



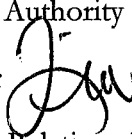
Berkeley Housing Authority

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Office of the Executive Director

Item 5D
NEW BUSINESS
March 10, 2016

To: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

From: Tia M. Ingram, Executive Director 

Subject: Employee-Employer Organization Relations Resolution

RECOMMENDATION

Approve a resolution adopting an “Employee-Employer Organization Resolution” for the Berkeley Housing Authority (BHA).

BACKGROUND

As a public employer, BHA is subject to Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Code). The “Code” contains a specific requirement to adopt a “resolution” that addresses the employer-employee relationship. Typically, large agencies (those with more than 50 employees) have such a resolution in place. Prior to 2007, when we assumed responsibility for the Human Resource function, our 12 employees were covered under the City’s Resolution No. 43,397-N.S. (adopted in 1969).

DISCUSSION

In July 2015, Jose Martinez, SEIU, Local 1021, sought to challenge the reassignment of the Management Analyst position from SEIU, Local 1021 to representation under the Local One contract (the management unit). In September, he requested a copy of BHA’s Employee-Employer Organization Resolution (EEOR).

His request prompted us to review our personnel policies, and the conclusion that we did not have an EEOR for BHA. While it is not clear that an agency of our size is required to have an EEOR, having such a plan allows us to memorialize how we will respond to certain personnel situations, and clarifies our relationship with SEIU Local 1021, and Local One. A draft of the EEOR was shared with leadership within SEIU 1021 and Local One, and with BHA staff (Attachment 2). In addition to sharing the document, we offered to meet with the unions and/or employees (Attachment 3). Note that one line in particular speaks to Mr. Martinez’ concern about reassignment of the Management Analyst position: “Managerial employees and confidential employees shall not be included in a representation unit including other types of employees.” [*taken from the 1969 document pg. 3*]

STATUS

The “resolution” before you this evening was shared with the bargaining units and staff with no comment or objections. Staff thereby recommends approval.

FINANCIAL IMPLICATIONS OF ACTION

No direct cost. Could expose BHA to litigation from Union, or an unfair labor practice before the Public Employees Relations Board.

CONTACT PERSON

Tia Ingram, Executive Director, Berkeley Housing Authority, 981-5471
Jesy Yturalde, Finance Manager, 981-5488

Attachments:

1. EEOR and Resolution
2. October 13, 2015 email to Unions 1021 and Local One offering to meet regarding draft EEOR

BERKELEY HOUSING AUTHORITY

RESOLUTION NO. 16-_____

EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION

Article I. General Provisions

Section 1. Statement of Purpose.

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 *et seq.*) by providing orderly procedures for the administration of employer-employee relations between the Authority and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of State law or Authority resolutions which provide for other methods of administering employer-employee relations. This Resolution is intended, instead, to strengthen the employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the Authority.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal or inherent exclusive Authority rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other reasons; maintain the efficiency of operations; determine the methods, means and personnel by which operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

Section 2. Definitions.

As used in this Resolution, the following terms shall have the meanings indicated:

- (a) "Appropriate Unit" or "Unit" means a unit of employee classifications or positions, established pursuant to Article II hereof.
- (b) "Authority" means the Berkeley Housing Authority and, where appropriate herein, refers to the Executive Director or any duly authorized Authority representative as herein defined.
- (c) "Confidential Employee" means an employee who, in the course of his or her duties, has independent access to and uses in the course of the job function, confidential information relating to the Authority's administration of employer-employee relations.
- (d) "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with an exclusively recognized

employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV hereof.

- (e) "Day" means calendar day unless expressly stated otherwise.
- (f) "Executive Director" means the Executive Director of the Authority or his/her duly authorized representative.
- (g) "Impasse" means that the representatives of the Authority 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 concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.
- (h) "Management Employee" means an employee having significant responsibility for formulating, administering or managing the implementation of Authority policies and programs.
- (i) "Meet and confer" means to negotiate.
- (j) "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee or employees, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only dues deduction authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within sixty (60) days prior to the filing of a petition.
- (k) "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the Authority as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II hereof, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.
- (l) "Supervisory Employee" means any employee having authority, in the interest of the Authority, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or evaluate their performance, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Article II. Unit Determination and Representation Proceedings

Section 3. Policy and Standards for Determination of Appropriate Units.

