

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 OCT 18 PM 6:12

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Finance and Management Agency
DATE: October 17, 2006

RE: A Resolution to Adopt Rules and Regulations Governing Employer-Employee Relations in City Government Applicable to Sworn Police Officers

SUMMARY

Council has previously been advised that the City has met and conferred with the Oakland Police Officers Association (OPOA) regarding the adoption of an Employer-Employee Relations Resolution (EERR) applicable to sworn police. The City has offered to extend the coverage of the existing EERR to police, with minor modifications requested by the union. The OPOA objects to inclusion of current EERR language permitting the City Administrator to modify units at any time for specified reasons and impasse has been declared because of that issue. The City Charter impasse procedures do not apply to this resolution. The draft EERR before you, utilizes the same definition of management employees contained in the EERR for miscellaneous employees. The City Administrator may rely upon this section of the EERR as the legal basis for removing managers including Captains and Lieutenants from the bargaining unit, should she so determine. We therefore request the Council move forward to implement the EERR. Doing so will authorize the City Administrator to create a separate management unit in the police department. Her decision may be appealed to the City Council.

FISCAL IMPACT

None.

BACKGROUND

The City lacks an applicable Employer-Employee Relations Resolution (EERR) providing a mechanism for creating appropriate bargaining units for sworn employees. Legal counsel recommends that the City Council adopt an EERR applicable to sworn police officers, expressly authorizing the City Administrator to create a management bargaining unit, subject to appeal to the City Council. While the city does not believe that the absence of an EERR precludes the creation of new units, the issue is currently in litigation in the Court of Appeals. Therefore, adoption of this resolution will provide the city with additional legal protections should the City Administrator determine to place managers including, Captains and Lieutenants in a separate bargaining unit.

KEY ISSUES AND IMPACTS

The Chief, the City Administrator and legal counsel concur that the creation of a management bargaining unit is an essential step toward creating an appropriate management ethos in the Department, and to the

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achievement of the goals of the Negotiated Settlement Agreement (NSA).

SUSTAINABLE OPPORTUNITIES

None.

DISABILITY AND SENIOR CITIZEN ACCESS

None.

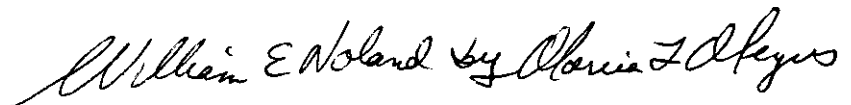
RECOMMENDATION AND RATIONALE

Staff recommends that Council adopt the EERR governing rules and regulations for employer-employee relations in City government applicable to sworn police officers.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that Council approve the EERR for sworn police officers.

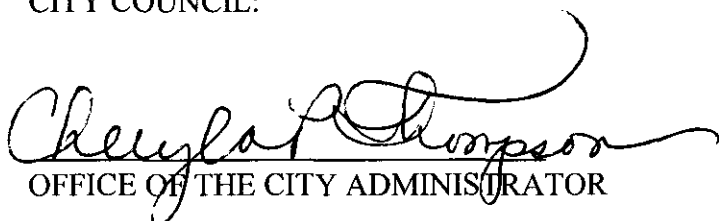
Respectfully submitted,



William E. Noland
Director, Finance and Management Agency

Prepared by:
Marcia Meyers, Director
Office of Personnel Resource Management

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



OFFICE OF THE CITY ADMINISTRATOR

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APPROVED AS TO FORM AND LEGALITY

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OAKLAND CITY ATTORNEY'S OFFICE

OFFICE OF THE CITY CLERK
OAKLAND

2006 OCT 5 9:00 AM
OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

OFFICE OF THE CITY CLERK
OAKLAND
2006 OCT -5 PM 6:13

**A RESOLUTION TO ADOPT RULES AND REGULATIONS
GOVERNING EMPLOYER-EMPLOYEE RELATIONS IN CITY
GOVERNMENT APPLICABLE TO SWORN POLICE OFFICERS**

WHEREAS, on September 28, 1976, Resolution No. 55881 C. M. S. adopted rules and regulations governing employer-employee relations in the City Government; and

WHEREAS, the provisions of Resolution No. 55881 did not apply to sworn members of the Police Department; and

WHEREAS, rules and regulations are necessary to promote improved employer-employee relations with sworn members of the Police Department; now, therefore be it

RESOLVED: It is the public policy of Municipal government to maintain good relations between that government and those employed by it, and to protect the public by assuring the orderly and uninterrupted operation and services provide by the City. To that end and pursuant to Section 3507 of the Government Code, the following rules and regulations are hereby adopted.

