

### §33.28 COLLECTIVE BARGAINING

(A) Matters which are expressly addressed in an approved collective bargaining agreement shall be handled in accordance with the agreement. Matters not included in an agreement shall be handled in accordance with the prevailing personnel ordinance. In case of conflict, the written agreement will prevail on matters within the scope of collective bargaining.

(B) (1) *Employee rights.* Classified city employees shall have the right to form, join, and participate in the activities of employee organizations; to bargain collectively, over matters within the scope of collective bargaining, through certified employee organizations of their own choosing; and to refrain from any or all of the activities. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of his or her exercise of the right to refrain from forming, joining, or participating in the activities of employee organizations.

(a) Nothing contained in this chapter shall be construed to limit, impair, or affect the rights of any individual city employee to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions of compensation of city employment or their betterment aside from the method described herein, so long as the same is not designed to and does not interfere with the full, faithful, and proper performance of the duties of his or her employment.

(b) No organization, its representative, or other individual shall be allowed to solicit membership of city employees for an employee organization or labor union during the employees' duty hours.

#### (2) *Employer rights.*

(a) Subject to the restrictions contained in this section and the collective bargaining agreement, and any provision of this chapter, the exclusive rights of the city shall include, without limitation because of enumeration, the right to:

1. Direct the work of its employees;
2. Hire, promote, assign, transfer, and retain employees in positions in the service of the city;
3. Demote, suspend, or discharge employees for proper cause;
4. Promote and maintain the efficiency of city operations;
5. Relieve employees from employment or duties because of lack of work or for any other legitimate reason;
6. Take the actions as may be necessary to carry out the missions of the city in emergencies;
7. Determine the methods, means, and personnel by which city operations are to be carried on;

8. Adopt and enforce a merit system to govern the hiring, promotion, demotion, suspension, or discharge of city employees;

9. Determine the purposes, objectives, and policies of each of its offices and departments;

10. Set the standard of services to be offered to the public; and/or

11. Carry out normal management function.

(b) The provisions of this section shall be a part of every collective bargaining agreement between the city and a certified employee organization.

(3) *Petitions for certification of employee organization.*

(a) Any employee organization seeking certification for the purpose of bargaining collectively as exclusive representative of an appropriate bargaining unit shall file with the City Manager a petition for certification containing the following information:

1. A certified copy of the organization's constitution or bylaws;

2. A roster of the duly elected officers of the organization;

3. A list of all other employee organizations with whom the organization is affiliated;

4. A statement that the employee organization has no conditions of membership or other policies which discriminate with regard to race, color, creed, sex, age, political affiliation, or national origin;

5. A statement that the employee organization does not advocate the overthrow, by unlawful means, of the constitutional form of government of the United States;

6. A list of the names of employees or other persons authorized to speak for the organization. This list may be supplemented or changed when appropriate;

7. A description of the grouping of jobs or positions which constitute the bargaining unit claimed to be appropriate; and

8. Proof of support of at least 30% of the employees in the bargaining unit claimed to be appropriate. The proof shall be made by use of 1 or more of the following:

a. Notarized membership lists; and/or

b. Signed and notarized membership cards.

(b) 1. Within 3 working days from receipt of a petition for certification, the City Manager shall post a notice that certification of the petitioning employee organization is being sought.



2. The notice shall be posted in a place conspicuous to the employees within the bargaining unit claimed to be appropriate.

(c) Within 10 days after posting of the notice that a petition for certification has been filed by an employee organization, any other employee organization may intervene by filing a petition, as required in this section, to seek consideration as the majority representative of the bargaining unit claimed to be appropriate.

(4) *Determination of bargaining unit.*

(a) The Personnel Labor Management Relations Board shall investigate the appropriateness of the bargaining unit proposed in any petition filed by an employee organization and submit recommendations as to the appropriateness of the proposed bargaining unit to the governing body within 3 weeks of the filing of a petition for certification.

(b) The governing body shall determine that the proposed bargaining unit is appropriate or that an alternative bargaining unit is the appropriate bargaining unit. The governing body shall then determine whether the employee organization's petition for certification adequately proves that the employee organization represents 30% of the employees in the appropriate bargaining unit.

