

CHAPTER 5 PERSONNEL PRACTICES

SECTION 5 EMPLOYER-EMPLOYEE RELATIONS

5.01 PURPOSE

It is the purpose of this Chapter to promote full communication between the District and its employees by providing a reasonable method for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly and significantly affect and primarily involve matters regarding wages, hours and other terms and conditions of employment, as well as to promote the improvement of personnel management and employee relations by providing a uniform basis for District employees to join or not to join any organization of their choice. It is also the purpose of this Chapter to fully comply with the provisions of the Meyers-Milias Brown Act and to provide orderly procedures for the administration of employer-employee relations.

5.02 DEFINITIONS

A. Employee Organization: Either (1) any organization that includes employees of the District and that has as one of its primary purposes representing those employees in their employment relations with the District; or (2) any organization that seeks to represent employees of the District in their relations with the District.

B. Registered Employee Organization: An employee organization that has registered with the District as provided in this Chapter.

C. Recognized Employee Organization: An employee organization that has been certified by the District as the majority representative of a representation unit in accordance with this Chapter.

D. Representation Unit: A group of District employee classifications that have a common community of interest, established pursuant to this Chapter.

E. Meet and Confer: The free exchange of information, opinions and proposals between representatives of the District and a recognized employee organization with the goal of reaching agreement on matters within the scope of representation.

F. Consult or Consultation: Verbal or written communication for the purpose of presenting and obtaining views or advising of intended actions in a good faith effort to reach a consensus, and as distinguished from meeting and conferring in good faith regarding matters within the scope of the meet and confer process as required by applicable law.

G. Proof of Employee Support: An unambiguous written statement that an employee wishes to designate an employee organization as the recognized employee organization for

his/her representation unit, or that an employee wishes to cease having an employee organization be the recognized employee organization for his/her representation unit. This statement must appear on the same page as and under which an employee's printed name, classification, and signature appear, and must have been signed within the year preceding its submission.

H. Terms not defined herein shall have the meanings as set forth in the MMBA.

### 5.03 DISTRICT AUTHORITY

A. The District has the sole right and exclusive authority to direct the affairs of, manage, and maintain the efficiency of the District, to set standards of services to be offered to the public, and to control the organization and operation of the District. The District also has the sole and exclusive authority to take any actions which the District deems desirable to conduct its affairs including, but not limited to, directing its work force (including scheduling and assigning work and overtime); hiring, firing, discharging, promoting, demoting, transferring, or disciplining employees, consistent with and pursuant to the authority of Water Code section 71362; determining the methods, means and personnel by which District operations are to be conducted; layoffs for budgetary considerations or lack of work; subcontracting work; maintaining efficiency of employees; taking all necessary actions to carry out its mission in emergencies; and exercising complete control and discretion over its organization and the technology of performing its work consistent with the provisions of this Chapter and the Meyers-Milias Brown Act. The foregoing authority of the District is descriptive, not exhaustive.

B. Except as otherwise stated, all powers and obligations described in this Chapter are hereby delegated to the General Manager. The General Manager may delegate these powers and obligations to other District managers as he/she deems necessary.

### 5.04 EMPLOYEE RIGHTS

Each employee has the following rights which he/she may exercise in accordance with the Meyers-Milias Brown Act:

1. The right to form, join and participate in the activities of employee organizations of the employee's own choosing for the purpose of representation on matters of the employee's relations with the District, or to refuse to join or participate in the activities of any employee organization.
2. The right to be free from interference, intimidation, restraint, coercion, discrimination or reprisal by the District, other employees, or employee organizations with respect to the employee's membership or non-membership in any employee organization, or with respect to any lawful activity associated therewith which is within the scope of representation.

3. The right to represent himself or herself individually in his or her employee relations with the District, to the extent allowed by law. Whenever a District employee desires to represent himself or herself in consulting with District management during regular hours of work, the employee shall first request and obtain permission to take time off to do so.

#### 5.05 ESTABLISHMENT OF REPRESENTATION UNITS

A. The General Manager shall determine the appropriate composition of a representation unit by considering the following factors:

1. The effect of the proposed unit on the operations of the District.
2. The proposed unit's compatibility with the primary responsibility of the District and its employees to serve the public effectively and economically.
3. The ability to provide effective representation to employees based on a recognized community of interest, within the broadest feasible grouping of classifications sharing an identifiable community of interest.

