

ORDINANCE NUMBER 239

AN ORDINANCE ESTABLISHING PROCEDURES FOR THE ADMINISTRATION OF EMPLOYMENT RELATIONS BETWEEN THE CITY OF TROUTDALE AND ITS EMPLOYEES. THIS ORDINANCE SHALL BE KNOWN AS THE EMPLOYMENT RELATIONS ORDINANCE.

WHEREAS the Common Council of the City of Troutdale, acknowledges the importance of City employees to the proper discharge of public duty; and

WHEREAS, the Common Council acknowledges the needs of the City employees to participate openly and fairly in matters of employer-employee relations; and

WHEREAS the Common Council acknowledges its responsibility as elected officials to protect the health, welfare and public safety of the community in the general public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE, THAT THE FOLLOWING ORDINANCE AND SECTIONS BE ENACTED:

SECTION 1. Purposes. The purpose of this ordinance is to establish policies and procedures for the orderly administration of employer-employee relations in city government, the formal recognition of employee organizations, and the resolution of disputes regarding wages and all other terms and conditions of employment between the parties.

SECTION 2. Definitions. For the purpose of this ordinance, except where the context clearly indicates a contrary meaning, the following words and phrases shall mean:

a. APPROPRIATE UNIT: A bargaining unit determined pursuant to Section 4 of this ordinance, excluding confidential and management employees or supervisory employees as herein defined.

b. CITY. The City of Troutdale and, where appropriate, the Common Council, Mayor or any of its authorized management employees as herein defined.

c. COMMON COUNCIL. The governing body of the City of Troutdale.

d. CITY REPRESENTATIVE. The City Administrator, or such other alternate or alternates as may be selected by him in consultation with the Mayor and the

Common Council, who shall act as labor relations representatives and chief negotiators for the City.

e. CONSULTATION IN GOOD FAITH. The mutual obligation of the City Representative and Employee Representative to meet personally at reasonable times and to communicate in good faith verbally or in writing in an attempt to reach agreement on these matters within the scope of consultation.

f. DAY. A calendar day.

g. EMPLOYEE. Any employee who is appointed to a full-time or part-time permanent city position.

h. CONFIDENTIAL EMPLOYEE. Any employee who assists or acts in a confidential capacity to a person who formulates or determines or effectuates management policies in the area of employment relations.

i. EMPLOYEE, MANAGEMENT/SUPERVISORY. Any employee having significant responsibilities for formulating and administering City policies and programs, including but not limited to the City Administrator, Division and Department Heads, and any employee having authority to exercise independent judgment to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees or having the responsibility to direct them, or to adjust grievances, or to effectively recommend such action if in connection with the foregoing, and the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. Management or supervisory employees shall be designated by the City Administrator.

j. EMPLOYEE REPRESENTATIVE. The employee or employees representing a certified labor organization for purposes of the consultation process.

k. EMPLOYMENT RELATIONS. Employment relations includes but is not limited to matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures, and other terms and conditions of employment. "Employment Relations" includes when used in a general sense, the relationship between the City Management and employee or employees' organization.

l. EMPLOYEE ORGANIZATION. Any organization which has as one of its purposes representing employees in their employment relations with the City.

m. EMPLOYEE ORGANIZATION, CERTIFIED: An employee organization which has been certified by the City Council as the majority representative of employees in an appropriate unit in accordance with the provisions of Sections 4 through 6.

n. FACT-FINDER. The fact-finder, Fact-Finding Committee or fact-finding body selected pursuant to Section 6.

o. FACT-FINDING. Identifying the major issues in a particular dispute; reviewing the positions of the parties; investigating and reporting the facts by one or more impartial fact-finders; and making recommendations for settlement.

p. GRIEVANCE. A dispute concerning the interpretation of rules and regulations governing personnel policies and practices of the City affecting the employee, or of the practical consequences of a "City Rights" decision on wages and related economic benefits. An impasse is not a grievance.

q. IMPASSE. A deadlock in the discussions between the City Representative and Employee Representative over any matters within the scope of consultation as defined in Section 3 of this ordinance.

r. MAYOR. Chief executive of City of Troutdale.

s. MEDIATION. The effort of an impartial third person, or persons functioning as intermediaries to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion, and advice.

t. MEMORANDUM OF UNDERSTANDING. A written memorandum incorporating matters on which agreement is reached through the consultation process and which is approved by the Common Council. All such memorandums shall be on a calendar year basis. All such memorandums shall: (a) provide that matters agreed to in the memorandum shall not be implemented if, at any time, the Common Council determines that the City lacks the financial ability to do so; and (b) incorporate in substantially similar language the provisions of Sections 18 and 19 of this ordinance.

