

Resolution No. 2001-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH TO PROMOTE IMPROVED RELATIONS AND COMMUNICATION BETWEEN THE CITY OF NEWPORT BEACH AND ITS EMPLOYEES, WHICH SHALL BE KNOWN AS THE "EMPLOYER-EMPLOYEE RELATIONS RESOLUTION"

SECTION 1. Statement of Purpose. This resolution is enacted pursuant to the authority contained in the Meyers-Milias-Brown Act, California Government Code (Section 3500 et. seq.) for the purpose of providing orderly procedures for the administration of employer-employee relations between the City of Newport Beach (hereinafter referred to as the "City") and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of state law, City Charter, ordinances, resolutions and rules which establish and regulate the merit and civil service system, or which provide for other methods of administering employer-employee relations. This resolution is intended, instead, to strengthen merit, civil service, and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City regarding matters that affect and primarily involve wages, hours, and other terms and conditions of employment, and to establish procedures for the recognition of employee organizations.

SECTION 2. Definitions. Terms used herein that are used in Government Code Section 3500 et seq. will have the same meaning as in said Code, and have been restated herein for the purpose of convenience, together with certain other definitions which are unique to this resolution.

(A) "Appropriate Unit" - means a unit of employee classes or positions, established pursuant to Section 7 of this Resolution.

(B) "City" - means the City of Newport Beach, a municipal corporation, and where appropriate herein "City" refers to the City Council, the governing body of said City, or any duly authorized management employee as herein defined.

(C) "City representative" - The City Manager of the City shall be the City's representative in employer-employee relations. The City Manager may designate staff employees or consultants to assist him/her as necessary or appropriate and the term "City representative" shall include the representatives designated by the City Manager.

(D) "Day" means calendar day unless expressly stated otherwise.

(E) "Employee" - means any person employed by the City, excepting members of the City Council, members of appointive boards and commissions.

(F) "Employee, Confidential" - means any employee whose duties would give the employee access to decisions and decision-making processes of the City concerning any matters relating to employer-employee relations.

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

(H) "Employee, Supervisory" – 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, in connection with the foregoing, the exercise of such authority is not of a merely routing or clerical nature, but requires the use of independent judgement.

(I) "Employee Organization" - means any organization which includes employees of the City and which has as one of its primary purposes the representation of such employees in their relations with the City.

(J) "Employee Representative" -means the authorized representative of a Recognized Employee Organization. The term "Employee Representative" shall include all persons or entities authorized to represent or act on behalf of the Recognized Employee Organization.

(K) "Impasse" - means that the City representative and the Recognized Employee Organization have reached a point in their meeting and conferring in good faith where the differences, on matters which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

(L) "Majority Representative" - means an employee organization which the City Representative has formally recognized as representing the majority of the employees in an Appropriate Unit as designated by the City

(M) "Mediation"- means the use of an impartial third person to assist the City and the Recognized Employee Organization Representative to voluntarily reach an accord where there has been an impasse.

(N) "Meet and Confer in Good Faith" - means the performance by a City Representative and a Recognized Employee Organization Representative of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment, in an effort to:

(1) Reach agreement on those matters within the authority of such representatives;  
and

(2) Reach agreement on what will be recommended to the City Council on those matters within the decision-making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.

(O) "Proof of Employee Support" - means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within six (6) months prior to the filing of a petition.

(P) "Meet and Consult 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 is not subject to the impasse procedures of Section 16.

(Q) "Recognized Employee Organization"- means an employee organization which has been formally acknowledged by the City Representative as the sole employee organization representing the employees in an appropriate representation unit pursuant to Section 6 of this resolution, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees.

(R) "Scope of Representation" - means all matters, relating to employment conditions and employer-employee relations including but not limited to wages, hours and other terms and conditions of employment that are not preempted by federal or state law or City Charter and excluding City Responsibilities and Rights as defined in Section 3.

SECTION 3. City Responsibilities and Rights. To insure that the City is able to carry out its functions and responsibilities, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy which include, among others:

The exclusive right to determine the mission of its constituent department, commissions and boards; to determine the procedures and standards of selection for employment and promotion; to set standards of service; to direct its employees; to assign work to employees in accordance with the requirements determined by the City; to establish and change work scheduled and assignments; to determine the content of job classifications; to relieve its employees from duty for lack of work or any other lawful reason; to discipline and discharge employees for just cause; to expand or to diminish services; to subcontract any work or operations and to 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 control and discretion over its organization and the technology of performing work.