B. In considering whether classifications share an identifiable community of interest, the following factors shall be considered:

1. Similarity of the work performed, required qualifications, level of responsibility, and general working conditions.
2. History of representation in the District, except that no representation unit shall be deemed appropriate solely on the basis of the extent to which employees in the proposed unit have organized.
3. Consistency with District administrative organization.
4. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and/or increase in number of representation units.
5. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing related classifications among two or more representation units.
6. Supervisory employees shall not be placed in a representation unit with non-supervisory employees.

7. Management employees shall not be placed in a representation unit with non-management employees.
8. Confidential employees shall not be placed in a representation unit with non-confidential employees.
9. Professional employees shall not be required to be included in the same unit with non-professional employees.

C. After notice to and consultation with affected employee organizations, the Human Resources Manager shall allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete classifications in accordance with this Section.

#### 5.06 CERTIFICATION OF EMPLOYEE ORGANIZATIONS

A. Registered Employee Organizations: Any group of employees that wishes to create a registered employee organization shall file with the General Manager a written application for registration of the employee organization. The application shall include:

1. The name and address of the organization.
2. The names and titles of its officers and mailing address.
3. A designation of one person, including his/her address, to whom notice to the organization may be sent for any purpose.
4. The names of persons who are authorized to act as representatives of the organization in any communications with the District.
5. A statement that the employer organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the District.
6. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national, or international organization, and, if so, the name and address of each such other organization.
7. Certified copies of the employee organization's constitution and bylaws.
8. A statement that the organization does not restrict membership based on race, color, creed, national origin, political affiliation, sex, disability, age, or any other classification prohibited by state or federal law .

9. A list of all District employees who are represented by the organization and their job classifications or position titles.

10. 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 District. Such written proof shall be submitted for confirmation to the General Manager or to a mutually agreed upon disinterested third party.

When an employee organization has complied with the requirements of this Section, the General Manager shall register the organization and notify it that it is a registered employee organization.

B. Recognized Employee Organizations: An employee organization or registered employee organization that wishes to become the recognized employee organization of a representation unit or proposed representation unit shall file with the General Manager a petition for certification as a recognized employee organization. The petition shall:

1. Name and provide an address for the representation unit or proposed representation unit which it purports to represent.
2. Be accompanied by proof of support by at least thirty percent (30%) of the employees within the representation unit or proposed representation unit.

Upon receipt of a petition that proposes a new representation unit, the General Manager shall determine whether:

1. There has been compliance with the requirements of the recognition petition, and
2. The proposed representation unit is an appropriate unit.

If the representation unit is appropriate and the proof of support is found to be valid, the General Manager shall accept the petition and give notice of the request for recognition filing thereof to all District employees and shall take no action on said request for thirty (30) days thereafter. Recognized employee organization status shall be granted if the proof of support shows that a majority of the employees in the representation unit or proposed representation unit desire the representation; however, if another labor organization has previously been lawfully recognized as a recognized employee organization of all or part of the same unit, or if more than one labor organization has been proposed as the recognized employee organization, determination of the recognized employee organization shall be made by the State Mediation and Conciliation Service, who shall review the proof of support to verify the status of the employee organization. The General Manager shall engage the State Mediation and Conciliation Service to conduct an election within 30 days of the foregoing notice, or as soon thereafter as the State Mediation and Conciliation Service can conduct it, among the eligible members of the representation unit.

If the General Manager does not accept the petition, it shall notify the petitioning registered employee organization of the reasons therefore in writing. No petition shall be

accepted affecting a representation unit or proposed representation unit for which, within the preceding 12 months, a certification or decertification election was conducted.

