

ORDINANCE NUMBER 1339

AN ORDINANCE RELATING TO THE ESTABLISHMENT OF PROCEDURES AND GUIDELINES FOR THE ADMINISTRATION OF COLLECTIVE BARGAINING BETWEEN THE CITY OF MILWAUKIE AND ITS EMPLOYEES AND DECLARING AN EMERGENCY.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

SECTION 1. TITLE. This ordinance shall be known as The Milwaukie Collective Bargaining Ordinance.

SECTION 2. PURPOSE. The City Council finds and declares that:

- A. The City of Milwaukie is a home rule municipality under provisions of the Oregon Constitution and the City's duly adopted charter, and as such has established jurisdiction over all matters of local concern.
- B. The people of the City have a fundamental interest in the development of harmonious and cooperative relationships between the governing body and its employees.
- C. The establishment and administration of the process, procedures, and guidelines of collective bargaining are matters of local concern.
- D. Recognition by the City of the rights of employees to organize and full acceptance of the principle and procedure of collective negotiation between the City and public employee organizations can alleviate various forms of strife and unrest.
- E. Experience in private and public employment has proved that protection by law of the right of employees to organize and bargain collectively is fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, and other working conditions.
- F. This ordinance and any agreement negotiated pursuant hereto shall not impair any constitutional, common law, charter, statutory or traditional right or responsibility of the City to act, including but not limited to the following:
 - 1. Determination of the overall mission of the City as a unit of government;
 - 2. Determination of the location of all physical and other facilities of the City including the right to establish new facilities and to relocate or close old facilities;

3. Determination of the financial policies of the City, including the general accounting procedures, inventory of supplies and equipment, administrative procedures and public relations;

4. Determination of the management, supervisory, and administrative organization of the City and the selection of employees for promotion to supervisory, management or administrative positions, consistent with the City Charter;

5. Maintenance of employee discipline and control and use of property and facilities;

6. Determination of safety, health and property protection measures where legal responsibility of the City or other governmental units is involved;

7. Direction and arrangement of all the working forces in the system, including the right to hire, suspend, discharge, discipline or transfer employees consistent with the City Charter.

8. Creation, combination, modification or elimination of any position consistent with the City Charter;

9. Determination of the size of the working force, the allocation and assignment of work to employees, the determination of policies affecting the selection of employees, and the establishment of quality standards and judgment of employee performance;

10. The right to subcontract work or any services currently provided by the City;

11. Determination of the services to be rendered, the operations to be performed, the technology to be utilized and the programs to be budgeted;

12. The right to take whatever other actions may be necessary to carry out the wishes of the public not otherwise specified herein or limited by a collective bargaining agreement.

Nothing in this ordinance shall be construed to limit the discretion of the City to voluntarily confer with City employees in the process of developing policies to effectuate or implement any of the above enumerated rights.

SECTION 3. DEFINITIONS. For the purpose of this ordinance, except where the context clearly indicates a different meaning, the following words and phrases shall mean:

A. "Bargaining unit" means the unit designated by the City to be appropriate for the purpose of collective bargaining.

B. "Certification" means official recognition by the City Council that a labor organization is the exclusive representative for all of the employees in the bargaining unit.

C. "City" means the City of Milwaukee.

D. "Collective bargaining" means the performance of the mutual obligation of the City and a recognized bargaining agent to meet at reasonable times and confer in good faith with respect to employment relations or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached and requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

E. "Confidential employee" means one who directly or indirectly assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

F. "Employee" means an employee of the City of Milwaukee but does not include elected officials, persons appointed to serve on boards or commissions or persons who are confidential employees or supervisory employees.

G. "Employment relations" includes wages, hours and other conditions of employment.

H. "Exclusive representative" means the labor organization which, as a result of recognition by the employer, has the right to be the collective bargaining agent of all employees in a bargaining unit.