The provisions of this Section shall not impair, alter or restrict the obligation of the City to meet and confer in good faith regarding matters within the scope of representation

SECTION 4. Employee Rights. The employees of the City shall have the right to form, join and participate in or refrain from the activities of employee organizations of their own choosing for the purpose of representation on all matters within the scope of representation, subject to an employee's right to represent themselves individually.

Professional employees shall not be denied the right to be represented separately from non-professional employees.

The City and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against employees because of their rights under this section.

SECTION 5. Management and Confidential Employees. The City Council authorizes the City Representative to designate the employees by job title which have been determined to be management or confidential employees based on the definitions set forth in Section 2 of these Rules.

SECTION 6. Determination of Appropriate Bargaining Units. The City Representative, after reviewing the petition filed by an employee organization seeking formal recognition as majority representative shall determine whether the proposed group is an appropriate bargaining unit. The petitioning employees or employee organization may appeal such determination in accordance with Section 14. Factors to be considered are listed as follows:

1. Which group will assure employees the fullest freedom in the exercise of rights set forth under this resolution.
2. The history of employees' relations: (I) in the group; (ii) among other employees of the City; (iii) in similar public employment.
3. The effect of the grouping on the efficient operation of the City and sound employer-employee relations.
4. The extent to which employees have a community of interest, such as common skills, working conditions, job duties or similar educational requirements.
5. The effect on the existing classification structure of dividing a single classification among two or more groups.
6. Effect of differing legally mandated impasse resolution procedures.

Provided, however, no group shall be established solely on the basis of the extent to which employees in the proposed groups have organized or have not organized.

Notwithstanding the foregoing provisions of this section, managerial, supervisory and confidential responsibilities, as defined in Sec. 2 of this Resolution, are determining factors in establishing appropriate units hereunder, and therefore, managerial, supervisory and

confidential employees may only be included in units that do not consist of non- managerial, non-supervisory or non-confidential employees respectively.

The City Representative shall, after notice to and meeting and consulting with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section. The decision of the City Representative shall be final.

SECTION 7. Petition for Recognition. An organization representing employees that seeks recognition as the majority representative of the employees in an appropriate unit shall file with the City Representative a petition containing the following information:

- (A) Name and address of the employee organization;
- (B) Names and titles of its officers;
- (C) Names of two employee organization representatives who are authorized to speak on behalf of its members;
- (D) A copy of the employee organization's constitution and bylaws which shall contain a statement that the employee organization has as one of its primary purposes the representation of the employees in their employment relationship with the City;
- (E) A statement whether the employee organization is a chapter or a local 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;
- (F) The designation of those persons, not exceeding two in number and their addresses, to whom notice sent by regular mail will be deemed sufficient notice to the employee organization;
- (G) A statement that the employee organization recognizes that the provisions of Section 923 of the labor Code are not applicable to city employees;
- (H) A statement that the employee organization has no restrictions on membership based on race, color, creed, sex, national origin or age, sexual orientation, mental or physical disability or medical condition or marital status;
- (I) The names of the employees it represents, together with the class titles and departments where employed;
- (J) A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their

employment relations with the City. Such written proof shall be submitted for confirmation to the City Representative;

(K) A request that the City Representative recognize the employee organization as the majority representative of the employees in the Employee Group for Recognition for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

The Petition, including proof of employee support and all accompanying documentation, shall be declared to be true and correct, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

SECTION 8. City Response to Recognition Petition: Upon receipt of the Petition, the City Representative shall determine whether:

(A) There has been compliance with the requirements of a recognition petition, and

(B) The proposed representation unit is an appropriate unit in accordance with Section 6 hereof.

If an affirmative determination is made by the City Representative on the foregoing matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either the foregoing matters are not affirmatively determined, the City Representative shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing. The petitioning employee organization may appeal such determination in accordance with Section 14 of this Resolution.

SECTION 9. Petitions to Intervene. Within fifteen (15) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the recognized employee organization of the employees in the same or overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 7. If such intervening petition seeks establishment of an overlapping unit, the City Representative shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the City representative shall determine the appropriate unit or units in accordance with the standards in Section 6. The petitioning employee organizations shall have fifteen (15) days from the date of notice of such unit determination is communicated to them by the City Representative to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 14.

