

RESOLUTION NO. 65 - 01

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**IMPLEMENTING EMPLOYER/EMPLOYEE RELATIONS
PURSUANT TO SENATE BILL 739**

WHEREAS, the City of Dublin ("City") desires to implement sections 3500-3510 of the California Government Code (the Meyers-Milias-Brown Act, or "MMBA"), as amended;

WHEREAS, the City desires to implement local rules and regulations governing employer – employee relations to ensure they are consistent with recent amendments to the MMBA; and

NOW, THEREFORE, BE IT RESOLVED, that the City hereby adopts these policies governing employer-employee relations pursuant to the MMBA;

1. Purpose: The purpose of this Resolution is to implement City rules and regulations governing employer-employee relations.

2. Definitions: As used in this Resolution, the following terms are defined as follows:

a. "Agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues and general assessments of the organization.

b. "Bargaining Unit" means a unit of employee classifications and/or positions established by the City.

c. "Certify" means the process by which the City Council formally acknowledges an employee organization as the exclusive representative of a bargaining unit.

d. "Confidential Employee" means an employee who is privy to information that could affect employer-employee relations.

e. "City" refers to the City of Dublin and, where appropriate, the City Council or any duly authorized City representative.

f. "Consult/Consultation in Good Faith" means to communicate orally or in writing with all affected employee organizations for the purpose of presenting and obtaining views or advising of proposed actions in an effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of representation, does not involve an exchange of proposals and counterproposals with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a memorandum of understanding.

g. "Day" means calendar day unless expressly stated otherwise.

h. "Employee" means any person employed by the City, but does not include: (1) elected officials; and (2) self-employed persons or persons employed by contract with a third party agency or company; and (3) independent contractors.

i. "Employee Organization" means any organization which includes employees of the City, and which has as one of its primary purposes representing such employees in their labor relations with the City.

j. "Exclusively Recognized Employee Organization" means an employee organization which has been formally recognized by the City as the exclusive representative of a bargaining unit or units for purposes of meeting and conferring on matters within the scope of representation under the MMBA.

k. "Impasse" means a deadlock in negotiations concerning matters within the scope of representation.

l. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

m. "Memorandum of Understanding" (or "MOU") means a written agreement between the City and an exclusively recognized employee organization regarding wages, hours and working conditions within the scope of representation. MOUs shall not be valid or enforceable unless and until adopted by the City Council.

n. "Notice" means depositing the information at issue, properly addressed with correct postage for first class delivery, in a United States Postal Service (USPS) facility. Unless otherwise specified in this resolution, or otherwise agreed between the affected parties in writing, notice shall be complete upon deposit in a USPS mail box or facility.

o. "Scope of representation" shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms of conditions of employment; provided, 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, or any other matter excluded by applicable case law or statute.

p. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

3. City Management Rights

Unless specifically in conflict with any MOU, all management rights shall remain vested exclusively with the City. City management rights include but are not limited to:

a. The right to determine the mission of its agencies, departments, institutions, boards and commissions;

b. The right of full and exclusive control of the management of the City; supervision of all operations; determination of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;

c. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the City;

d. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems and filing cabinets and systems;

e. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any City work, and to contract out for work;

f. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;

g. The right to establish and enforce employee performance standards;

h. The right to schedule and assign work, make reassignments and assign overtime work;

i. The right to hire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step, grade or salary, all employees;

j. The right to establish and modify bargaining units;

k. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require employees to appear, respond truthfully and cooperate in good faith regarding any City investigation; and

l. The right to maintain orderly, effective and efficient operations.

4. Employee Rights

Unless specifically in conflict with a MOU, all employees shall enjoy the following rights:

a. 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 employer-employee relations.

b. The right to refuse to join or participate in the activities of employee organizations, and to represent themselves individually in their employment relations with the City.

c. The right to be free from interference, intimidation, restraint, coercion, or discrimination because of exercising rights specified in this section.