I. "Factfinding" means review of the major issues in a particular labor dispute by an impartial board which then makes its selection from the final offers submitted by the parties.

J. "Fair-share agreement" means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization. Such agreement shall reflect the opinion of a majority of the employees in the bargaining unit.

K. "Impasse" means that point at which no further progress toward a mutually acceptable agreement can be expected to result from continued bargaining; a deadlock.

L. "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment relations.

M. "Labor organization" means any organization which has as one of its purposes representing employees in their employment relations with the City.

N. "Legislative body" means the City Council of the City of Milwaukie.

O. "Mediation" means assistance by an impartial third party in reconciling a labor dispute between the City and the exclusive representative regarding employment relations.

P. "Payment-in-lieu-of-dues" means an assessment of all employees in an appropriate bargaining unit to defray the cost for services by the exclusive representative in negotiations and contract administration as determined by the City.

Q. "Strike" means a public employee's refusal in concerted action with others to report for duty or his wilful absence from his position or his stoppage of work or his absence in whole or in part from the full, faithful or proper performance of his duties of employment for the purpose of inducing, influencing or coercing a change in conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

R. "Supervisory employee" means any individual having authority in the interest of the City to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or having responsibility to direct them or to adjust their grievances or to effectively recommend such action if, in connection therewith, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

S. "Unfair labor practice" means the commission of an act designated an unfair labor practice in Section 6 of this ordinance.

SECTION 4. RIGHTS OF EMPLOYEES. City employees have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the City of Milwaukie on matters concerning employment relations.

SECTION 5. CERTIFICATION, RECOGNITION AND REPRESENTATION ELECTION.

A. A labor organization recognized by the City is the exclusive representative of the employees of the City for the purpose of collective bargaining with respect to employment relations.

B. Notwithstanding the provisions of subsection "A" of this Section, an individual employee or group of employees at any time may present grievances to their employer and have such grievance adjusted without the intervention of the labor organization if:

1. the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and
2. the labor organization has been given opportunity to be present at the adjustment.

C. Procedures governing certification and recognition shall be as set forth by the Civil Service Commission of the City of Milwaukie. Representation elections shall be conducted and shall be governed by the City.

SECTION 6. UNFAIR LABOR PRACTICES

A. It is an unfair labor practice for the City or its designated representative to do any of the following:

1. Interfere with, restrain or coerce employees in or because of the exercise of the rights guaranteed in Section 4;
2. Dominate, interfere with or assist in the formation, existence or administration of any employee organization;
3. Discriminate in regard to hiring, tenure, or any terms or conditions of employment for the purpose of encouraging or discouraging the membership in an employee organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between the City and the exclusive bargaining representative of its employees. If such a fair-share agreement has been agreed to by the City and the exclusive representative, nothing shall prohibit the deduction of the payment in-lieu-of-dues from the salaries or wages of such employees;

4. Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this ordinance;

5. Refuse to bargain collectively in good faith with the exclusive representative;

6. Refuse or fail to comply with any provision of this ordinance;

7. Refuse to reduce an agreement reached as a result of collective bargaining to writing and sign such contract;

8. Communicate directly or indirectly during the period of negotiations with other than the designated bargaining representative regarding issues subject to the current negotiations. This shall not be construed as to prohibit the processing of grievances, the issuance of a public statement by the Factfinding Board or the issuance of press releases by the parties.

B. It is also an unfair labor practice for an employee or for a labor organization or its designated representative to do any of the following:

1. Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this ordinance;

2. Refuse to bargain collectively and in good faith with the City if the labor organization is an exclusive representative;

3. Refuse or fail to comply with any provisions of this ordinance;

4. Violate the provisions of any written contract with respect to employment relations including an agreement to binding factfinding or to accept the terms of an award resulting from such process where previously the parties have agreed to accept such award as final and binding upon them;

5. Refuse to reduce an agreement reached as a result of collective bargaining to writing and sign the resultant contract;

6. Communicate directly or indirectly during the period of negotiations with officials other than those designated to represent the City regarding the collective bargaining process.