SECTION 10. Election Procedures. The City Representative shall arrange for a secret ballot election to be conducted by a party agreed to by the City Representative and the concerned employee organization(s), in accordance with such party's rules and procedures and subject to the provisions of this Resolution. In the event the parties are unable to agree on a third party to conduct the election, the election shall be conducted by the State Mediation and Conciliation Service. Costs of conducting an election shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

All employee organizations who have submitted petitions which have been determined to be in conformance with this Resolution shall be included on the ballot. The ballot shall also reserve to employee the choice of no organizational representation. Employees shall be entitled to vote in such election shall be those persons employed in regular positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation, or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Resolution pursuant to any petition in a 12-month period affecting the same unit.

SECTION 11. Procedure for Modification of Established Appropriate Units: Requests by Employee Organizations for modifications of established appropriate units may be considered by the City Representative only during the period of not more than one hundred and twenty (120) nor less than ninety (90) days prior to the expiration or renewal date of a memorandum of understanding between the Recognized Employee Organization and the City. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the information required in Section 7 herein, shall contain a complete statement of all relevant factors in support of the proposed modified unit in terms of the policies and standards set forth in Section 6 hereof. The City Representative shall process such petitions as any other Recognition Petitions.

The City Representative may, by his/her own motion propose that an established unit be modified. The City Representative shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter, the City Representative shall determine the composition of the appropriate unit or units in accordance with Section 6 hereof, and shall give written notice of such determination to the affected employee organizations. If a unit is modified pursuant to the motion of the City Representative hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Recognized Employee Organization for such new appropriate unit or units pursuant to Section 7, hereof.

The provisions of this section shall not impair, modify or restrict the right of any State agency to perform any function related to the modification of units to the full extent authorized by State law.

**SECTION 12. Procedure for Processing Severance Requests.** An employee organization may file a request to become the Recognized Employee Organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another recognized employee organization. The timing, form and processing of such requests shall be as specified in Section 11 for unit modification requests.

**SECTION 13. Procedure for Decertification of Recognized Employee Organization.** A Decertification Petition alleging that the incumbent Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the City Representative only during the month of March of any year following the first full year of recognition for units which have no current MOU or during the period commencing at least one hundred and twenty (120) days prior to the termination date of the current MOU and ends ninety (90) days prior to the MOU termination date, which ever occurs later. If an MOU has been in effect three (3) years or more a petition may be filed during the month of March in any year following the third full year of the MOU. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the signatory under penalty of perjury to be true and complete:

(A) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or request for further information.

(B) The name of the established appropriate unit and of the incumbent Recognized Employee Organization sought to be decertified as a representative of that unit.

(C) An allegation that the incumbent Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

(D) Proof of employee support that at least thirty (30) percent of the employees in the established unit no longer desire to be represented by the incumbent Recognized Employee Organization. Such proof shall be submitted for confirmation to the City Representative within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a petition under this Section in the form of a Recognition Petition that evidences proof of employee majority support of at least thirty (30) percent, that includes the allegation and information required under paragraph (C) of this Section, and otherwise conforms to the requirements of Section 7.

The City Representative shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Resolution. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return the Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 14. If the determination of the City Representative is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Recognized Employee Organization and to unit employees.

The City Representative shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was also duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 10.

If pursuant to this Section 13, a different employee organization is formally acknowledged as the Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

**SECTION 14. Appeals.** An employee organization aggrieved by an appropriate unit determination of the City Representative (Section 6), or an employee organization aggrieved by a determination of the City Representative that a Recognition Petition (Section 7), Intervening Petition (Section 9), Decertification Petition (Section 13), Unit Modification (Section 11), or Severance (Section 12), or employees aggrieved by a determination of the City Representative that a Decertification Petition (Section 13) has not been filed in compliance with the applicable provisions of this resolution, may, within ten (10) days of notice of the City Representative's final decision, request to submit the matter to mediation by the State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision within fifteen (15) days of notice of the City Representative's determination or the termination of mediation proceedings, whichever is later.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the City Representative. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of a hearing process, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

Nothing in this section shall impair, restrict or modify the authority of any State agency to review any decision of the City Council pursuant to this section.

**SECTION 15. Agreement -- Preparation of Memorandum of Understanding.** If agreement is reached by the City Representative and a Recognized Employee Organization Representative on matters within the scope of representation, they shall jointly prepare a written

memorandum of such understanding, which shall not be binding, and present it to the City Council for determination.

