitioning employee organization represents at least thirty percent (30%) of the employees in the representation unit, the City Manager shall arrange for a secret ballot election to ascertain the free choice of a majority of such employees. Any other employee organization shall be shown as one choice on the ballot upon filing of a petition and presentation of proof, as defined in Section 3 R, that the organization represents at least thirty percent (30%) of the employees in the representation unit. Such petition for a place on the ballot must be filed within seven (7) days after notice of the petition for election has been mailed by the City Manager to the employees. In all certification or decertification elections the choices on the ballot shall be the currently recognized employee organization for the unit (if any), and challenging employee organizations, and no representative organization.

- B. There shall be no more than one (1) election in a two (2) year period to certify a recognized employee organization in a representation unit.
- C. Employees entitled to vote in a representation election shall be those permanent employees employed in positions within the representation unit who were permanent employees at least thirty (30) days prior to the date of the election.

- D. The recognized employee organization shall be the representative of all the employees in such unit for purposes of negotiating on matters within the scope of representation. This shall not preclude individual employees from consulting with management representatives on employer-employee relations matters of concern to them.
- E. Provided that at least thirty-six (36) months have elapsed from the most recent date of certification of said organization, requests for decertification of that employee organization may be initiated by a petition from employees or by another employee organization. No such request shall be processed unless it is filed no sooner than one hundred fifty (150) days, and no later than ninety (90) days, before the expiration of the then current memorandum of understanding or agreement between the City and the employee organization which is then presently certified as the representative of the unit for which decertification is requested. A petition for decertification shall be submitted to the City Manager and must be accompanied by proof of employee approval as defined in Section 3 R of at least thirty percent (30%) of the employees within the representation unit. The City Manager shall arrange for a secret ballot election to determine which employee organization shall represent the unit or if there shall be no representative organization. Choices on the ballot shall be determined in the manner set forth in Section 9 A.
- F. Notwithstanding any other provision of this Resolution, if the City Manager has a reasonable doubt that an employee organization represents a majority of the employees in a representation unit as evidenced by payroll records showing that fifty (50) percent or less of the eligible employees in a representation unit are current dues-paying members of the employee organization, the City Manager shall schedule an election to determine the current wishes of employees in the representation unit, such secret ballot election to be conducted in the same manner as provided in Section 9 A of this Section; provided, however, that no such election shall be held until the employee organization then currently recognized as the representative of the unit or units involved has been given at least thirty (30) days' notice of the date upon which the election will be held. If the Union can demonstrate that more than fifth (50) percent of the eligible employees are dues paying members, no election shall be held.

Any employee organization may be listed on said ballot if said organization petitions for a place thereon and submits proof, as defined in Section 3 R, that that employee organization represents at least thirty percent (30%) of the total number of employees in the representation unit or units affected by the election. The ballot shall contain a "no representative organization" choice.

- G. An employee organization shall be granted formal recognition as the recognized employee organization by the City Manager following an election or run-off election if:

(1) That employee organization has received a numerical majority of the votes of all employees eligible to vote in the unit in which the election is held.

(2) In an election involving three (3) or more choices, where none of the choices receives such a majority, a run-off election shall be conducted between the two (2) choices receiving the largest number of valid votes cast. The rules governing an initial election shall also apply to a run-off election.

Notification of recognition shall be made to the City Council, departments concerned, employees in the unit being represented, challenging employee organizations, and such other persons or organizations as the City Manager deems appropriate.

Section 10. Executive Sessions

Nothing in this Resolution shall be interpreted as preventing, or limiting the right of the City Council to hold executive sessions with the City Manager, or other duly designated management representatives, prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, salary schedules, or compensation paid in the form of employee benefits of employees in order to review its position and instruct its designated representatives.

Section 11. Impasse Procedures

Impasse procedures may be invoked only after all other attempts made by both parties to reach agreement through good faith negotiation have been unsuccessful.

- A. Impasse Meeting: Any party involved in the negotiation of specific issues may invoke the impasse procedure by filing with the other party (or parties) affected a written request for an impasse meeting together with a statement of its position on the disputed issues. An impasse meeting shall then be promptly scheduled by the parties involved. The purpose of such impasse meeting is to permit review of the position of all parties in a final good faith effort to reach agreement on the disputed issues.
- B. If agreement is not concluded at the impasse meeting, the parties together may mutually agree upon a method of resolving the dispute including, but not limited to, mediation as defined in Section 3 N of this Resolution. Unless the parties in writing mutually request them to do so, mediators shall make no public statement nor take any public position regarding the issues. All mediation sessions shall be conducted in private.

Section 12. Unfair Employee Relations Practices

- A. It shall be unfair employee relations practices for the City to:
 - (1) Interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Resolution or by State or Federal law;
 - (2) Dominate or interfere with the formation of any employee organization or contribute financial support to it, provided that the City may permit the use of City facilities, make dues deductions, and permit employees who are officers or representatives of recognized employee organizations to confer with City officials during working hours without loss of time or pay, subject to applicable regulations and on a uniform basis for all recognized employee organizations;
 - (3) Refuse to negotiate with representatives of recognized employee organizations on matters within the scope of negotiation during the periods prescribed by this Resolution;
 - (4) Refuse or fail to meet with any duly designated mediator.
- B. It shall be unfair employee relations practices for employees or employee organizations or their agents to:
 - (1) Interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Resolution or State or Federal law;
 - (2) Refuse to negotiate with City officials on matters within the scope of negotiation when the employee organization involved has been recognized as the majority representative;

(3) Refuse or fail to meet with any duly designated mediator.