Section 1. Definitions. For the purposes of this Resolution, the following terms shall have these meanings:

- a. "Employee Organization" shall be as defined in Section 3501 of the Government Code of California (commonly known and hereinafter referred to as Meyers-Milias-Brown (MMB) Act).
- b. "Confidential Employee" means any employee who is privy to the management decision-making discussions and memoranda affecting employer-employee relations.
- c. "Employee Relations Officer" means the City Administrator and/or his/her designed representative.
- d. "Management Employee" means an employee having significant responsibilities for formulating and administering City policies, procedures and programs, including but not limited to the City Administrator, his/her staff, all department heads, assistant department heads and division chiefs, as designated from time to time by the City Administrator.
- e. "Consult" means to communicate orally and/or in writing for the purpose of presenting and exchanging views.

- f. "Employee" means any Sworn Police Officer who is employed by the City of Oakland, as designated by the Employee Relations Officer.
- g. "Professional employee" shall be as defined in Section 3507.3 of the MMB Act.
- h. "Recognized Employee Organization" means an employee organization which shall have the right to "meet and confer in good faith" with the Employee Relations Officer or other designated representatives of the City.
- i. "Appropriate Unit" means a grouping of employees by class which may be appropriately represented by one employee organization.
- j. "Meet and confer in good faith" refers to the procedure and to the subject matter within the scope of representation provided therefor in the MMB Act.
- k. "Majority Representative" means an employee organization which has been granted formal recognition as representing the majority of employees in an appropriate unit and thereby is the recognized employee organization for such unit.
- l. "Supervisor" or "supervising employee" means an employee who has responsibility for supervising the work of others, or who has authority to exercise independent judgment in the assigning of tasks to subordinates, in directing their work, or in transferring, suspending or evaluating them, or in adjusting their grievances; or who has the authority to recommend action in connection with hiring, discharge and disciplinary matters.

The City Administrator shall from time to time designate Management Employees, Confidential Employees, and Supervisory Employees.

Section 2. Employee Relations Officer. The City Administrator or his/her designated representatives shall represent the City in employer-employee relations. All recognized employee organizations shall be notified of any such designation.

Section 3. Federal, State and City Preemption. Any and all subjects preempted by Federal or State law or by the City Charter are excluded from the scope of the meet and confer process.

Section 4. City Responsibilities and Rights. It is the exclusive right and responsibility of the City to determine the organization of its activities, to determine the mission of each of its organizational units, to set standards of service, to determine and enforce the required levels of employee skill and performance, and to exercise control and discretion over its organization and operations. It is also the exclusive right and responsibility of the City to assign, reassign and direct its employees and the use of its equipment and vehicles, to take disciplinary action for proper cause, to terminate employees for lack of funds or work or other legitimate reasons, and to determine the means, number and kind of personnel by which the City's

operations are to be conducted. It is also within the City's exclusive right and responsibility to contract any work or operation permitted under the City Charter and to take all necessary actions in emergencies to carry out its functions. The City will 'meet and confer' to the extent required by law on the practical consequences of contracting any such work or operation permitted under the City Charter."

The City shall not be required to meet and confer in good faith on City responsibilities and rights or on employee rights as defined in Section 4 and 5 respectively. Proposed amendments to this Resolution are excluded from the scope of the meet and confer process, but are subject to consultation.

Section 5. Employee Rights. Each City employee shall have the rights set forth in Section 3502 of the MMB Act. Nothing in this Resolution shall be construed to restrict the right of an individual employee to present matters involving his/her personal employment relationship to management, provided that any action taken is not inconsistent with the terms of a memorandum of understanding then in effect which applies to such employee.

Section 6. Responsibility to Represent. Each employee organization shall represent fairly all employees within its organizational unit who wish to be represented and shall not discriminate on the basis of organizational membership, race, color, creed, sex, or national origin.

Section 7. Prohibition Against Discrimination. The City shall not discriminate for or against any employee organization or its members nor in any way coerce or influence any employee in his/her free choice to join or not to join any employee organization, nor shall it discriminate on the basis of race, color, creed, sex, or national origin.

Section 8. Registration of Employee Organizations. Each organization which desires to be registered as an employee organization shall file with the Employee Relations Officer a statement, signed by its principal officer, indicating:

- a. Name and mailing address of the organization.
- b. Names and titles of organization officers.

Any employee organization whose membership consists of City employees may represent its members in consultation with the Employee Relations Officer and before the City Council with respect to matters within the scope of representation, but the "Meet and Confer" process will be available only to recognized employee organizations.