(c) The following factors shall be considered by the Personnel Labor Management Relations Board in recommending to the governing body in determining the appropriateness of a bargaining unit:

1. The community of interest of the employees involved, including, but not limited to, the similarity of skills, job duties, educational and training requirements, and working conditions; the extent to which employees have common supervision; and the history of employee representation in the city and in similar employment in other geographic areas;

2. The effect of the proposed bargaining unit upon collective bargaining in the city, including, but not limited to, overfragmentation of employee representation, the availability and authority of city representatives to bargain effectively with employee organizations representing the unit; and

3. The effect of the proposed bargaining unit upon the efficient operation of the city and the obligation of the city and its officers to serve the public interest.

(d) A bargaining unit shall not include professional employees, managers, supervisors, or employees having direct access to confidential information concerning employee relations. For purposes of this Section, a "supervisor" means an employee who devotes a majority amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees, and who has the authority in the interest of the employer to hire, promote, or discipline other employees or to recommend such actions effectively. This definition does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their

subordinates and does not include lead employees or employees who occasionally participate in peer review or evaluation of employees.

(5) *Certification elections.*

(a) Within 30 days after the governing body has determined the most appropriate bargaining unit; determined that the petitioning employee organization represents at least 30% of the employees in the most appropriate bargaining unit; and determined which, if any, intervening employee organizations represent at least 10% of the employees in the most appropriate bargaining unit, the City Manager shall call and hold a certification election.

(b) A certification election shall not be held if the City Commission determines that:

1. There is currently in effect a lawful written collective bargaining agreement between the city and another certified employee organization representing any of the employees included in the proposed bargaining unit;

2. Within the preceding 12 months from the date the petition for certification was filed, a certification election has been held for the bargaining unit; or

3. The public interest requires that the employees included in the proposed bargaining unit should not be permitted to bargain collectively with the city.

(c) If a majority of eligible voters favor exclusive representation by any of the employee organizations, the City Commission shall certify that employee organization as exclusive bargaining representative for the bargaining unit.

(d) If a 51% majority of the eligible voters favor no representation, there shall be no bargaining representative.

(e) If no employee organization on the ballot receives a majority of the votes of the eligible voters, a run-off election shall be held within 30 days of the date when the election results are announced. The ballots in the runoff election shall give eligible voters a choice between no representation and representation by the employee organization receiving the largest number of votes in the first election.

(f) All certification elections shall be conducted in the following manner.

1. All full-time city employees who are employed in the bargaining unit on the date of the certification election shall be eligible to vote.

2. Voting shall be by secret ballot.

3. Ballots shall offer eligible voters the choice of:

a. Exclusive representation by the petitioning employee organization;



b. Exclusive representation by any intervening employee organization; or

c. No representation.

(6) *Decertification.*

(a) The governing body, or at least 30% of the employees in the bargaining unit, may file a written request for decertification with the Personnel-Labor Management Relations Board. A request for decertification filed by employees is subject to the limitations of division (B)(6)(d) below.

(b) The City Manager shall call and hold a decertification election within 45 days from the date that the written request for decertification was filed with the Personnel-Labor Management Relations Board. A decertification election shall be held in the same manner as a certification election, except that the questions presented to the eligible voters shall be changed appropriately.

(c) A request for decertification filed by employees in the bargaining unit may be accompanied by a petition from an employee organization for certification. In that case, a certification election may be held simultaneously with the decertification election. If a simultaneous certification-decertification election is held, the time limits and procedure for the election shall be the same as those for a certification election.

(d) A decertification election shall not be held upon the request of employees when:

1. Within the previous 12 months, a certification or decertification election has been held for the bargaining unit; or

2. A written collective bargaining agreement between the city and the present bargaining representative has been in effect for less than 12 months.

(e) If a written collective bargaining agreement is in effect on the effective date of decertification of an employee organization, the city and the newly certified employee organization shall be bound by the provisions of the collective bargaining agreement until its expiration.

(7) *Duty to bargain collectively; scope of collective bargaining.*

(a) The scope of collective bargaining shall be limited to the following:

1. Wages and salaries;

2. Hours;

3. Working conditions; and

4. Other benefits.

(b) Policy, management rights, employee rights, methods and procedures of initial employment, establishing classified and unclassified employee positions, performance evaluations, promotional procedures, discipline, and the grievance procedure are specifically included in those matters not within the scope of collective bargaining.

(c) The duty to bargain collectively includes the duty to confer in good faith at reasonable times, and to reduce to a written collective bargaining agreement the matters agreed upon. Nothing contained in this chapter or in a collective bargaining agreement shall prohibit any city employee from bringing matters of personal concern to the attention of appropriate officials.

*(8) Procedure for collective bargaining.*

(a) All collective bargaining negotiations shall begin not later than February 1 prior to the expiration of the respective agreement.