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the Authority including the compatibility of the unit with the mission of the Authority and the unit's impact on the Authority's ability to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible

grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

- (a) Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- (b) History of representation in the Authority and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- (c) Consistency with the organizational structure of the Authority.
- (d) Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- (e) Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Section 2 of this Resolution, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

Section 4. Procedure for the Establishment of Appropriate Units.

The Executive Director shall have the authority to establish Appropriate Units, pursuant to the provisions of Section 3 of this Article II. Whenever the Executive Director establishes an Appropriate Unit, he/she shall give written notice of such action to the affected employees and/or employee organizations, if any. Thereafter, an affected employee organization may appeal the Executive Director's determination pursuant to the provisions of Section 6 of this Article II.

Following final determination of the Executive Director establishing an Appropriate Unit, employee organizations may file Recognition Petitions pursuant to Section 7 of this Article II seeking to become the Exclusively Recognized Employee Organization for such unit.

Section 5. Procedure for Modification of Established Appropriate Units.

Requests by employee organizations for modifications of established appropriate units may be considered by the Executive Director only during the thirty (30) day period commencing sixty (60) days prior to the termination date of a Memorandum of Understanding covering the existing unit. If the existing unit is not covered by an existing Memorandum of Understanding, the request for unit modification must be filed during the thirty (30) day period commencing sixty (60) days prior to the close of the Authority's fiscal year. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 7 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 3 hereof. The Executive Director shall process such petitions as other Recognition Petitions under this Article II.

The Executive Director may on his/her own motion propose during the period specified in this Section 5 that an established unit be modified. The Executive Director shall give written notice of the proposed modification(s) to any affected employee organization and

shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Executive Director shall determine the composition of the appropriate unit or units in accordance with Section 3 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Executive Director's determination may be appealed as provided in Section 6 of this Article II.

If a unit is modified pursuant to the motion of the Executive Director hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 7 hereof.

Section 6. Appeals of Appropriate Unit Determinations and Unit Modifications.

An employee organization aggrieved by the establishment or modification of an Appropriate Unit by the Executive Director pursuant to the provisions of this Article II may, within ten (10) days of notice thereof, file a written appeal with the Executive Director. Such appeal shall specify the provisions of this Article II to have been violated and the corrective action requested.

The Executive Director shall provide a written response within ten (10) days of receipt of the appeal. Either the employee organization or the Executive Director may request to meet with the other to discuss the appeal. If such a meeting is requested, it shall take place. If the parties meet, the Executive Director shall provide his/her written response within ten (10) days following the meeting.

If the appeal is unresolved following response by the Executive Director, the parties may, during the ten (10) day time period for advancing the appeal to the Board of Commissioners, mutually agree to request the assistance of the California State Mediation and Conciliation Service to mediate the dispute. If the parties proceed to mediation, the time limit for advancing the appeal to the Board of Commissioners shall be stayed pending completion of mediation.

If the appeal is unresolved following response by the Executive Director, or following the completion of mediation if the parties agree to mediate, the employee organization may advance the appeal to the Board of Commissioners. The appeal shall be filed in writing with the Chairman and a copy thereof served on the Executive Director. The Board of Commissioners shall commence to consider the matter within thirty (30) days of the filing of the appeal and shall render a decision within sixty (60) days. The Board of Commissioners may, at its discretion, refer the dispute to a neutral third party hearing process which shall provide an advisory decision to the Board. Any decision of the Board of Commissioners on the use of such procedure, and/or any decision of the Board of Commissioners determining the substance of the dispute shall be final and binding.

If, at any stage of this appeal process, the employee organization fails to comply with the time limits contained herein, the appeal shall be deemed to have been resolved based upon the last response/action of the Authority. If, at any stage of this appeal process, the Authority fails to comply with the time limits contained herein, the employee organization may advance the appeal to the next level. Nothing herein is intended to prohibit the parties from waiving and/or modifying these time limits by mutual agreement. Such waivers shall be in writing to a date certain.

Section 7. Filing of Recognition Petition by Employee Organization.

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Executive Director containing the following information and documentation:

- (a) Name and address of the employee organization.