Each such organization shall submit a statement, signed by its principal officer, that the organization has no restrictions on membership based on race, color, creed, national origin or sex.

Section 9. Proof of Representation. Proof that an employee organization represents City employees shall be evidenced by employee authorization forms, furnished by the City, and signed and dated by the eligible employees within sixty (60) days prior to the submission of such authorization forms. Only authorization forms of persons currently employed at the time proof is submitted shall be counted.

Section 10. Time for Petition and Recognition. Petitions seeking recognized employee organization status and containing such information as is described in Section 11 may be filed with the City, identifying the representation unit for which recognition is sought. The Employee Relations Officer shall determine the validity of each such initial petition within fifteen (15) days after the last date of the filing period. If an election is not required, the recognized employee organization shall be formally acknowledged within thirty (30) days after such determination. If an election is required, it shall be held within thirty (30) days after such determination with respect to the additional petition (or petitions); the results shall be determined and announced within thirty (30) days after such election; and the recognized employee organization so determined shall be formally acknowledged within thirty (30) days after such determination.

Employee organizations may appeal adverse decisions under this section by the Employee Relations Officer to the City Council who, in their discretion, may hear the appeal or refer it to a sub-committee thereof.

Section 11. Certification of Employee Organizations. Any employee organization which desired to be certified as a recognized employee organization, in addition to complying with the requirements of Section 10 shall file with the Employee Relations Officer a petition signed by its presiding officer, showing:

- a. The name of the employee organization
- b. The name, address and title of each principal officer and of the representative of the employee organization.
- c. A statement by its principal officer that the organization has as one of its primary purposes representation of employees in their employment relations with the City.
- d. A clear description of the general composition of the proposed representation unit and the number of employees in the proposed unit.
- e. A statement by the employee organization to the effect that it has been designated as a representative employee organization by at least 20% of the employees in the proposed representation unit.
- f. A statement that the employee organization has no restriction on membership based on race, color, creed, sex or national origin.
- g. The petition shall be accompanied by appropriate evidence that the employee organization has in fact been designated by at least 20% of the employees in the proposed representation unit. Such evidence shall consist of signed forms furnished by the City and signed by eligible employees, and dated within sixty (60) days prior to the filing of the petition authorizing such representation. The petition and the accompanying evidence shall be verified in writing by the chief officer of the employee organization as true and accurate

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Section 12. Notice of Filing Petition. Upon receipt of a Section 11 petition, the Employee Relations Officer shall within ten (10) working days post a notice upon the official bulletin board in the City Clerk's office that such petition has been filed.

Section 13. Appropriate Units. Representation units shall be designated by the Employee Relations Officer from time to time. In making such designations, and in allocating new and existing classes to units, the Employee Relations Officer shall consider the following factors, among others, although the principal criterion shall be whether or not there is a community of interest among the employees comprising the proposed unit.

- a. Will the proposed unit assure employees freedom in the exercise of rights set forth under this resolution?
- b. What is the history of employee relations in the unit; among other employees of the City, and in similar public employment generally?
- c. What will be the effect of the unit on the efficient operation of the City and upon sound employee-employer relations?
- d. Will the criteria result in the broadest feasible units?

Appeal from the determination of the Employee Relations Officer as to appropriate units shall be heard by the City Council or, in its discretion, by a committee thereof, upon written request of the employee organization, setting forth the specific reasons upon which the appeal is based.

Section 14. Membership in Units. The following limitations shall apply to formation of, and membership in, recognized employee organization (appropriate units) for purposes of representation:

- a. An employee shall be represented by more than one employee organization for the purpose of the representation.
- b. Confidential employees shall not be included in any unit which includes non-confidential employees.
- c. Professional employees shall have the right not to be included in any unit which includes non-professional employees.
- d. Neither Management Employees nor Confidential Employees shall represent an employee organization which includes non-management or non-confidential employees, in consulting with, or in meeting and conferring with, the Employee Relations Officer.
- e. Management employees shall not be included in the same unit as non-management employees.

Section 15. Recognition of Valid Petitions. If the Employee Relations Officer determines that a valid Section 11 petition has been filed, he/she shall then determine the percent of proof of employee approval. A petition accompanied by proof of employee approval of 20%

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or more within the representation unit shall be certified as a valid petition; petitions not accompanied by proof of employee approval by at least 20% of the employees within that representation unit will not be acted upon.