SECTION 16. Initiation of Impasse Procedures: Any impasse as defined in Section 2 of this resolution may be settled in the following manner:

If after a reasonable period of time, the City Representative and the Representative of a Recognized Employee Organization or Organizations fail to reach agreement, the City Representative and the Recognized Employee Organization or Recognized Employee Organizations Representative, either party may initiate the impasse procedures and agree on the appointment of a mediator mutually agreeable to the parties. If mutual agreement on the appointment of a mediator cannot be reached, the parties may select a mediator by obtaining a list of seven names from the American Arbitration Association, the State Mediation and Conciliation Service, or some other agreed upon source, and each party shall alternatively strike one name from the list until only one name remains. The parties shall instruct the mediator on the facts to be ascertained and the issues on which his/her interpretation, suggestion and advice are sought.

Costs of mediation shall be divided one-half to the City and one-half to the Recognized Employee Organization or Recognized Employee Organizations. The mediator shall keep all discussions with the parties confidential, and shall take no public position on the merits of the issue or issues. His/her powers will be strictly limited to his/her efforts to aid the parties to reach a voluntary accord.

SECTION 17. Employees at Meetings. A maximum of two employees representing a Recognized Employee Organization may be released from work without a loss of pay or benefits to meet with the City Representative in employer-employee relations. The limitation of two employees may be waived by mutual agreement between the City Representative and the Recognized Employee Organization Representative.

SECTION 18. Timetable for Submission of Requests. Preliminary requests from Recognized Employee Organizations for changes in wages, fringe benefits and other terms and conditions of employment shall be submitted at least 90 days prior to the expiration of the then current Memorandum of Understanding.

SECTION 19. Use of Bulletin Boards. Space shall be made available to Recognized Employee Organizations on existing departmental bulletin boards with-in the representation unit provided such use does not interfere with the needs of the department and the material posted is not derogatory to the City, employees of the City, or other employee organizations in the fair and equitable judgment of the City Representative.

SECTION 20. Use of City Facilities. Recognized Employee Organizations may distribute pamphlets, brochures and membership cards in city facilities only during non-working hours of the employees involved. No unrecognized employee organization shall engage in organizing activities or distribute pamphlets or similar literature in connection therewith on any City property.

SECTION 21. Peace Officers' Affiliation with Other Organizations. All City employees who are peace officers, as that term is defined in Section 817 of the California Penal Code, may form, join, participate in, and be represented by employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relation as provided by this Resolution, provided such employee organizations: (i) are composed solely of such peace officers, and (ii) concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and (iii) are not subordinate to any other organization.

SECTION 22. Advance Notice. Except in case of emergency, each Recognized Employee Organization affected shall be given written notice of any resolution, rule or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council and shall be given the opportunity to meet with the City Representative prior to its adoption.

SECTION 23. Separability. If any provision of this resolution or the application of such provision to any person or circumstance shall be held invalid, the remainder of this resolution or the application of such provision to persons and circumstances other than those to which it is held invalid shall not be affected thereby.

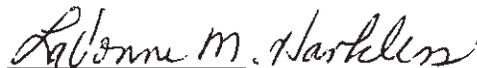
SECTION 24. Adoption of Resolution. This resolution is adopted after consultation in good faith with the Newport Beach City Employees Association, the Newport Beach Police Employees Association, the Newport Beach Fire Fighters Association, the Newport Beach Professional and Technical Employees Association, the Newport Beach Fire Management Association, the Newport Beach Employees League, the Newport Beach Police Management Association, the Newport Beach Marine Safety Officers Association, the Newport Beach Part-time Unit and the Association of Newport Beach Ocean Lifeguards, which are the only employee organizations having members in the employ of the City.

Adopted this 26th day of June, 2001



Mayor

ATTEST

  
City Clerk



STATE OF CALIFORNIA                    }  
COUNTY OF ORANGE                    }  
CITY OF NEWPORT BEACH                }            ss.

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2001-50 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of June, 2001, and that the same was so passed and adopted by the following vote, to wit:

- Ayes:       Heffernan, O'Neil, Ridgeway, Glover, Bromberg, Mayor Adams
- Noes:       None
- Absent:     Proctor
- Abstain:   None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of June, 2001.

Lavonne M. Harkless  
City Clerk  
Newport Beach, California

(Seal)