5. Policy and Standards for Determination of Bargaining Units

The City Manager shall have the management discretion to form, define and designate all appropriate bargaining units in the City, and to modify bargaining units based on the procedures specified in this resolution. The City Manager (which includes any authorized designee), shall maintain a list of the classifications in each unit. The City Manager may consider, but shall not be bound by, labor relations criteria considered under federal authorities such as the National Labor Relations Act. In exercising discretion regarding bargaining unit composition, including initial formation and subsequent modification, the City Manager shall consider the following criteria:

- a. Community of interest among employees, and avoiding actual or potential conflicts of interest within the bargaining unit;
- b. Historical relationships including the organizational structure and collective bargaining;
- c. The effective delivery of services;
- d. The application and consistency of wage, hour, and benefit packages (including retirement benefits) within the bargaining unit;
- e. Specific legal requirements, such as the rights of public safety and professional employees to form their own bargaining units;
- f. Employee rights to freely choose labor representatives according to their preference; and
- g. The interest of broad-based units, composed of the largest number of employees having a reasonable community of interest.

Managerial, supervisory and confidential responsibilities (as defined in Section 2 of this resolution) are determining factors in establishing appropriate units, and therefore, managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

6. Certification as Exclusive Bargaining Representative

a. Elements of Petition:

An employee organization seeking recognition as an exclusively recognized employee organization representing the employees in a bargaining unit shall file with the City Manager a written petition for certification, which shall include:

- (1) The complete name and street address of the organization;
- (2) The names, titles, mailing addresses, and telephone numbers of the organization's officers;
- (3) The names, addresses and telephone numbers of those persons who are authorized to speak on behalf of the organization;

(4) A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose;

(5) A statement that the organization has no restriction on membership and does not discriminate based on race, color, creed, national origin, sex, age, disability, sexual orientation or political affiliation.

(6) A statement that the primary purpose of the organization is to represent employees in the City on matters concerning wages, hours and other terms and conditions of employment.

(7) A statement whether the organization is affiliated in any manner, directly or indirectly, with another organization (for example as a local or chapter of a national or international parent union), and, if so, the name and address of the affiliated organization.

(8) Copies of the employee organization's constitution and bylaws, accompanied by a statement of authenticity.

(9) Authorization cards demonstrating support for the petition, signed by thirty percent (30%) or more of the employees within the bargaining unit, that are dated no later than six (6) months earlier than the date of the petition, and which appear authentic to the satisfaction of the City Manager.

(10) A request that the City Council certify the petitioner as the exclusive bargaining representative for those employees in the bargaining unit(s) at issue.

b. Response to Petition:

At some reasonable time after receiving a petition, the City Manager shall determine whether the petition contains the necessary elements demonstrating the requisite showing of interest. If the Petition is defective in some respect, the City Manager may reject and return it, with a brief explanation. Alternatively, the City Manager may retain the petition, and permit the petitioner to cure the deficiencies promptly.

c. Notice

After the City Manager determines that a petition meets the requirements under this resolution, the City Manager shall provide notice that a petition has been filed to: (1) all employees in the bargaining unit at issue; (2) any and all recognized employee organizations; and (3) the City Council.

d. Elections

Elections shall be conducted in accordance with the provisions of section 7 herein.

e. Certification

The City Manager shall provide notice of the election outcome to all affected employee organizations and the City Council. For petitions to certify, the City Council shall certify the prevailing organization, if any, as the exclusive bargaining representative for the bargaining unit(s) at issue.

7. Elections

The following procedures are applicable to elections, except as specified herein:

- a. Elections will be conducted by the City Manager. Alternatively, the City Manager has the discretion to appoint another City official, or third party, to conduct the election. The City Manager may take reasonable measures, not in conflict with this resolution or applicable law, to ensure the integrity of elections.
- b. The City Manager has the discretion to refer the election matter at issue to the Public Employee Relations Board (PERB) for handling. If an election is referred to PERB, rules and regulations adopted by PERB governing the type of election at issue shall apply.
- c. In order for an election to be held, petitions to certify or decertify a recognized bargaining organization, or to rescind an agency shop provision, must be accompanied by cards showing that the petition at issue is supported by thirty percent (30%) or more of the employees in the bargaining unit.
- d. Challenges to certification petitions may be initiated by other employee organizations providing: (1) the challenging organization provides the information contained in section 6.a(1)-(8) of this resolution; (2) the challenging organization produces cards demonstrating that at least ten percent (10%) of employees in the bargaining unit subject to the petition support the challenge; and (3) the challenge must be initiated within thirty (30) days after the City gives notice of a petition for certification. If the challenging organization meets these requirements, the organization will also be included in this election.
- e. The City Manager shall exercise his/her discretion to verify the authenticity of cards and signatures.
- f. Elections will be conducted by secret ballot. Over fifty percent (50%) of the employees in the bargaining unit must participate in the election in order for the election to be certified. Elections will be determined by majority vote of those employees casting votes.
- g. Ballots shall contain the choice "no representation."
- h. If no organization receives a majority of the votes, the City Manager shall conduct a runoff between the two (2) choices receiving the most votes.
- i. Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.
- j. Elections concerning the proposed decertification of an exclusive bargaining organization may be held no sooner than twelve (12) months following the date the City certified and recognized the bargaining organization as the exclusive recognized employee organization for the bargaining unit(s) at issue.
- k. No more than one vote to rescind an agency shop agreement may be taken during the life of a MOU which provides for agency shop.

8. Bargaining Unit Modifications

Bargaining unit modifications may be initiated by: (a) the City; (b) a group of employees; or (c) a recognized employee organization.

a. City-initiated unit modifications: The City may initiate a modification of its unit structure, including the creation of new units, or the reallocation of classifications from one bargaining unit to another bargaining unit. The City shall provide notice to all affected employee organizations, and to each employee who may be affected by the proposed change. Before implementing any modification or reallocation, the City shall provide the opportunity to meet and confer, to the extent required by law, with affected recognized employee organizations.

b. Employee and union-initiated modifications: An employee, group of employees, or a recognized employee organization may request that a unit be modified, or that one or more classifications be reallocated to a new or existing bargaining unit. The City shall provide notice to any and all affected employee organizations upon receipt of such a request. The request must be accompanied by cards, dated no later than six months earlier than the request, showing that at least fifty percent (50%) of the employees in the new proposed unit, or thirty percent (30%) of the employees in the classification(s) proposed to be reallocated to another bargaining unit, support the request.

(i) The City Manager may exercise discretion to deny the request in the event the criteria in section 5 of this resolution suggest to the City Manager that the modification or reallocation is inappropriate. The City Manager shall provide notice of the rejection to all recognized employee organizations promptly after such determination.

(ii) If the City Manager determines that the modification or reallocation of a unit is consistent with the criteria listed in section 5, the City Manager shall further process the request. If the City Manager determines that a new unit or reallocation is appropriate, the City Manager shall provide notice to all recognized employee organizations in the City. If no protest is filed within thirty (30) days, the City Manager shall promptly reassign affected classifications to the new unit, or reallocate the classifications to an existing bargaining unit. In the event of an assignment to a newly created bargaining unit, the City Manager shall also notify the employees of their rights under this resolution, including the right to select an employee organization of their choice for the purpose of meeting and conferring with the City regarding wages, hours and working conditions under the MMBA.

(iii) Within thirty (30) days of notice regarding the City Manager's determination to modify a bargaining unit, or reallocate classifications, an affected recognized employee organization may submit a protest to the City Manager. The protest must include the following in order to be considered: (a) the name, address and telephone number of the protesting employee organization; (b) the facts and arguments supporting the protest; and (c) the proposed resolution. Upon receipt of a protest, the City Manager shall meet and confer to the extent required by law. If there is no resolution, the dispute shall be submitted to nonbinding arbitration. The arbitrator shall forthwith convene a hearing and propose a solution, in writing, to the City Manager. The City Manager shall then issue a final decision, and give notice to all affected parties. After issuing a decision, the City Manager may reassign or reallocate the classifications at issue, and inform the employees of their rights under this resolution.

c. Timing: Unless required by law, unit modifications or reallocations may not be initiated sooner than twelve (12) months following the date of any memorandum of understanding which covers the classifications proposed to be reallocated or moved from the bargaining unit.