SECTION 3. Scope of Consultation. The scope

of consultation between the City Representative and Employee Representative shall include all matters relating to employee wages and related economic benefits and all other terms and conditions of employment. Employee Rights as defined in Section 12 and City Rights as defined in Section 13 in this ordinance are excluded from the scope of consultation and not be subject to the consultation process provided in this ordinance.

SECTION 4. Employee Representation Unit Determination.

(1) Any employee or labor organization desiring to represent a group of employees in consultations held in accordance with this ordinance may petition the Common Council for a representation election. Such representation petition shall be in writing and shall specify:

- (a) The name and address of the organization.
- (b) The principal officers of the organization.
- (c) The person and address to whom all communications to the organization concerning the election shall be sent.
- (d) That membership in such organization is not denied because of race, sex, color, religious creed, national origin or ancestry, or political affiliation.
- (e) A description of the unit proposed by said organization to be appropriate and within which the election is sought. The description shall include a listing of the classification titles of the positions in the proposed appropriate unit.

(2) The representation petition shall be supported by the signatures of at least 30 percent of the employees in the proposed appropriate unit. The signatures shall be placed upon the representation petition and the petition shall bear the date that the signatures were obtained. All employee signatures must have been placed upon the representation petition within 60 days immediately preceding submission of said petition.

(3) Upon filing of the representation petition the City Recorder shall post within the work area of the proposed appropriate unit a notice describing the proposed unit, that a representation election has been requested and naming the employee organization petitioning for representation.

(4) The Common Council shall refer the representation petition to the City Administrator for examination and verification. The City Administrator shall examine the petition and determine whether valid signatures of the required 30 percent of the employees in the proposed unit are on the petition. In the event the City Administrator finds that the petition lacks the required 30 percent he shall so notify the Common Council and the petitioning employee organization. The petition shall be dismissed forthwith if not previously withdrawn by the employee organization.

(5) The City Administrator shall make the determination as to what employees, if any, in the proposed appropriate unit shall be considered management or confidential employees. If that determination affects the representation petition, then the employee organization shall be notified and it may amend its petition, or the decision may be appealed to the Common Council for final decision. The verification of the representation petition shall be forwarded to the Common Council immediately.

(6) After receiving the representation petition, and after the City Administrator has notified the Common Council that the petition meets the requirements of this Section, the Common Council shall then determine whether the petitioner is a bona fide employee organization, whether the unit within which the election is sought is an appropriate unit, and any other questions relating to the subject matter. In determining whether the proposed unit is an appropriate unit, the Common Council shall use the following criteria to assist them in its determination:

(a) The community of interest of employees.  
(b) The history of employee representation in the unit, among other employees of the City and in similar employment.

(c) The effect of the unit on the efficient operation of the City and upon sound employee relations.

(d) The extent to which employees have common skills, working conditions, job duties or similar educational requirements.

(e) The effect on the City's classification structure of dividing a single classification among two or more units.

(7) If the Common Council determines that

the unit is inappropriate, then it shall direct the City Recorder to schedule a secret ballot election within the unit in accordance with provisions of Section 6. If the Common Council determines that this unit is inappropriate, it shall so notify the affected parties. Upon receipt of such notification, the petitioner may amend his petition in which event the applicable procedures of the Section shall again apply.

(8) If an employee organization other than the one filing the original petition for representation desires to represent the same unit and wishes to be on the same election ballot, it shall file a petition meeting the requirements of the Section within 15 days of the posting of notice by the City Recorder of subsection (3), provided the petition need be supported by only 20 percent of the eligible employees in the proposed unit.

SECTION 5. Procedure for Representation Election.

(1) Upon receiving the Common Council's order to hold a representation election, the City Recorder shall schedule an election within 30 days, and shall post a notice of the election in the work area of the appropriate unit not later than 15 days prior to the election. The notice shall include a description of the appropriate unit, the name of the employee organization or organizations which are candidates for election, a list of the employees eligible to vote, the date the election is to be held, and the procedure to be followed. Only employees within the appropriate unit shall be eligible to vote in the election. Voting shall be by secret ballot and shall provide an opportunity to vote for any of the candidates on the ballot or for "no representation". Absentee ballots may be used in connection with representation elections in such form and manner as may be prescribed by the City Recorder.

