

EMPLOYEE - EMPLOYER RELATIONS
RESOLUTION NO. 3799
(with 1979 amendments from Resolution No. 3829)

BE IT RESOLVED by the City Council of the City of Walnut Creek, State of California, that the following policy, rules and regulations are adopted pursuant to the Meyers-Milias-Brown Act (Government Code, Section 3500 et seq.)

Section 1. TITLE. This resolution shall be known as the Employer-Employee Relations Resolution of the City of Walnut Creek.

Section 2. PURPOSE. The purpose of the resolution is to promote the improvement of employee relations between the City of Walnut Creek and its employees by the establishment of formal procedures providing for the orderly and systematic presentation, consideration and resolution of employee relations matters concerning wages, hours and other terms and conditions of employment, and to ensure the orderly and uninterrupted operations and services of City Government.

Section 3. DEFINITIONS. As used in this resolution, the following terms shall have the meanings indicated:

- a. CITY means the City of Walnut Creek, and where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.
- b. CONFIDENTIAL EMPLOYEE means any employee who is privy to decisions of City management affecting employer-employee relations.
- c. CONSULT or CONSULTATION means verbal or written communications or both for the purpose of presenting and obtaining views or advising of proposed actions, between the City and its employees, on matters outside the scope of the meet and confer process.
- d. DAY means a calendar day unless otherwise stated.
- e. EMPLOYEE ORGANIZATION means an organization which includes employees of the City and which has as one of its primary purposes representing employees in their employment relations with the City.
- f. EMPLOYEE RELATIONS OFFICER means the City Manager or his duly authorized representative.
- g. EXECUTIVE means specified employees who have significant responsibilities for formulating or administering departmental policies and programs and who serve in the capacity of a department director.
- h. FACT FINDING means the investigation of an impasse by an impartial third party for the purpose of describing the issues in dispute, stating the positions of the parties, and making a finding of fact on issues in

dispute. Fact finding is advisory in nature and shall not include recommendations as to settlement of the dispute unless so specified.

i. IMPASSE means that the representatives of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and upon which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

*j. MAJORITY EMPLOYEE ORGANIZATION 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.

*k. MANAGEMENT means any employee having authority and responsibility for formulating, administering, managing or supervising the implementation of City policies or programs. Such authority and responsibility includes but is not limited to the ability to effectively recommend hiring, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, evaluating or disciplining other employees of the City.

*l. MEDIATION means the effort of an impartial third party, functioning as an intermediary, to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion and advice.

*m. MEET AND CONFER means the process whereby representatives of the City and of qualified employee organizations in good faith exchange information, opinions and proposals to reach agreement on wages, hours and other terms and conditions of employment, as contemplated by Government Code Section 3505.

*n. RECOGNIZED EMPLOYEE ORGANIZATION means an employee organization which has been formally acknowledged by the City as an employee organization which represents employees of the City.

*o. REPRESENTATION UNIT or UNIT means a unit of employee classes or positions, established in accordance with this resolution.

*p. REPRESENTED MEMBER means an employee who is a member of an employee organization who has currently authorized that organization to represent the employee in his/her employment relations with the City.

*Amended by Resolution #3829

Section 4. EMPLOYEE RIGHTS. Consistent with appropriate State or Federal law or with this resolution, employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations.

Employees shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employee relations with the City, if they are not members of a recognized employee organization.

The City and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against employees because of the exercise of these rights.

Section 5. CITY RIGHTS.

- a. City reserves, retains, and is vested with exclusive rights not specifically prohibited by law with respect to matters of general legislative or management policy which include but are not limited to the following:
1. To determine the mission of its departments, commissions and boards and to determine issues of policy.
 2. To set standards of service to be offered to the public.
 3. To exercise control and discretion over its own organization and operations.
 4. To determine methods of financing.
 5. To direct, discipline and discharge its employees in accordance with law, ordinances and regulations.
 6. To relieve its employees from duty because of lack of work, abolition of position, or other legitimate reasons.
 7. To determine the methods, means, number and kind of personnel by which its operations are to be conducted, including the performance thereof by contract, and to determine workloads and staffing patterns.
 8. To prescribe qualifications for employment, selection procedures and standards, job classifications, and to reclassify employees in accordance with applicable resolutions, rules and codes of the City.
 9. To administer the City's personnel system; to reclassify positions; and to amend the Salary Resolution by adding or deleting position or classes.
 10. To issue reasonable employee performance standards and to require compliance therewith.
 11. To hire, transfer, promote and demote employees for nondisciplinary reasons in accordance with appropriate resolutions, rules and conditions of the City.
 12. To maintain order, efficiency, and safety in its facilities and operations.