- (b) Names and titles of its officers.
- (c) Names of employee organization representatives who are authorized to speak on behalf of the organization.
- (d) A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the Authority.
- (e) 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.
- (f) Certified copies of the employee organization's constitution and bylaws.
- (g) A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- (h) A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability.
- (i) The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- (j) A statement that the employee organization has in its possession proof of thirty percent (30%) 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 Authority. Such written proof shall be submitted for confirmation to the Executive Director or to a mutually agreed upon disinterested third party. In the case of a unit modification, the petition shall state that the signing employees support the request for the unit modification.
- (k) A request that the Executive Director formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

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

Section 8. Authority Response to Recognition Petition.

Upon receipt of the Petition, the Executive Director shall determine whether:

- (a) There has been compliance with the requirements of Section 7 of this Article II, and
- (b) The representation unit has been determined to be an appropriate unit in accordance with the provisions of Sections 3 and 4 of this Article II.

If the Executive Director determines that the foregoing two conditions have been satisfied, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing conditions has not been satisfied, the Executive Director shall offer to consult thereon with such

petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing. The petitioning employee organization may appeal such determination in accordance with Section 12 of this Article II.

Section 9. Open Period for Filing Challenging Petition.

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30%) percent and otherwise in the same form and manner as set forth in Section 7 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Executive Director shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Executive Director shall determine the appropriate unit or units in accordance with the standards in Section 3 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Executive Director to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 6 of this Article II.

Section 10. Election Procedure.

The Executive Director shall arrange for a secret ballot election to be conducted by a party agreed to by the Executive Director and the concerned employee organization(s), in accordance with its rules and procedures subject to the provisions of this Resolution. All employee organizations that have duly submitted petitions which have been determined to be in conformance with this Article II shall be included as a choice on the ballot. The ballot shall also include as a choice "No Representation." Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who are employed on the date of the election and who were employed during the pay period immediately prior to the date of the election, but which ended at least fifteen (15) days before the date the election commences. Voters shall include employees who did not work during such period because of illness; vacation or other authorized leaves of absence. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it receives a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted only between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one (1) valid election under this Resolution pursuant to any petition in a twelve (12) month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the State Mediation and Conciliation Service.

Costs of conducting elections shall be borne in equal shares by the Authority and by each employee organization appearing on the ballot.

Section 11. Procedure for Decertification of Exclusively Recognized Employee Organization.

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Executive Director only during the thirty (30) day period commencing sixty (60) days prior to the termination date of a Memorandum of Understanding. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

- (a) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- (b) The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.
- (c) An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- (d) Proof of employee support that at least thirty percent (30%) of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Executive Director or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

The Executive Director shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 12 of this Article II. If the determination of the Executive Director is in the affirmative, or if his negative determination is reversed on appeal, he shall give written notice of such Decertification to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Executive Director shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after the above notice to determine the wishes of unit employees as to the question of decertification. Such election shall be conducted in conformance with Section 10 of this Article II.

If, pursuant to this Section 11, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization or a majority of voting employees select "No Representation," such organization (if any), the employees assigned to the unit in question and the Authority shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

Section 12. Appeals of Sections 7, 9, 11 of Article II.

An employee organization aggrieved by a determination of the Executive Director that a Recognition Petition (Section 7), Challenging Petition (Section 9), Decertification of Recognition Petition (Section 11), or employees aggrieved by a determination of the Executive Director that a Decertification Petition (Section 11) has not been filed in compliance with the applicable provisions of this Article may, within fifteen (15) days of notice of such determination, appeal the determination to the Board of Commissioners for final decision.

The appeal shall be filed in writing with the Chairman of the Board of Commissioners and a copy thereof served on the Executive Director. The Board of Commissioners shall commence to consider the matter within thirty (30) days of the filing of the appeal and shall render a decision within sixty (60) days. The Board of Commissioners may, at its discretion, refer the dispute to a neutral third party hearing process which shall provide an advisory decision to the Board. Any decision of the Board of Commissioners regarding the use of such procedure, and/or any decision of the Board of Commissioners determining the substance of the dispute shall be final and binding.

Nothing herein is intended to prohibit the parties from waiving and/or modifying these time limits by mutual agreement. Such waivers shall be in writing to a date certain.

Article III. Administration

Section 13. Submission of Current Information by Recognized Employee Organizations.

All changes in the information filed with the Authority by an Exclusively Recognized Employee Organization under items (a) through (e) of its Recognition Petition under Section 3 of this Resolution shall be submitted in writing to the Executive Director within fourteen (14) days of such change.