The Employee Relations Officer shall post notice of his/her certification of valid positions on the official bulletin board in the City Clerk's Office. A secret ballot election shall then be held among the holders of valid petitions by the City Clerk or other disinterested person or office.

- a. Eligible members of the particular representation units will be afforded the opportunity to vote by secret ballot to determine which employee organization, if any, of those appearing on the ballot shall represent them. To become the recognized employee organization for a designated representation unit, the employee organization must receive a majority of the votes cast, and the total of the votes cast must constitute at least 51% of the total possible votes in the unit.
- b. Eligible voters shall be those employees in the appropriate unit whose names appeared on the first payroll in the month immediately prior to the call of election as employees in said unit, including those shown as on vacation or other authorized leave of absence.
- c. Every ballot for such election shall contain a choice of "no organization" in addition to the name of each employee organization which has qualified for a place on the ballot. If "no organization" receives a majority of the votes cast, no employee representative shall be recognized for the unit.
- d. Each election shall be conducted by rules and procedures established to guard against fraud, mistake, ineligible voting and the like.
- e. If none of the ballot choices receives a majority of the votes cast, a run-off election shall be held between the two choices receiving the highest number of votes.
- f. If less than 51% of the employees in the appropriate unit eligible to vote cast their ballots in the election, the election shall be declared a nullity and no further election shall take place for a minimum period of one year.
- g. Any costs incurred in conducting elections shall be borne equally amongst the involved employee's organizations and the City of Oakland.
- h. Each employee organization included on the ballot shall be authorized one official observer to observe the voting and the counting of votes. A committee of two management representatives and one representative of each employee organization involved shall establish any special procedures needed for conduct of the election.
- i. The employee organization receiving a majority of the votes so cast and counted, provided that these constitute at least 51% of the total possible

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vote, shall be formally acknowledged as the recognized employee organization for the designated appropriate unit.

Section 16. Reconsideration of Recognition. A formally acknowledged employee organization representing an appropriate unit shall continue such representation from year to year following such formal acknowledgement pursuant to the following procedures:

- a. Such acknowledged employee organization may withdraw from such representation at any time upon filing written notice thereof with the Employee Relations Officer not less than 30 days preceding said date of withdrawal. In such case, the MOU between such employee organization and the City shall terminate effective on the date of withdrawal.
- b. During the period 150 days and 120 days prior to the expiration date of the Memorandum of Understanding (and prior to the third and subsequent anniversary dates of a Memorandum of Understanding of longer duration than three years) Section 11 petitions may be completed and filed by employee organizations which seek to replace a recognized employee organization with respect to the appropriate representation unit which is represented by such recognized employee organization and/or which petitions may propose a modified unit to include some or all of the employees in said unit and some other employees. Such petition shall be evaluated and processed pursuant to Sections 11, 13 and 15.
- c. Annually between October 1 and December 1, each formally acknowledged employee organization representing an appropriate unit, to qualify for continued formal acknowledgement as such, shall provide the Employee Relations Officer with such information as he/she may require as to whether or not there has been any change in the facts and information on file in support of its Section 11 petition, as to what the change (or changes) and shall state the changed information; and as to current appropriate evidence that it is the designated organization representing at least 30% of the employees in the unit. The Employee Relations Officer may formally declare and notify the organization that it no longer is a recognized employee organization promptly upon its failure to comply with these requirements.
- d. The City Administrator at any time, for appropriate reasons including substantial changes in City functions, organizational structure or job classification, may initiate a reconsideration of the recognition of an employee organization by proposing a new or modified appropriate representation unit or units and require an election pursuant to the procedures set forth in Section 15 to determine which employee organization or "no organization" shall represent the employee in the proposed unit or units. In such cases, the City shall bear the cost of an election.
- e. During the period 150 days and 120 days prior to the expiration date of a Memorandum of Understanding (and prior to the third and subsequent

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anniversary date of a Memorandum of Understanding of longer duration than three years) a Section 11 petition may be completed and filed by a group of employees equaling not less than 30% of the unit requesting decertification of the recognized employee organization involved in which the affected employees work.

Section 17. Withdrawal of Recognition. Upon the refusal of an employee organization or recognized employee organization or the members, officers or representatives thereof, or of City employees, to comply after written notice with these Rules and Regulations insofar as they apply to such organization members, officers, representatives, or employees, the Employee Relations Officer shall withdraw City recognition of such organization or individuals for purposes of the meet and confer process.

Section 18. Dues Deduction From Pay Check. On and after the effective date of these Rules and Regulations, only a recognized employee organization may be granted permission to have the regular dues of its members deducted from their pay checks in accordance with procedures prescribed by the City and the Finance Director, provided, however, that this shall not preclude the continuation of dues check-off heretofore granted to any employee organization.