(2) An employee organization shall be certified by the City Recorder as the representative of the appropriate unit following an election if such organization has received the vote of a majority of all employees in the appropriate unit for which the election is held.

(3) Each party may be represented at the polling place by one observer. Observers may challenge votes. When a voter's eligibility is called into question,

the ruling shall be temporarily reserved. The ballot will be marked as "challenged", together with the reasons for the challenge. The City Recorder may also challenge anyone whose name is not on the eligibility list. When all ballots are in, the City Recorder shall tally the ballots. The official observers may be present when the tally is made. An investigation shall be made by the City Administrator as to the validity of each challenge. The results of the election shall be certified by the City Recorder to the parties.

(4) At least one year shall elapse following an election by which an organization has been certified as the majority representative or by which the employees have chosen "no representation" before a petition for representation and certification may be filed covering substantially the same group of employees. At least three months shall elapse before such petition may be filed if neither "no representation" nor an organization receives a majority vote as required by subsection (2).

(5) Election costs shall be shared equally by the City and the employee organizations whose names appear on the ballot.

SECTION 6. Duration of Certification. When an employee organization has been certified as the majority representative of an appropriate unit, certification shall remain in effect for one year from the date thereof, or for the length of the contract negotiated between the parties whichever is longer. However, after one year the organization will remain subject to the affirmation procedures provided in Section 7.

SECTION 7. Affirmation Procedure.

(1) A petition alleging that a certified employee organization is no longer the majority representative of employees in an appropriate unit may be filed with the City Recorder, by an individual employee, a group of employees or their representatives, or an employee organization.

(2) The petition may be filed at any time after completion of the certified employee organization's first year of certification; provided, however, the Common Council may prescribe additional restrictions on

the time of filing a petition during the term, if any, of an approved memorandum of understanding or contracts.

(3) The affirmation petition shall be in a form substantially similar to the form prescribed for petitions under the provisions of Section 6 supported by signatures of at least 30 percent of the eligible employees represented by the certified employee organization and indicating that they do not desire to be represented by the currently certified employee organization. The affirmation petition may be accompanied by a petition for certification of another employee organization.

(4) If the City Administrator determines that petition requirements have been met, the City Recorder shall arrange for an election which shall be held in substantial accord with the election procedures of Section 6 to determine whether the certification of the currently certified organization should be affirmed. Such organization shall be decertified if it fails to receive affirmative vote of a majority of the employees in the appropriate unit currently represented by the organization.

(5) An affirmation election may be held concurrently with a representation election where the Common Council considers it appropriate to do so, in which event a combined ballot may be used.

SECTION 8. Consultation Process. The purpose of this section is to provide procedures for the consultation process.

(1) A meeting of all Employee Representatives and the City Representative shall be held no later than October 1 of each year to review the consultation procedures and to discuss matters within the scope of consultation and the data relating to such matters that the Employee Representatives desire to have available during the consultation process. The City Representative shall then make reasonable efforts to obtain such data and shall present it to the Employee Representative.

(2) All matters within the scope of consultation which the Employee Representatives might propose shall be submitted in writing to the City Representative at the initiation of the consultation process. All such matters as the City might propose shall be submitted in writing by the City Representative to the appropriate employee representative.



(3) Matters of City-wide concern shall be discussed at joint meetings between the City Representative and the Employee Representative of all certified employee organizations. "Matters of City-wide concern" are those matters requiring major budgetary financing or having an impact on city employees generally, as determined by the City Administrator.

(4) The initial consultation shall begin no later than (120) days before the previous contract expires or no later than 60 days after a representation election is held. Thereafter, consultation sessions shall be held by mutual agreements of the City Representative and the Employee Representative.

(5) Upon completion of consultations, a "memorandum of understanding" shall be prepared by the parties and signed by the City Administrator and the Employee Representative. That memorandum shall be submitted to the Common Council for its acceptance, rejection or modification and acceptance, subject to ratification by the parties.

(6) Either party may declare an issue to be at an impasse, and after ten (10) days written notice, submit the issue to the Common Council. The Common Council may accept the declaration of impasse, or return the issue to the parties for further negotiations. The parties must then negotiate further in good faith for a period of 14 days before again declaring the issue to be at an impasse.

(7) At any time, the parties may agree to mediation of an issue. Such mediation shall be accomplished by use of a neutral third party, mutually agreed upon, acting as a fact-finder.