Section 13. Advance Notice

Except in cases of emergency, reasonable advance written notice shall be given 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, by any board or commission of the City, or by any department, and each shall be given the opportunity to meet with such body prior to adoption. In cases of emergency when the City management determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice of meeting with the recognized employee organization, City management shall provide such notice and opportunity to meet at the earliest practical time following the adoption of each ordinance, rule, resolution or regulation.

Section 14. Attendance at Meetings by Employees

City employees who are official representatives or unit representatives of recognized employee organizations shall be given reasonable time off with pay to attend meetings with management representatives, or to be present at hearings where matters within the scope of representation or grievances are being considered. The use of official time for this purpose shall be reasonable and shall not interfere with the performance of City services as determined by the City. Such employee representatives shall submit a written request for excused absence to their respective department heads, at least two (2) working days prior to the scheduled meeting whenever possible. Except by mutual agreement, the number of employees excused for such purposes shall not exceed two (2) for any one employee organization.

Section 15. Use of Bulletin Boards

Recognized employee organizations may use portions of City bulletin boards under the following conditions:

- A. All materials must be dated and must identify the organization that posted them.
- B. Unless special arrangements are made, materials posted will be removed thirty-one (31) days after the date of posting. Materials which the department head considers objectionable will not be posted. In instances where the department head denies posting, the recognized employee organization involved may appeal such denial to the City Manager.
- C. The City reserves the right to determine where bulletin boards shall be placed and what portion of City bulletin boards are to be allocated to employee organizations' materials.

Section 16. Access to Work Locations

Reasonable access to employee work locations shall be granted officers of recognized employee organizations and their officially designated representatives, for the purpose of processing grievances or contacting members of the organization concerning business within the scope of representation. Such officers or representatives shall not enter any work location without the consent of the City Manager or his designated representative. Prearrangement for routine contact may be made by agreement between the employee organization and the Department Head and when made shall continue until revoked. Access shall be restricted so as not to interfere with the normal operations of the department or with established safety or security requirements.

Solicitation of membership and activities concerned with the internal management of an employee organization, such as collecting dues, holding membership meetings, campaigning for office, conducting elections and distributing literature shall not be conducted during working hours unless approved in advance by the City Manager or his designated representative.

Section 17. Use of City Facilities

City employees or a recognized employee organization or their representatives may, in accordance with established City policies, be granted the use of City facilities during non-work hours for meetings of City employees provided space is available.

The use of City equipment other than items normally used in the conduct of business meetings, such as desks, chairs, ashtrays, and blackboards, is strictly prohibited, the presence of such equipment in approved City facilities notwithstanding.

Section 18. Dues Deduction

Payroll deductions for membership dues shall be granted by the City Manager only to the recognized employee organizations.

The following procedures shall be observed in the withholding of employee earnings:

- A. Payroll deductions shall be for a specified amount and shall not include fines. Dues deduction shall be made only upon the employee's written authorization on a payroll deduction request approved by the City of Pacifica.
- B. Authorization, cancellation or modification of payroll deduction shall be made upon written request approved by the City of Pacifica. The voluntary payroll deduction authorization shall remain in effect until employment with the City is terminated or until cancelled or modified by the employee by written notice to the City of Pacifica. Employees may authorize dues deductions only for the organization certified as the recognized employee organization of the unit to which such employees are assigned.
- C. Amounts deducted and withheld by the City shall be transmitted to the officer designated in writing by the recognized employee organization as the person authorized to receive such funds, at the address specified.
- D. The employee's earnings must be sufficient, after all other required deductions are made, to cover the amount of the deductions herein authorized. When an employee is in a non-pay status for an entire pay period, no withholdings will be made to cover that pay period from future earnings nor will the employee deposit the amount with the City which would have been withheld if the employee had been in pay status during that period. In the case of an employee who is in a non-pay status during a part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other required deductions have priority over the employee organization deduction.
- E. A recognized employee organization which receives deductions shall indemnify, defend and hold the City harmless against any claim made and against any suit initiated against the City on account of checkoff of employee organization dues or premiums for benefits. In addition, all such employee organizations shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

Section 19. Notification to City

Each recognized employee organization shall provide in writing to the City a list of the organizations' current officers, affiliations and authorized representatives.

Section 20. Administration

The City Manager is authorized to establish procedures to carry out the intent of this Resolution and shall also have the authority for the administrative interpretation of this Resolution.

All elections authorized by this Resolution shall be conducted by the State Conciliation Service or some other party agreed on by the City and concerned employee organization. The expenses, if any, of conducting an election shall be shared equally by the parties involved in the election; provided, however, no expenses shall be incurred without the prior approval of the concerned employee organization.

Section 21. Construction

- A. Nothing in this Resolution shall be construed to deny any person, employee, or employee organization the rights granted by Federal and State laws.
- B. The rights, powers and authority of the City Council and the rights of employee organizations in all matters, including the right to maintain legal action, shall not be modified or restricted by this Resolution.
- C. The provisions of this Resolution are not intended to conflict with, nor shall they be construed in a manner inconsistent with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 et seq.) as amended.

Section 22. Separability

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

Section 23. Rescission of Prior Resolution

Resolution No. 26-69, adopted by this City Council on February 10, 1969, is hereby rescinded.

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Passed and adopted at a meeting of the City Council of the City of Pacifica held on the 23rd day of April, 1984 by the following vote:

- AYES, Council Members: Warden, Murray, Jaquith, Curry, and Mayor Loeb
- NOES, Council Members: None
- ABSENT, Council Members: None
- ABSTAIN, Council Members: None

ATTEST:

David G. Finigan
David G. Finigan, City Manager-Clerk

Peter Loeb
Peter Loeb, Mayor