C. Election Procedure:

1. When an election is required pursuant to this Section, it shall be conducted by secret ballot in accordance with the procedures and regulations of this section. Eligible voters shall be those employees in the representation unit whose names appear on the payroll immediately prior to the date which ended at least fifteen (15) days before the date of the election, including those shown as on vacation or authorized leaves of absence, and who are employed by the District in the same unit on the date of the election. If the State Mediation and Conciliation Service declines to conduct the election, the Board of Directors will adopt rules for the conduct of election. There shall be no more than one valid election under this Section pursuant to any petition in a 12-month period affecting the same unit.
2. The General Manager shall declare the results of the election in accordance with the following:
  - a. When a majority of the eligible employees voting at the election vote to certify an organization, the General Manager shall certify the organization as the recognized employee organization of the representation unit.
  - b. When two organizations appear on the ballot and no organization receives a majority of the votes cast, the General Manager shall declare that no organization will be the recognized employee organization of the unit.
  - c. When three or more organizations appear on the ballot and no organization receives a majority of the votes cast, the General Manager shall order a runoff election between the two organizations receiving the greatest number of votes, the rules governing an initial election being applicable to a run-off election.
  - d. If less than a majority of eligible employees voted, the General Manager shall declare the election void and no further election shall be held based on the petition.

Half of the cost incurred in conducting a certification election shall be borne by the District and the other half shall be divided equally among and be paid by the employee organizations appearing on the ballot.

5.07 EMPLOYEE ORGANIZATIONS' RIGHTS

A. A registered employee organization may represent its members in disputes on wages, hours and any other terms or conditions of employment as allowed by law. A registered employee organization may not present a grievance or dispute in its own name or on behalf of itself. The District is not obliged to meet and confer or enter into a memorandum of understanding with a registered employee organization or with an individual employee.

B. A recognized employee organization may represent itself and/or its members in disputes and grievance matters. Should the recognized employee organization be dissatisfied with the results of such consultations, it has the further right to meet and confer with the General Manager. The scope of representation includes all matters relating to employment conditions and employee relations, including, but not limited to, wages, hours and other terms and conditions of employment. However, the scope of representation shall not include the merit, necessity, or organization of any service or activity provided by law or executive or Board order. If the General Manager and the recognized employee organization reach agreement, they shall jointly prepare a written memorandum of understanding which shall not be binding on the District until it is ratified by the Board of Directors.

C. Officers and/or representatives of recognized employee organizations may petition the General Manager, or designee, in writing for access to work facilities and work locations outside of regular working hours. The petition shall identify where they wish to have access and the purpose for which access is sought. The General Manager shall not unreasonably refuse such petition and will provide to persons granted access an appropriate escort and rules and regulations governing access to District property, consistent with Board of Directors Policy No. 13.

#### 5.08 IMPASSE PROCEDURE

If, after a reasonable period of time of meeting and conferring, a recognized employee organization and the General Manager fail to reach agreement on matters within the scope of representation, either party may declare the existence of an impasse. Upon declaring impasse, a party may ask the California State Conciliation Service to assist the parties in reconciling differences through mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues. All mediation costs shall be borne equally by the District and the recognized employee organization.

If mediation does not resolve the impasse, the employee organization may request to the Public Employment Relations Board (PERB) to submit the impasse to factfinding, pursuant to Government Code sections 3505.4 through 3505.7, no sooner than 30 days, but no more than 45 days, following the appointment or selection of a mediator. Factfinding panel recommendations are only advisory, not binding. All mutually incurred costs for factfinding shall be borne equally by the District and the recognized employee organization (i.e. cost for the services of the panel chairperson).

After applicable mediation and factfinding procedures have been exhausted, the General Manager may take such action regarding the matters in dispute as he/she deems necessary to the public interest, but not earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Government Code section 3505.5 and following a public hearing regarding the impasse. Any legislative action by the Board of Directors on the matters in dispute shall be final and binding.

#### 5.09 DECERTIFICATION PROCEDURE

A. An employee may present to the General Manager a petition to decertify the recognized employee organization for his/her representation unit. No action may be taken on a petition that is submitted within 12 months of the date of initial certification of a recognized employee organization or of any election to certify or decertify such organization.

B. A decertification petition must be declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete and include the following:

1. The name, address, and telephone number of the petitioning employee and a designated representative authorized to receive notices or requests for further information;
2. The title of the representation unit;
3. The name of the incumbent recognized employee organization for the representation unit sought to be decertified;
4. If another organization is proposed to become the recognized employee organization, the name of such organization and the name, address, and telephone number of its agent;
5. 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;
6. Proof of support from at least 30 percent of the employees in the representation unit who:
  - a. no longer wish to be represented by the incumbent recognized employee organization; and/or
  - b. wish to be represented by a different employee organization.