13. To regulate the activity of employee organizations on municipal property and on municipal time, except by agreement in a Memorandum of Understanding with an employee organization.

b. The establishment, modification or exercise of City rights shall not be subject to the meet and confer process.

Section 6. CRITERIA FOR ESTABLISHING AN APPROPRIATE REPRESENTATION UNIT.

a. It is the responsibility of the Employee Relations Officer to determine appropriate representation units. In the determination of representation units, the following factors among others are to be considered:

1. The effect of the unit on efficient operations of City service and sound employee relations.
2. Community of interest among the employees comprising the proposed unit.
3. The history of employee relations in a unit and among other employees of the City.
4. Consistency with the organizational patterns of the City.
5. The effect of dividing a single classification or similar classifications among two or more units.
6. Similarity of the general kinds of work performed, types of qualifications required and the general working conditions.
7. Developing the broadest feasible grouping of positions that share an identifiable community of interest.

b. Notwithstanding the foregoing provisions of this Section, the following limitations shall apply:

1. No unit shall be established primarily on the basis of the extent to which employees in the proposed unit have organized.
2. Executive, management and confidential employees shall only be included in a unit consisting solely of executive, management, or confidential employees and such executive, management or confidential unit shall not be represented by a recognized employee organization which represents non-executive, non-management, or non-confidential employees.
3. Supervisory employees, with the exception of sworn peace officers, may be included in a unit consisting solely of supervisory employees.
4. Executive, management, supervisory and confidential employees may not represent any employee organization which represents other employees.
5. Employees who are full-time "peace officers" shall not be included in a representation unit containing employees who are not peace officers with the exception of the Chief of Police. Such

peace officer unit may include both supervisory and non-supervisory employees; however, police management employees shall not be included in a unit including non-police management employees.

6. Temporary employees shall not be included in a representation unit with employees occupying regular positions.

c. The determination of the Employee Relations Officer as to appropriate units may be appealed to the City Council by the Employee Organization. Such appeal must be in writing; must be filed with the Employee Relations Officer within fifteen (15) days of notice of the Employee Relations Officer's determination; and must set forth the specific reasons upon which the appeal is based.

Section 7. PROCEDURE FOR DETERMINATION OF REPRESENTATION UNITS.

a. Upon adoption of this resolution the Employee Relations Officer shall have the responsibility, in consultation with employee organizations, to establish representation units. The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new and existing classifications or positions, delete eliminated classifications or positions and retain, reallocate or delete modified classifications or positions among units pursuant to the provisions of this resolution.

b. Requests by employee organizations for modifications of established representation units may be considered by the Employee Relations Officer. Such requests shall be submitted in the form of a petition and shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit pursuant to Section 9 of this resolution.

c. The City reserves the right, subject to the procedures contained in this resolution, at any time to establish or permit the establishment of one or more executive, management or confidential units and to allocate positions or classes thereto from other units.

Section 8. RECOGNITION OF EMPLOYEE ORGANIZATIONS. There are two kinds of representation rights granted by the City to employee organizations. An employee organization may be granted formal recognition to represent only the employees within a unit who are members of the employee organization (Recognized Employee Organization). An employee organization may also be granted exclusive representation rights to represent all employees within a unit (Majority Employee Organization). The City will consider information and recommendations submitted by individual employees, a committee of employees, and any employee organization whose membership includes Walnut Creek employees. However, the City will only meet and confer with the majority employee organization (if such exists) on matters within the scope of representation.

This section sets forth a procedure for formally acknowledging an employee organization as either a recognized employee organization or a majority employee organization.

a. Petition for Recognition. An employee organization that desires to become a recognized employee organization shall submit to the Employee Relations Officer a petition signed by its president and secretary within 120 days but no later than 60 days before the expiration date of the memorandum of understanding for employees in the affected unit, which shall include the following:

1. Name and address of the employee organization.
2. The names and titles of all the officers of the organization.
3. A statement that the organization includes employees of the City along with proof that at least one of these employees is a member and has designated the organization to represent him/her.
4. A statement setting forth whether or not the organization is a chapter or local affiliate of a regional, state, national or international organization, and, if so, the name and address of each such related organization.
5. A statement that the organization has as one of its purposes representing its member employees in their employment relations with the City.
6. A statement that the organization has no restriction on membership based on race, color, creed, national origin, political affiliation, sex or age.
7. A statement that a copy of the Employer-Employee Relations Resolution has been received by the organization.
8. A designation of one name and address to which notice sent by United States mail or personally delivered will be deemed sufficient notice to the employee organization for any purposes.
9. A designation, signed by the president and secretary, of those persons who are authorized representatives of the organization in any communication to the City government.
10. A request that the Employee Relations Officer formally acknowledge the petitioner as a recognized employee organization representing its employee members in an appropriate representation unit for the purpose of meeting and conferring in good faith in employment relations matters.

When an employee organization has fulfilled the foregoing requirements as determined by the Employee Relations Officer, he/she shall acknowledge to the organization that it is a recognized employee organization.

b. Majority Recognition. Any recognized employee organization may in writing request recognition as a majority representative of an appropriate representation unit. Such request shall include a description of the representation unit for which the employee organization seeks recognition and it shall be submitted within 120 days but no later than 60 days before the expiration of the memorandum of understanding for employees in the affected unit. Upon sufficient proof that the employee organization represents thirty percent (30%) of the eligible employees within the representation unit, the Employee Relations Officer shall schedule a secret ballot election.

c. Election. A secret ballot election shall be conducted by a party mutually agreed upon by the City and employee organizations.

1. Eligible members of the particular representation unit will be afforded the opportunity to vote to determine which employee organization, if any, of those appearing on the ballot shall represent them. To become the majority 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 50% plus 1 vote of the total eligible employees within the unit.
2. 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 including those shown as on vacation or other authorized paid leave of absence.
3. Every ballot for such election shall contain a choice of "no organization" in addition to the names 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.
4. If none of the ballot choices receives a majority of the vote scast, a run-off election shall be held between the two choices receiving the highest number of votes.
5. If less than 50% plus one 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.
6. Any costs incurred in conducting in conducting elections shall be apportioned equally among the involved employee organizations and the City of Walnut Creek.
7. Procedures and rules for conducting the election shall be established by a committee consisting of an equal number of members of management representatives and representatives of each employee organization involved in the election. Such rules and procedures will provide for safeguards against fraud, mistake, ineligible voting and the like.
8. The employee organization receiving a majority of the votes so cast and counted, as provided in Section 8.c.l., shall be formally acknowledged as the majority employee organization. The majority employee organization shall have the exclusive recognition to represent the employees in the designated representation unit for purposes of meeting and conferring on matters within the scope of representation subject to the right of an employee to represent himself or herself as provided in Section 3502 of the Government Code.

*d. Maintenance of Recognized Status. A recognized employee organization shall furnish to the Employee Relations Officer or his/her designee the following in writing:

1. Not later than February 1 of each year a statement that the organization continues to represent the majority of the employees in an appropriate unit.
2. Within 10 days after it has occurred, any change or affiliation with a related organization, and any change of name and address for mailing notice to the organization.

3. Within 14 days after it has occurred, any changes in the officers of the employee organization and/or representatives authorized to speak on behalf of the organization.

*e. Termination of Majority Recognition. The Employee Relations Officer may call for an election of eligible members of an appropriate unit to determine if an employee organization represents a majority of that unit. The election must be held pursuant to Section 8-c of this resolution.

f. Termination of Recognition. An employee organization shall cease to be recognized upon order of the Employee Relations Officer made after reasonable notice and opportunity to be heard for:

1. Repeated or long continued failure or refusal to comply with any of the provisions of this resolution.
2. Intentional furnishing of false information to the City required by this resolution, or intentionally misrepresenting employee membership or that employees have authorized representation by the organization.
3. Participating in, encouraging or supporting any slowdown or work stoppage by employees of the City of Walnut Creek.

*Amended by Resolution #3829

Termination of recognition also terminates recognition as a majority employee organization.

Recognition of an organization may be suspended by the Employee Relations Officer, after reasonable notice of default, for non-compliance with this resolution. The suspension shall continue until the default is cured or recognition is terminated.

Section 9. MODIFICATION OF UNITS.