9. Rights and Responsibilities

a. Meet and Confer:

An exclusive bargaining representative shall have the right to meet and confer in good faith with authorized representatives of the City regarding matters within the scope of representation. If an agreement is reached, the parties shall jointly prepare a written MOU, which shall not be binding, and present it to the City Council. If the City Council adopts the written MOU, it shall become binding on the parties. The City is under no obligation to meet and confer with an employee organization, unless it has been certified as a recognized employee organization.

b. Current Information:

Recognized employee organizations have the responsibility to inform the City Manager, in writing, of any changes in the information specified in section 6a(1)-(8). There shall be no relief from time limits imposed by this resolution because of an employee organization's failure to keep the City apprised of current information required under this resolution.

c. Release Time:

During the period of meet and confer regarding a memoranda of understanding, recognized employee organizations shall be entitled to a limited number of representatives who may receive paid release time during the period when negotiations are occurring at the table. The precise number shall be subject to the City's approval at the outset of negotiations. Employee organizations shall cooperate with the City on a reasonable schedule, and the employees released for negotiations shall notify their supervisors, obtain their consent and ensure that the dates scheduled for negotiations do not adversely affect City operations. Release time may not be authorized for activities such as soliciting membership, campaigning for office or other political activity, organizing efforts, or for any other purpose not authorized by this resolution or a MOU.

d. Use of City Resources:

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in memoranda of understanding and/or administrative procedures, and shall be limited to lawful activities consistent with the provisions of this resolution that pertain directly to the employer-employee relationship. Such access is not permitted for such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections.

e. Dues and Other Authorized Payroll Deductions:

Recognized employee organizations may sponsor payroll deduction programs for membership dues, charitable causes and benefit premiums and contributions. In order to participate, each affected employee must submit a written authorization on a form prescribed by the City Manager. Deductions shall comport with City administrative procedures.

10. Impasse Resolution Procedures

If impasse is reached during negotiations concerning matters within the scope of representation, either party may declare an impasse. Upon and after impasse, either party may request that the dispute be

submitted to mediation. The costs of mediation shall be borne equally. Mediation shall be conducted by a mutually agreed upon mediator, or a mediator supplied by the State Mediation and Conciliation service. Mediation shall be confidential. The mediator shall not make public recommendations or issue any decision concerning the issues.

If no agreement is reached after mediation, or if one party refuses to mediate the dispute, the matter shall be referred to the City Council for final determination.

This section shall not apply to economic disputes involving employees governed by different impasse resolution procedures imposed by statute.

11. Agency Shop

Agency shop arrangements between the City and any exclusively recognized employee organization shall be made in accordance with the MMBA, as amended, and other applicable law.

12. Miscellaneous Provisions

a. Savings and Separability: This resolution is intended to comport with all applicable state and federal laws, and it should be interpreted and applied to harmonize with all such law, reserving the broadest legal measure of authority to the City Council. In the event of a court of competent jurisdiction determines that some provision is inconsistent with applicable and binding law, then that provision shall be severed and all remaining portions of the resolution shall continue in full force and effect. Upon request by the City, a recognized bargaining organization will meet and consult with the City promptly upon request in an effort to resolve any amendments that are necessary or advisable in light of changes to existing law, or interpretations of the law that impact this resolution.

b. Construction: This resolution should be interpreted based on its plain meaning and intent of the City Council as expressed herein. Nothing in this resolution shall be construed to give employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout, or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly provided by law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced; and employee organizations may thereby forfeit rights accorded them under law or contract.

PASSED, APPROVED AND ADOPTED this 1st day of May 2001, by the following vote:

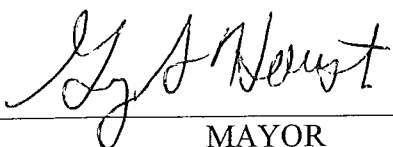
AYES: **Councilmembers Lockhart, McCormick, Oravetz and Mayor Houston**

NOES: *None*

ABSENT: **Councilmember Zika**

ABSTAIN: *None*

ATTEST: 
CITY CLERK


MAYOR