#### SECTION 9. Impasse Procedures.

(1) If the City Representative and the Employee Representative are unable to agree on the terms of a "Memorandum of Understanding" and the Common Council upon application by either party, certifies the matters to be at an impasse, the parties shall submit the matters of dispute to Common Council for final determination. The Common Council may certify the matters to be at an impasse if there has been no determination thirty (30) days prior to the Budget Decision.

(2) The Common Council shall make the final

determination of the issues, and may, as an aid, implement the fact-finding processes specified hereunder:

(a) The City Representative and the Employee Representative shall each submit a list of three persons to serve on this Fact-Finding Board. Each party shall select one person from each list.

(b) The Common Council shall then select a third member to serve as Chairman from a list obtained from the American Arbitration Association of those members of that association who reside in the State of Oregon.

(c) The Fact-Finding Board shall then conduct a public hearing within 15 days after selection of the Chairman wherein both parties may present evidence and take testimony. Said Fact-Finding hearing shall be public and testimony or evidence may be taken from interested parties.

(d) Thirty (30) days after selection of the Chairman, the Fact-Finding Board shall present a written statement of the facts and its recommendations to the Common Council. The Common Council shall then post the recommendations in a public place, and each party shall have 10 days to submit written statements and responses to the recommendations. The Common Council shall then make a final determination.

(e) The expense of Fact-Finding shall be equally shared by the parties. The City shall furnish meeting space when requested for such proceedings.

(3) Within ten (10) days after the Common Council makes a final decision, either party may petition the Common Council to:

(a) Submit the issue to an advisory referendum to the voters

(b) In the event of a referendum election, the Common Council in consultation with the City Recorder, shall determine the contents of the ballot title and each party shall submit a one paragraph description of its demands or proposals and the expected economic impact on the city budget for inclusion on the ballot.

(c) Results of an advisory referendum are to be considered by the Common Council in reaching a final decision on the submitted issue or issues at impasse; or

(d) Receive the right to strike after a 45 day "cooling off" period. The Common Council will retain the right to petition thereafter for injunctive relief if necessary to effect city business or protect matters of city-wide concern.

(4) Subsequent to the Common Council's decision, or after the results of the election are filed, the affected party shall incorporate that decision into the "Memorandum of Understanding" to be submitted to the Common Council for its approval.

(5) Any time limit provided by this Section may be extended by mutual agreement by both parties.

#### SECTION 10. Time Off for Employee Representatives.

Reasonable time off without loss of pay shall be limited to not more than three employees serving as authorized representatives of the certified employee organizations, when formally meeting during regular working hours with the City Representative on matters within the scope of consultation. Only those employees whose active participation is necessary in the conduct of such meetings shall be authorized paid time off. No employee representative shall leave his or her duty or work station or assignment for purposes of the employee organization without specific approval of the department or division head or other authorized city management official. Any such meeting on city time is subject to scheduling by the City Administration in a manner consistent with the operating needs and working schedules. Nothing provided herein, however, shall limit or restrict the City Administrator from scheduling such meetings before or after regular duty or work hours under appropriate circumstances.

#### SECTION 11. Availability and Use of Data.

(1) The City will make available to certified employee organizations such non-confidential information pertaining to employer-employee relations as is contained in the public records of the City, as defined in Oregon Revised Statutes Chapter 192 et sec. Such information

shall be made available during regular office hours in accordance with applicable City rules and regulations. Information which shall be made available to certified employee organizations includes regularly published data covering subjects under discussion. Data collected on a promise to keep its source confidential may be made available in statistical summaries, but shall not be made available in such form as to disclose the source.

(2) Nothing in this ordinance shall be construed as to require disclosure of records that are:

(a) Records pertaining to pending litigation to which the City is a party, or to claims or appeals which have not been settled.

(b) Personnel, medical or similar files, the disclosure of which would constitute an invasion of personal privacy.

(c) Working papers or memorandum which are not retained in the ordinary course of business or any records where the public interest served by not making the record available clearly outweighs the public interest served by making disclosure of the record.

(3) To facilitate meaningful consultations, the City Representative and Employee Representatives may agree to use certain common sources of information, such as salary surveys of private and public employers. Mutually agreed upon data collected by either party shall be made available to the other. All data shall conform to the salary policy and other similar policies adopted by the Common Council. All data of a confidential nature, and a substance of progress of the consultation process, shall remain confidential until such time as a final determination is made.