(b) 1. All collective bargaining negotiations shall be held at times and places mutually agreed upon by the authorized representatives of the city and the certified employee organization.

2. Negotiating sessions shall not be open to the public.

(c) All collective bargaining agreements shall be reduced to writing, signed by the duly authorized representatives of the city and the certified employee organization, and submitted to the membership of the certified employee organization and the governing body.

(d) A written collective bargaining agreement shall not be binding upon either party to the agreement until ratified and signed by the governing body of the city and the membership of the certified employee organization.

*(9) Impasse procedures.*

(a) At any time during the negotiations, the city and the certified employee organization may mutually agree that an impasse has been reached. If the city and the certified employee organization do not reach agreement by April 1, an impasse shall automatically be deemed to have been reached.

(b) When an impasse has been reached, the specific items that are the subject of the impasse shall be submitted to mediation. If the city and the certified employee organization are unable to agree upon a mediator within 3 days from the date the impasse is reached, the Federal Mediation and Conciliation Service shall be requested to provide a mediator. After selection and appointment, the mediator shall meet with the representatives of the city and the certified employee organization, either jointly or separately, or both, and take the steps as he or she may deem appropriate to effect an agreement which is acceptable to both parties. Representatives of the city and the certified employee organization shall meet with the mediator at all reasonable times requested by mediator. The mediator shall have access to all negotiating information available to the city and the certified employee organization.



(c) If by April 15 the mediator is unable to effect an agreement which is acceptable to the city and the certified employee organization, a fact-finding panel shall be appointed. The fact-finding panel shall be composed of 3 members. One member shall be appointed by the negotiating representatives of the city; 1 member shall be appointed by the negotiating representatives of the certified employee organization; the third member shall be appointed by the other 2 and shall be the Chairperson. If the 2 members of the fact-finding panel are unable to agree on the appointment of a Chairperson within 5 days from the date when mediation ended, the Chairperson of the **Personnel-Labor Management Relations** Board shall select the Chairperson. Within 10 days of its appointment, the fact-finding panel shall meet with the representatives of the city and the certified employee organization either jointly or separately or both; make inquiries and investigations, hold hearings, and take any other action it deems appropriate to effect an agreement; have access to all negotiating information possessed by the city and/or the certified employee organization; and have the right to question the representatives of the city and the certified employee organization together, separately, or any 1 representative of either party separately. The fact-finding panel shall submit to the parties in private written findings-of-fact and recommendations for resolving the disputed issues not later than May 1. In arriving at their findings and recommendations, the fact-finding panel shall consider, weigh, and be guided by the following criteria:

1. The lawful authority of the employer;
2. Stipulation of the parties;
3. The interest and welfare of the public and the financial ability of the employer to bear the costs involved;
4. Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:
  - a. In public employment in comparable communities; and/or
  - b. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living;
6. The overall compensation presently received by the employees, including direct wage compensation; vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received; and
7. The other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment, including any other matters agreed to by the parties.

(d) The findings-of-fact and recommendations of the fact-finding panel shall be advisory only, unless the parties have agreed in writing prior to the submissions of the findings-of-fact and recommendations that they all be binding. If the representatives of the city and the certified employee organization are unable to reach an agreement within 5 days from the date of submission of the written findings-of-fact and recommendations, the written findings-of-fact and recommendations shall be made public and submitted to the City Commission. The City Commission shall, within 5 days from the date when the written findings-of-fact and recommendations were submitted to it, hold a public hearing at which the representatives of the city and the certified employee organization shall be required to explain their positions with respect to the written findings-of-fact and recommendations of the fact-finding panel. After the hearing, but prior to submission of the budget for the next fiscal year to the governing body, the City Commission shall take the action as it deems to be in the public interest, including the interest of the city employees involved. The decision of the City Commission shall be final and binding upon the city and the certified employee organization.

(e) The costs of impasse procedures shall be borne equally by the city and the certified employee organization.

(f) The impasse procedures provided for in division (B)(9) shall not be required of the city and the certified employee organization if the city and the certified employee organization agree in writing to other impasse procedures.

(10) *Unfair employee relations practices.*

(a) It shall be an unfair employee relations practice for the city:

1. To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this chapter;
2. To dominate or interfere with the formation of any employee organization or contribute financial support to it;
3. To discriminate in regard to hiring or conditions of employment for the purpose of encouraging or discouraging membership in any employee organization;
4. To refuse to negotiate with representatives of certified employee organizations on matters within the scope of collective bargaining;
5. To discharge or discriminate against a city employee because he or she has filed charges or given testimony pursuant to provisions of this chapter or has filed a grievance pursuant to a collective bargaining agreement; and/or
6. To violate a valid written agreement currently in effect between the city and a certified employee organization.