SECTION 7. COLLECTIVE BARGAINING PROCESS. The City and the bargaining agent shall provide for and make every reasonable effort to conclude negotiations including provisions for an effective date, a reopening date and an expiration date at a time to coincide with the period during which the Budget Committee and the City Council shall decide on the operating budget of the City. The process of collective bargaining shall begin on or about January 1, in the last year of an agreement and shall conclude by April 1 of the same year, except that the City Council at its discretion may authorize an extension of the collective bargaining conclusion date if satisfied that progress is being made and a mutual settlement can be obtained through further bargaining. In no case, however, shall the Council extend the conclusion date beyond June 1.

SECTION 8. IMPASSE PROCEDURES. An impasse shall be declared if no settlement has been achieved after a reasonable period of negotiation over the terms of an agreement; after a reasonable time following certification or recognition of an exclusive bargaining representative; or upon arrival of the deadline for conclusion of bargaining without an authorized extension.

A. Mediation:

1. In the event the parties are unable to reach an agreement pursuant to Section 7, or upon declaration of impasse, either party shall have the right to invoke mediation.
2. Upon invocation of mediation the parties shall confer for the purpose of jointly selecting a mediator.
3. If after passage of five (5) days the parties have not mutually agreed on the selection of a mediator, they shall jointly request the services of a mediator from the American Arbitration Association. The mediator's fees shall be shared equally by the parties.
4. Mediation shall be deemed to have commenced upon initiation of work by the mediator.

B. Factfinding:

1. In the event an impasse has not been settled within ten (10) calendar days after commencement of mediation, either party may petition in writing to the City Recorder to initiate factfinding. Within five (5) days of the petition for factfinding, the parties together shall present to the City Recorder a submission agreement listing all matters previously agreed to. Each party shall additionally submit to the City Recorder a final offer on all outstanding issues at impasse within ten (10) days of the filing of the petition for factfinding.

2. The factfinding process shall consist of an open hearing before a three member board, one member appointed by the City, one appointed by the bargaining unit and one appointed by the two previously appointed members. The third member appointed shall serve as chairman. Within seventeen (17) days of filing a petition for factfinding the parties shall designate and exchange names of their appointments to the board. The two appointees shall confer and select the third board member and announce their selection within twenty-four (24) days of the filing of a petition for factfinding. The parties shall jointly share the fees and costs of the Factfinding Board.

(a) If, after twenty-four (24) days, the third member has not been mutually agreed upon, the appointees shall request a list of five names from the American Arbitration Association. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining name shall be appointed to the Factfinding Board. The chairman shall call a hearing within twenty (20) days thereafter at a location within the City of Milwaukie, designated by the chairman.

(b) From the time of appointment until such time as the factfinding appointees select their third member, there shall be no communication by the appointees with parties other than the City's or bargaining unit's designated representative concerning recommendations for settlement of the dispute. This shall not preclude the appointees from, on their own initiative, obtaining whatever information from whatever sources they deem appropriate to assist in their selection of the third appointee.

(c) The Factfinding Board shall also have the power to subpoena any person or persons necessary to arrive at a decision and shall conduct a formal hearing to discuss offers submitted by both parties. The board shall have twenty (20) days from the conclusion of its hearing to make its selection from the final offers submitted.

(d) The Factfinding Board shall select the most reasonable, in its judgment, of the final offers submitted by the parties. The Factfinding Board may take into account only the following factors:

(1) Collective bargaining contracts between the parties including the bargaining that led up to such contract;

(2) Comparison of wages, hours and conditions of employment of other employees doing comparable work giving consideration to factors peculiar to the market area and the classification involved;

(3) Comparison of wages, hours and conditions of employment as reflected in Oregon public employment in general and specifically municipalities reasonably proximate to the City;

(4) The interest and welfare of the public, the ability of the City to finance economic adjustments and the effect of such adjustments on the normal standard of City services.