Section 14. Payroll Deductions on Behalf of Employee Organizations.

Upon formal acknowledgment by the Authority of an Exclusively Recognized Employee Organization under this Resolution, only such Recognized Employee Organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written authorization of employees in the unit represented by the Exclusively Recognized Employee Organization on forms provided therefore by the Authority. The providing of such service to the Exclusively Recognized Employee Organization by the Authority shall be contingent upon and in accordance with the provisions of Memoranda of Understanding and/or applicable administrative procedures.

Section 15. Employee Organization Activities -- Use of Authority Resources.

Access to Authority work locations and the use of Authority paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and (not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections during working time) and shall not interfere with the efficiency, safety and security of Authority operations.

Section 16. Administrative Rules and Procedures.

The Executive Director is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations.

Article IV. Impasse Procedures

Section 17. Initiation of Impasse Procedures.

If the meet and confer process has reached impasse as defined in this Resolution, 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 issues. An

impasse meeting shall then be scheduled promptly by the Executive Director. The purpose of such meeting shall be:

- (a) To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and
- (b) If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Section 18. Impasse Procedures.

- (a) **Applicability.** The provisions of this section shall apply to disputes that are required by law to be submitted to mandatory non-binding fact-finding under Cal. Gov. Code section 3505.4.
- (b) **Mutual Agreement Required to Waive Timelines.** The Authority and recognized employee organizations may mutually agree in writing to waive the timelines set forth in this Section 18 or in State law.
- (c) **Scheduling of Bargaining and Impasse Resolution Proceedings.** Timely resolution of negotiations for memoranda of agreement is in the mutual interest of the Authority and employee organizations because prompt resolution will help ensure that the Authority is able to adopt a balanced, complete and accurate annual budget of which labor costs are a large proportion and provide members of employee organizations with predictability and greater certainty regarding the substance and timing of benefits and other matters involving wages, hours and terms and conditions of employment. Accordingly, the parties shall endeavor to schedule and conduct negotiations and impasse resolution proceedings at times sufficient to resolve negotiations prior to the Authority's adoption of its final budget for the ensuing year.
- (d) **Fact-finding procedure.** Fact-finding shall be conducted in accordance with requirements set forth in this section and in State law.
- (e) **Pre-Designation of Fact-finding Panel Chair.** Not later than fourteen (14) calendar days after the initial bargaining session for negotiations for a new Memorandum of Understanding (MOU), the Authority and the recognized employee organization shall select a fact-finding panel chair to hear the dispute who will certify that he or she will start the fact-finding proceedings within ten (10) days of notification by either party. In the event that the Authority and the employee organization cannot agree upon the selection of the panel chair, then the parties shall request the State of California Mediation and Conciliation service provide a list of seven (7) qualified fact finders, and the parties will select a fact finder from this list who will certify that he or she will start the fact-finding hearing within ten (10) days of notification. Any failure to confirm the pre-designated chair pursuant to this section shall not be construed as a waiver of the right to request fact-finding.

- (f) Request for Fact-Finding Panel. If a mediator is selected or appointed, the employee organization may request that the parties' differences be submitted to a fact-finding panel not sooner than 30 days, but not more than 45 days, following the mediator's appointment or selection. In the event that the dispute is not submitted to mediation, the employee organization may request that the parties' differences be submitted to a fact-finding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.
- (g) Designation of the Fact-finding Panel Chair. After a valid fact-finding request has been made and within five (5) working days of receiving a list of neutral fact finders from the Public Employment Relations Board ("PERB"), the parties shall determine whether to use the pre-designated chairperson. If one or both parties do not agree to use the pre-designated chairperson or other neutral on the list provided by PERB for the fact-finding panel, the parties shall use the chairperson designated by PERB.
- (h) Fact-finding Hearings Not Open To Public. Unless otherwise mandated by state law, all hearings before the fact-finding panel shall not be open to the public for observation and all documents submitted in a fact-finding proceeding shall be public records. Deliberations of the fact-finding panel shall also be confidential and closed to the public.
- (i) Fact-finding Report. The fact-finding panel shall limit its findings and recommendations to issues that fall within mandatory subjects of bargaining, unless the parties mutually agree in writing to submit issues to the panel that are non-mandatory subjects.
- (j) Waiver of Fact-finding. Notwithstanding any other provision of this section, the employee organization may choose not to engage in fact-finding or to discontinue fact-finding at any time after a declaration of impasse by either party by notifying the Authority in writing that it waives its right to engage in and/or complete the fact-finding process. Written waivers shall be irrevocable. Upon receiving a waiver from the employee organization, the Authority may implement its last, best and final offer after holding a public hearing regarding the impasse.
- (k) Mediation by Mutual Agreement. At any time, the parties may mutually agree to submit the dispute to mediation or to have the neutral fact-finding panel member mediate the dispute. If the parties agree to mediation but are unable to agree on a mediator, the parties shall request the services of the State Mediation and Conciliation Service, or suitable alternate, to provide a mediator. Costs of mediation shall be divided one-half to the Authority and one-half to the recognized employee organization. The mediator or mediating agency shall make no public recommendations nor take any public position concerning the issues, but shall work directly with the parties involved. Mediation proceedings shall be