SECTION 12. Employee Rights. Employees of this City shall have the right to form, join, and participate in the activities of employee organizations of their own choosing pursuant to the provisions of this ordinance for the purpose of representation on matters of employee relations, other than those excluded herein. City employees shall also have the right to refuse to join,

compensate or participate in the activities of any employee organization and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of his exercise of these rights.

SECTION 13. City and Management Rights.

(1) Responsibility for management of the City and direction of its work force is vested in the City Administrator and his department and division heads. In order to fulfill this responsibility the rights of the City include, but are not limited to, the exclusive right to: (a) determine the mission of its constituent departments, divisions and component municipal agencies; (b) determine the level and standard of service; (c) determine the procedures and standards for selection for employment and promotion consonant with fair employment; (d) direct and supervise its employees; (e) take disciplinary action; (f) relieve its employees from duty because of lack of work or other legitimate reasons; (g) maintain or increase the efficiency of governmental operations; (h) determine the methods, means and personnel by which government operations are to be conducted, including the right to contract out for goods and services; (i) determine the content of job classifications; (j) take all necessary action to carry out its mission in emergencies; (k) exercise complete control and discretion over its organization and the technology of performing its work; and (l) all other rights not specifically secured with the city employees pursuant to this ordinance.

(2) The City retains all rights, powers and privileges not expressly specified in subsection (1) of this section and not included in Section 16.

SECTION 14. Grievances. All grievances shall be processed in accordance with the applicable adopted personnel rules and regulations of the City or as mutually agreed upon during consultation.

SECTION 15. Conduct of Organization Business. Reasonable time off without loss of pay and access to employee work locations shall be granted officers of employee organizations and their officially designated representatives, for the purpose of processing grievances or contacting members of the organization concerning business within the scope of representation.

Such officers or representatives shall not enter any work location without the consent of a department or division head. Access shall be restricted so as not to interfere with the normal operations of the department or with established safety or security requirements. Solicitation of membership and activities concerned with the internal management of an employee organization, such as collecting dues, holding membership meetings, campaigning for office, conducting elections and distributing literature shall not be conducted during regular City working hours.

SECTION 16. Use of City Facilities. Employee organizations may use, in accordance with established rules applicable to other groups within the community, city facilities during non-work hours for meeting of city employees provided such space is available. Requests for use of facilities not generally available to the public shall be in writing, state the purpose or purposes of the meeting and be approved by the City Administrator. The City reserves the right to assess reasonable charges for the use of such facilities.

SECTION 17. Peaceful Performance of City Services. In order that vital performance of city services can be maintained, no subject employee shall strike or recognize a picket line of a labor organization while in the performance of his official duties except as provided in Section 9. The following shall apply:

(1) 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.

(2) No employee organization, its representatives, or members shall engage in a strike or work stoppage of any kind.

(3) If a certified employee organization, its representatives, or members engage in a strike or work stoppage of any kind, in addition to any other lawful remedies or disciplinary actions, the Common Council may suspend or revoke the recognition or certification granted to such employee organizations, prohibit the use of city facilities, and prohibit access to former work or duty stations by such organization.

(4) As used in this section "strike" or "work stoppage" means the concerted failure to report

for duty, the willful absence from 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 influencing, or coercing a change in the conditions of compensation, or the rights, privileges or obligations of employment.

(5) The City may petition for appropriate courts for an injunction or other appropriate relief if a strike, work stoppage or recognition of a picket line in violation of this section is occurring or is about to occur. The City may take disciplinary action, including termination of employment against those employees engaging in strikes in violation of this ordinance. The City may also hire new permanent or temporary employees or transfer other City employees to perform the services and duties of these employees engaged in the strike or work stoppage in violation of this section.

SECTION 18. Construction

(1) It is declared that the subject of employer-employee relations as set forth in the ordinance is a matter of local concern, that the provisions herein are adopted pursuant to the authority of the Charter of the City of Troutdale, and that the provisions herein are exclusive and supercede and take precedence over any State statute now or hereafter enacted relating to city employer-employee relations, employee consultation or collective bargaining for city employees.

(2) The rights, powers and authority of the Common Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by this ordinance.

SECTION 19. Separability. If any provision of this ordinance, or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance, or the application of such provisions to persons or circumstances other than those which is held invalid, shall not be affected thereby.

Passed by the Common Council of the City of Troutdale this 19 day of April, 1977.

Yeas: 3  
Nays: 0

Signed by the Mayor this 20 day of April, 1977.

  
MAYOR

ATTEST:

  
City Recorder