(e) The offers selected by the Factfinding Board integrated with the previously agreed upon items received by the City Recorder shall be deemed to represent the findings and recommendations of the Factfinding Board. The finding shall be filed with the City Recorder and tendered to the parties within five (5) days.

(f) Within five (5) days after receipt of findings and recommendations, the parties shall certify in writing to the City Recorder their acceptance or rejection of said findings and recommendations. If such notice indicates that one or both of the parties do not accept the Board recommendations, or that the parties have not otherwise settled the dispute, the City Recorder shall publicize the findings and recommendations of the Board of Factfinders no sooner than five (5) days nor later than ten (10) days after it has been received.

(g) Nothing in this section shall be construed to prohibit the parties at any time from voluntarily agreeing to make the factfinding procedures outlined above final and binding.

SECTION 9. DISPUTE RESOLUTION.

A. In the event the City rejects the Factfinding Board's findings and recommendations, the City may implement its final offer, in which case the bargaining unit shall have the right to strike as provided in Section 10. Alternatively, the City may submit the Factfinding Board's findings and recommendations and the City's last offer to the voters at a special City election, to be held within 30 days from the date of publication of findings and recommendations. Only those items of economic dispute shall be presented to the voters. In the event of an election, the decision of the voters shall be final and binding upon both parties.

B. In the event the bargaining unit rejects the Factfinding Board's findings and recommendations and no agreement is reached, the bargaining unit shall have the right to strike as provided in Section 10 of this ordinance.

C. In the event both parties reject the Factfinding Board's findings and recommendations and no agreement is reached the City may submit the final economic offer of each party to the voters at a special city election, to be held within 30 days from date of publication of findings and recommendations.

SECTION 10. Strikes

A. Lawful strikes: A strike shall be lawful only if called pursuant to the provisions of this ordinance.

B. Unlawful strikes:

(1) No strike shall take place within 30 days from the date of publication of the Factfinding Board's findings and recommendations.

(2) No strike shall take place until the Bargaining unit has served a ten (10) day written notice of intent to strike on the City by certified mail.

(3) Participation in a strike shall be unlawful for any employee who is not included in an appropriate bargaining unit for which an exclusive representative has been recognized by the City.

(4) It shall be unlawful for an employee who is not prohibited from striking under paragraph (3) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike:

(a) If a labor organization, its agents, members, or officers fails to comply with the provisions of this section prior to engaging in a strike as defined in Section 3, subsection Q., the appropriate Circuit Court shall order the employees to return to work and such order shall additionally include the requirement that the employee unit engaged in such unlawful strike repay any damages and extraordinary costs incurred by the City as a result of the strike.

(b) Employees other than those engaged in a non-prohibited strike who refuse to cross the picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of subparagraph (a) above.

SECTION 11. Ordinance Enforcement. Enforcement and compliance with the provisions of this ordinance shall be by the following method: Suit in equity brought in the Circuit Court of the State of Oregon for Clackamas County by the City or by a duly elected bargaining representative against any person or party who it is claimed has violated this ordinance.

SECTION 12. Severability. It is hereby declared to be the legislative intent of the Council that if a provision, sentence, clause, section or part is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the ordinance or their application to other persons and circumstances.

SECTION 13. Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health and safety of the City of Milwaukie, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately upon its passage by the Council and signing by the Mayor.

Read the first time this 26th day of April, 1976, and moved to second reading by majority vote of the City Council.

Read the second time and adopted by the City Council this 3rd day of May, 1976.

Signed by the Mayor this 3rd day of May, 1976.

Bill Hupp
Bill Hupp, Mayor

ATTEST:

Dorothy E. Farrell
Dorothy E. Farrell, Recorder

Approved as to form:

Myer Avedovech
Myer Avedovech, City Attorney