C. Within five business days of receiving a decertification petition, the General Manager shall serve a copy of the petition on the recognized employee organization.

The General Manager shall verify that proof of support for decertification and/or certification of a new recognized employee organization contains the signatures of at least thirty percent (30%) of the employees in the representation unit. Verification shall consist of

confirming that each person identified in a proof of support is in the representation unit and that his/her signature is genuine. Upon verifying proof of support or lack thereof, the General Manager shall so notify the petitioner, the recognized employee organization, and, where applicable, the agent of the proposed new recognized employee organization in writing.

If the General Manager verifies proof of support of at least 30 percent (30%) of the representation unit for more than one proposed new recognized employee organization, each such organization shall be placed on the ballot.

D. Upon verifying appropriate proof of support, the General Manager shall schedule an election, to be conducted no earlier than 21 calendar days and no later than 42 calendar days after verification.

At least 15 calendar days before the scheduled date of the election, General Manager shall post in one or more conspicuous places frequented by members of the representation unit a copy of the decertification petition, notice of the date, time, and place of the election, and a brief statement of the purpose of the election. The notice shall remain posted until the day after the election.

E. If appropriate proof of support was verified for a proposed new recognized employee organization, the ballot shall state the following:

1. Shall the [recognized employee organization] continue to be the recognized employee organization for the [name of representation unit] unit?  
 Yes ([recognized employee organization] continues to be the recognized employee organization)  
 No ([recognized employee organization] ceases to be the recognized employee organization)

{ use when there is only one proposed new representative }

2. If the [recognized employee organization] ceases to be the recognized employee organization, shall the [proposed new recognized employee organization] become the recognized employee organization for the [name of representation unit] unit?  
 Yes  
 No

{ use when there is more than one proposed new representative }

2. If the [recognized employee organization] ceases to be the recognized employee organization, please choose one of the following options:  
 [proposed new recognized employee organization #1] becomes the recognized employee organization  
 [proposed new recognized employee organization #2] becomes the recognized employee organization

\_\_\_\_ [proposed new recognized employee organization #3 (if applicable)]  
becomes the recognized employee organization  
\_\_\_\_ No representative

Where more than one proposed new representative appears on the ballot, the order in which each proposed new representative appears shall be determined by lot.

If the election is only to decertify the recognized employee organization, the ballot shall state the following:

Shall the [recognized employee organization] continue to be the recognized employee organization for the [name of representation unit] unit?  
\_\_\_\_ Yes ([recognized employee organization] continues to be the recognized employee organization)  
\_\_\_\_ No ([recognized employee organization] ceases to be the recognized employee organization)

F. Elections shall be conducted under the following guidelines:

- 1) The recognized employee organization may have a representative present at all polling places and during the counting of ballots. The representative shall only observe activities and may not advocate for a particular vote or comment on the tabulation of votes while tabulation is in progress.
- 2) The proposed new recognized employee organization(s), if any, may have a representative present at all polling places and during the counting of ballots. The representative shall only observe activities and may not advocate for a particular vote or comment on the tabulation of votes while tabulation is in progress.
- 3) Other than the actual act of voting, no activity shall be conducted within 100 feet of a polling place that advocates for a particular vote.
- 4) A recognized employee organization shall be decertified if a majority of the representation unit members voting vote to decertify.
- 5) The votes to certify a proposed new recognized employee organization shall be tabulated only if a majority of those voting vote to decertify the existing recognized employee organization. If the certification votes are tabulated, the proposed new recognized employee organization shall be certified if a majority of the representation unit members voting vote to certify or, if there is more than one new employee organization proposed, the organization receiving the most votes of the representation unit members voting shall be certified.

- 6) No later than 10:00 a.m. on the day following the election, the General Manager shall post the results of the tabulation of votes at the same location(s) at which notice of the election was posted.
- 7) A member of the representation unit, an agent of the recognized employee organization, or an agent of the proposed new recognized employee organization may protest the tabulation results within 24 hours of posting of the results. To protest the tabulation results, a person must deliver to the General Manager a letter setting forth all bases for protest. The only acceptable bases for protest are:
  - a) Error or fraud in tabulating the ballots
  - b) Prohibited advocacy at or within 100 feet of a polling place
  - c) A ballot cast by a person who was ineligible to vote
  - d) Multiple ballots cast by one person
- 8) The General Manager shall promptly investigate all protests, if any, before accepting the tabulation results. The General Manager may only reject the tabulation results if one of the bases for protest exists and he/she concludes that the outcome of the election was affected thereby. If the General Manager does not accept the tabulation results, he/she shall schedule a new election.