(b) It shall be an unfair employee relations practice for employee organizations or their representatives or members:

1. To interfere with, restrain or coerce, or to threaten the action against employees or supervisors who exercise the rights recognized or granted in this chapter;
2. To cause or attempt to cause a city supervisor to discriminate against a city employee because of membership or nonmembership in an employee organization;
3. To refuse to negotiate with city officials on matters within the scope of collective bargaining when the employee organization involved has been certified;
4. To violate a valid written agreement currently in effect between the city and a certified employee organization;
5. To interfere with, restrain, coerce, or threaten the actions against the city, its officers, or representatives:
  - a. In the selection of the city's representatives for purposes of collective bargaining; or
  - b. In the conduct of private business or personal affairs.
6. To engage in, induce, or encourage any city employee or group of employees to engage in a strike, work stoppage, or work slowdown.

(c) No employee of the city shall engage in any strike or work stoppage or slowdown. In addition to the penalties established in this chapter, no employee who engages in a strike, work stoppage, or slowdown shall realize the benefits accruing to employees from the strike, work stoppage, or work slowdown.

(d) No person shall, within the corporate limits of the city, engage in picketing before or about the residence or dwelling of an individual.

(e) With respect to the impasse procedures set forth in division (B)(9) above, it shall be an unfair employee relations practice for either the city or a certified employee organization to fail or refuse to cooperate with the Labor Management Relations Board or with any mediators or fact finders.

(f) Charges of violations of this section, or of any other provision of this chapter, may be initiated by a city representative, by a representative of any employee organization, or by an individual employee or group of employees. The charges shall be filed in writing with the Labor Management Relations Board. Each charge so filed shall be processed in accordance with the rules and regulations of the Labor Management Relations Board.

(g) If the Labor Management Relations Board's decision is that the city has engaged in an unfair employee relations practice or has otherwise violated this chapter, the Labor Management

Relations Board shall direct the city to take appropriate corrective action. If compliance with the Labor Management Relations Board's decision is not obtained within the time specified by the Labor Management Relations Board, it shall so notify the other party, which may then resort to its legal remedies.

(h) If the decision is that an employee organization or its representatives or members have engaged in an unfair employee relations practice, or have otherwise violated this chapter, the Labor Management Relations Board shall direct the offending party to take appropriate corrective action. If compliance with the Labor Management Relations Board's decision is not obtained within the time specified by the Labor Management Relations Board, it shall so notify the City Manager who may then take appropriate action.

(i) If the unfair employee relations practice charged is that of engaging in, inducing, or encouraging any city employee or group of employees to engage in a strike, work stoppage, or work slowdown, the charge shall be made to the City Commission. Upon submission of the charge, the City Commission may take action it deems to be in the public interest, including, but not limited to:

1. Voiding any current collective bargaining agreement between the city and the certified employee organization whose members are involved in the strike, work stoppage, or work slowdown;
2. Ordering automatic decertification of the certified employee organization whose members are involved in the strike, work stoppage, or work slowdown; and/or
3. Declaring that the employee bargaining unit involved in the strike, work stoppage, or work slowdown shall not have the right to bargain collectively with the city through a certified employee organization for 60 months.

(j) In the case of a party committing a violation of division (B)(10), the appropriate district court may, if requested by the City Commission:

1. Issue an order restraining and enjoining the violation; and/or
2. In the case of a strike as defined by this chapter, the district court may impose on the employee organization a fine which will be set in accordance with the damages and/or loss of revenue involved.

(11) Labor Management Relations Board – Created – Terms.

- a. The "Labor-Management Relations Board" is hereby created. The Board shall be composed of three members appointed by the Mayor and approved by the City Commission. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the City

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Manager, and one member shall be appointed on the recommendation of the first two appointees.

- b. Board members shall serve for a period of one (1) year with terms commencing in the month of September, except in the initial appointment, which will be a shorter term, effective the same day as this Ordinance. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.
- c. During the term of appointment, no Board member shall hold or seek any other political office or public employment or be an employee of a union, an organization representing public employees, or a public employer.
- d. Each Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

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(1981 Code, § 20-31) (Ord. 823, passed 1-22-1991) Penalty. see § 33.99