Dues deduction shall be for a specified amount in accordance with specified dues provisions of an employee organization's constitution or by-laws and shall be made only upon the voluntary written authorization of the member. Such authorization is to continue in effect until cancelled upon voluntary written notice by the member to the City effective after 30 days' notice or as otherwise agreed in an applicable Memorandum of Understanding.

Dues deduction authorization or cancellation shall be made upon cards provided or authorized by the City.

An employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues check-off authorized. When a member in good standing of the recognized employee organization is in a non-pay status for an entire pay period, no dues withholding shall be made to cover that pay period from future earnings nor shall the member deposit the amount with the City which would have been withheld had the member been working during that period. If such employee is in a non-pay status during a portion of the pay period and the earnings are not sufficient to cover the full withholding, no dues deduction shall be made for him/her. All other legal and required deductions shall have priority over employee organization dues.

Dues withheld by the Finance Director shall be transmitted to the office or agency designated in writing by the proper officer of the employee organization as the person or agency authorized to receive such funds, at the address specified.

Each employee organization which receives dues check-off shall indemnify, defend and hold the City of Oakland and its officers and employees harmless against any claims made and against any suit instituted against it or them on a count of the union's failure to comply with any laws or rules regulating check-off of employee organization dues. Each such employee organization shall refund to the City of Oakland any amounts paid to it in error, upon presentation of supporting evidence.

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Section 19. Reasonable Employee Representation at Meetings. Each recognized employee organization may select representatives for the purpose of meeting and conferring, according to the following guidelines:

Total membership	1-100	2 representatives
	101-400	3 representatives
	more than 400	5 representatives

The above number is exclusive of a non-City employee, paid representative, if any such there be.

Representatives of the recognized employee organizations' "Meet and Confer" team shall be entitled to meet with the Employee Relations Officer and other management officials during regular business hours, without loss of time, provided:

- a. That no City employee representative shall leave his/her duty station or assignment without the specific prior approval of his/her department head or the latter's designated representative.
- b. Nothing provided herein shall limit or restrict the right of both management and employee groups to meet and confer either before or after the regular working day as matter of mutual convenience.

Section 20. Access to Work Location. Officers of recognized employee organizations and their officially designated representatives shall be granted reasonable access to employee work locations for the purpose of contacting members concerning business within the scope of representation.

Such officers or employees shall enter a work location only with the consent of the department head involved, or his/her designated representative. Access shall be granted only if it does not interfere with work operations or with established safety and security requirements.

Solicitation of City employees relating to the internal management of an employee organization, such as dues collection, soliciting membership, campaigning for offices, distributing literature, and conducting elections shall not be permitted during working hours unless specifically authorized by the department head.

Section 21. Use of Bulletin Boards. Recognized employee organizations may use a portion of bulletin boards designated for the purpose by the department head in the City offices under the following conditions:

- a. All materials to be posted must receive the prior approval of the department head involved.
- b. All materials posted must identify the organization and must be dated.
- c. All materials posted will be removed at the end of 30 days unless, in particular instances, special arrangements are made with the department head.

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- d. Materials which the department head considers untruthful, misleading or libelous must first be cleared with the Employee Relations Officer. No material derogatory to the City shall be posted.
- e. An employee organization which does not abide by these conditions may forfeit its right to post material on City bulletin boards as determined by the Employee Relations Officer.

Section 22. Advance Notice. Except under such conditions as might require the adoption of an urgency ordinance by the Council, each recognized employee organization shall receive reasonable advance written notice of any ordinance, resolution, rule or regulation directly relating to matters within the scope of representation proposed for adoption by the Council, and each such organization shall be given the opportunity to appear before the Council. For the purpose of this section, ten calendar days prior to first reading shall constitute reasonable notice.

In cases of emergency when the governing body or boards and commissions determine that ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or such boards and commissions shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation.

Section 23. Publications to be Made Available. Upon request of a recognized employee organization, the City shall provide or make available to its representative a copy of those non-confidential departmental publications relating to conditions of employment which periodically are published. Neither confidential records nor confidential studies are to be made available to such employee organization.

Section 24. Nonapplication of Labor Code Section 923. The enactment of these Rules and Regulations shall not be construed as making the provisions of Section 923 of the Labor Code applicable to City employees.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES-BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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ATTEST:

 LATONDA SIMMONS
 City Clerk and Clerk of the Council
 of the City of Oakland, California