G. The election results shall be final upon acceptance of the tabulation results by the General Manager following a rejection of any protests or, if no protests are received, following the expiration of the 24 hour protest period. If the recognized employee organization is decertified, the District shall cease to recognize the organization as the representative for the representation unit as of the date the results are final. If a new organization has been certified as the recognized employee organization, the District shall thereafter recognize that organization as the representative of the representation unit. A new recognized employee organization shall be bound by any memoranda of understanding then in place for the representation unit.

#### 5.10 INDIVIDUAL REPRESENTATION

A. Any individual may present a concern relating to working conditions to the General Manager pursuant to the administrative procedures of the District, if any, and have such concern fairly considered, without the participation of a recognized employee organization. The individual may be represented by any person of his/her choosing, including a registered employee organization. Any concerns brought pursuant to this Section is subject to the provisions of Section 5.07(A).

B. If an employee or group of employees who are members of a recognized employee organization present a concern to the General Manager, he/she shall notify an affected recognized employee organization of such concerns within three (3) days of receiving it.

C. The right to individual representation provided above is not intended to nor shall it confer a right to bargain or negotiate individual terms and conditions of employment.

#### 5.11 EMPLOYER-EMPLOYEE COMMUNICATIONS

A. The General Manager shall make available space on a bulletin board or other reasonable means of communication to a recognized employee organization, so that it may communicate with its members. No employee organization literature may be distributed in work areas, nor may any person solicit employees during working time. The General Manager shall communicate to all employees and all registered or recognized employee organizations the contents of this Chapter.

B. Recognized employee organizations may use District facilities for meetings of District employees, provided such meetings are held outside of regularly scheduled working hours for the employees in attendance, space permitting. Recognized employee organizations must obtain permission from the General Manager or designee to use District facilities, as discussed in Section 5.07(C), above.

#### 5.12 INFORMATION REQUESTS

A. A recognized employee organization or a registered employee organization may request that the General Manager provide documents or information that are necessary and relevant to their representation rights, such as the preparation or processing of a grievance, for consulting, or for meeting and conferring. The District shall not, however, be required to provide information in a particular form requested or desired by the requestor.

B. Requests that do not fall within the following parameters are presumed as requesting irrelevant document(s) and/or information, placing the burden on the requesting party to demonstrate its relevance :

1. The document or information was created within the two years preceding the request.
2. The document or information may be retrieved without resulting in an undue burden on the District i.e. retrieval does not require an extraordinary expense or use of staff time the documents or information may be compiled in the manner requested without extraordinary expense or use of staff time, etc.
3. The document or information does not invade the privacy rights of any person who has not consented to their disclosure in writing.

#### 5.13 INTERPRETATION

This Chapter shall be administered and construed as follows:

- A. Nothing in this Chapter shall be construed to deny to any person, employee, organization, the District, or any authorized officer, body or other representative of the District, the rights, powers and authority granted by federal or state law.
- B. This Chapter shall be interpreted so as to carry out the purposes set forth in Section 5.01.
- C. Nothing in this Chapter shall be construed as giving employees or employee organizations the right to participate in, support, cooperate with or encourage, directly or indirectly, a strike, sick-out, other total or partial stoppage or slowdown of work, or any unlawful concerted action. In consideration of and as a condition of employment by the District, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. District employees who engage in such actions shall be subject to disciplinary action, up to and including termination, and/or may be deemed to have abandoned their employment, and may be replaced, to the extent such actions are not prohibited by preemptive law. Employee organizations that engage in such acts may lose all rights accorded them under this Chapter for a period of up to one year from the last such act.

#### 5.14 AMENDMENTS

After consulting with recognized and registered employee organizations, the Board may from time to time amend this Chapter.

#### 5.15 SEVERABILITY

If any provision of this Chapter, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this Chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.