confidential and closed to the public.

- (l) Unless mutually agreed by the parties, agreement to mediate shall not alter or extend the timelines set forth in this Article IV, Impasse Procedures.
- (m) **Arbitration.** An arbitration agreement contained in a Memorandum of Understanding shall be enforceable in an action brought pursuant to State Law. An assertion that the arbitration claim is untimely or otherwise barred because the party seeking arbitration has failed to satisfy the procedural prerequisites to arbitration shall not be a basis for refusing to submit the dispute to arbitration. All procedural defenses shall be presented to the arbitrator for resolution. A court shall not refuse to order arbitration because a party contends that the conduct in question arguably constitutes an unfair practice subject to the jurisdiction of the Board of Commissioners. If a party files an unfair practice charge based on such conduct, the Board of Commissioners shall place the charge in abeyance if the dispute is subject to final and binding arbitration pursuant to a Memorandum of Understanding, and shall dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of this Resolution.
- (n) **Severability.** If any subsection, sentence, clause, or phrase of this Article IV is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Section 18. The Board of Commissioners declares that it would have approved this section and each and every subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the section would be subsequently declared invalid or unconstitutional.
- (o) **Operative Date; Expiration.** This Section 18 shall be operative on the date this Resolution is approved. It shall remain operative only so long as the Authority is subject to mandatory non-binding fact-finding under Government Code section 3504.5 *et seq.* If at any time and for any reason the Authority is no longer subject to mandatory fact-finding, this Section 18 shall expire immediately and automatically and shall have no further force and effect.

Section 19. Costs of Impasse Procedures.

The costs for the services of a jointly agreed upon mediator utilized by the parties, and other mutually incurred costs of mediation shall be borne equally by the Authority and the Exclusively Recognized Employee Organization. The cost for other separately incurred costs, shall be borne by such party.

Article V. Miscellaneous Provisions

Section 20. Construction.

This Resolution shall be administered and construed as follows:

- (a) Nothing in this Resolution shall be construed to deny to any person, employee, organization, the Authority, or any authorized officer, body or other representative of the Authority, the rights, powers and authority granted by Federal or State law.
- (b) This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

Section 21. Severability.

If any provision of this Resolution, or the application of such provision to any persons or circumstance, shall be held invalid, the remainder of this Resolution, 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.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on March 10, 2016 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
Tia M. Ingram, Secretary

Aguilar-Vasquez, Celinda

From: Ingram, Tia
Sent: Tuesday, October 13, 2015 12:08 PM
To: 'Jeff Apkarian'; 'Jose Martinez'
Cc: Barnes, Tilda J.; Jackson, Tracy; Ocampo, Virgilio; Yturralde, Jesusa Eva; Aguilar-Vasquez, Celinda
Subject: EMPLOYER EMPLOYEE ORGANIZATION RELATIONS Resolution
Attachments: EEOR.sept15.doc

Attached is a draft of BHA's Employer Employee Organizations Relations resolution.

We need to "meet and confer" before the Board takes action to adopt. Please review, advise consent, or propose dates you are available to meet and discuss any questions/concerns. Ideally I would like to present the document to the Board for approval at the November meeting (November 12th). I realize that may not give you sufficient time for review; our last regularly scheduled meeting of the calendar year is December 10th.

Thanks in advance.

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