1. A recognized employee organization may propose the modification of an established unit by filing a request with the Employee Relations Officer accompanied by proof, as defined by the Employee Relations Officer, that its represented members comprise more than 50% of the employees in the unit. The Employee Relations Officer may also propose a modification.
2. Within 15 days after proper notice to employees is posted, any other recognized employee organization may challenge the appropriateness of the proposed unit or units and request a different unit or units. The challenge shall be filed with the Employee Relations Officer and must be accompanied by proof, as defined by the Employee Relations Officer, that the represented members of the organization comprise more than 50% of the employees within any unit proposed by the challenging organization.
3. If a challenge is filed, the Employee Relations Officer shall notify the organization which submitted the original request for modification of the unit of the challenge. If an amended request

for modification is not filed within seven days of such notice, the original request for modification and the challenge shall be considered by the Employee Relations Officer. Upon the filing of an amended request, the original request shall be deemed revoked and the amended request shall be considered on its own merits as if originally filed.

4. If a challenging request has been filed and the challenge has not been resolved by amendment or withdrawal, the Employee Relations Officer shall hold a hearing on the request and challenge at which time all affected organizations shall be heard. The Employee Relations Officer shall make a determination on the appropriateness of the representation unit or units.

5. The determination of the Employee Relations Officer as to appropriate units may be appealed to the City Council by the Employee Organization. Such appeal must be in writing; must be filed with the Employee Relations Officer within fifteen (15) days of notice of the Employee Relations Officer's determination; and must set forth the specific reasons upon which the appeal is based.

Section 10. MEETING AND CONFERRING.

a. Employee organizations which have been certified as the majority organization in an established representation unit shall be exclusively entitled to meet and confer on wages, hours and other terms and conditions of employment for the unit. Individual employees may consult with the Employee Relations Officer on wages, hours, and other terms and conditions of employment.

b. Meeting and conferring shall not be required on any subject preempted by Federal or State law nor on employee or Management rights as defined herein. Proposed amendments to this resolution are excluded from the scope of meeting and conferring but are subject to consulting.

Section 11. PEACEFUL PERFORMANCE OF CITY SERVICES. Participation by any employee in a strike or work stoppage is unlawful and shall subject the employee to disciplinary action, up to and including discharge.

No employee organization, its representatives, or members shall engage in, cause, instigate, encourage or support a strike or work stoppage of any kind against the City of Walnut Creek.

As used in this section "strike or work stoppage" means the concerted failure to report for duty, the willful absence of one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the condition of compensation, or the rights, privileges or obligations of employment.

Section 12. ADMINISTRATION. The Employee Relations Officer shall have the primary authority for the administrative interpretation of this resolution. The Employee Relations Officer is authorized to establish procedures to carry out the purpose and intent of this resolution.

Section 13. IMPASSE PROCEDURE.

a. Impasse procedures shall not be requested by either party until all attempts to reach an agreement through meeting and conferring have been unsuccessful. Either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall be scheduled promptly by the Employee Relations Officer. The purpose of such impasse meeting shall be:

1. To identify and specify in writing the issue or issues that remain in dispute.
2. To review the position of the parties in a final effort to resolve such disputed issue or issues; and
3. If the dispute is not resolved, the parties may agree to explore new avenues to settlement through one of the following:
 - (a) The parties may mutually agree to request the assistance of a mediator.
 - (b) The parties may mutually agree to request the assistance of a fact finder.

If the parties agree to submit the dispute to mediation and agree on the selection of a mediator, the matter shall be first submitted to mediation. All mediation proceedings shall be private.

- (c) If the parties fail to agree to (a) or (b) above, the impasse shall be submitted to the Council for final decision.

b. If the parties fail to agree on mediation within 15 days, the parties may agree to submit the impasse to fact finding.

The parties shall mutually agree on one fact finder and each shall submit to such fact finder in writing the facts and issues they want ascertained. The Employee Relations Officer may submit to the fact finder specific criteria to be used in arriving at his/her findings. If mutually agreed by both parties, the fact finder may be requested to make a recommendation on an appropriate settlement of the dispute. The report of the fact finder shall be confidential and submitted directly to the parties concerned. The parties shall attempt to reach an agreement by meeting and conferring on the basis of the fact finder's report. If the parties have not reached an agreement within seven days after receiving the fact finder's report, they shall, within the next seven days, submit in writing their position on the unresolved issues to the City Council. The above time requirements may be extended by mutual agreement of the parties. The Employee Relations Officer shall submit a copy of the fact finder's report to the City Council along with his/her own recommendations. The employee organization may also submit a report. The City Council shall then make the final decision.

Section 14. EFFECTIVE DATE. This resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 5th day of December, 1978 by the following called vote:

