

ORDINANCE NO. 2712**AN ORDINANCE RELATING TO THE ESTABLISHMENT OF PROCEDURES FOR THE ADMINISTRATION OF EMPLOYER-EMPLOYEE RELATIONS BETWEEN THE CITY AND ITS EMPLOYEES AND DECLARING AN EMERGENCY.**

BE IT ORDAINED BY THE CITY OF BAKER:

SECTION 1. Title. This ordinance shall be known as the Baker Employer-Employee Relations Ordinance.

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

a. The people of the City have a fundamental interest in the development of harmonious and cooperative relationships between the governing body and its employees;

b. Recognition by the City of the rights of the 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. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies and the employees;

c. Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards the employees and the public from injury, impairment and interruptions of necessary services and removes certain recognized sources of strife and unrest by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers, and public employees;

d. It is recognized that the State Collective Bargaining law found in ORS 243.650 et. seq. adequately lays out the general rules and guidelines which this ordinance will attempt to incorporate and follow with the exception of those areas that are determined to be of strictly local concern for the City of Baker. Any deviations from the State Collective Bargaining Law are made only after a determination that the matter in question is of local concern.

e. This ordinance and any agreement pursuant hereto shall not impair any constitutional, common law, charter, statutory or traditional right or responsibility of the City

to act unilaterally:

- (1) to determine the overall mission of the City as a unit of government;
- (2) to maintain and improve the efficiency and effectiveness of City operations;
- (3) to determine the services to be rendered, the operations to be performed, the technology to be utilized or the programs to be budgeted;
- (4) to determine the overall methods, processes, means, job classifications or personnel by which City operations are to be conducted;
- (5) to direct, supervise or hire employees;
- (6) to promote, suspend, discipline, discharge, transfer, assign, schedule, retain or lay off employees;
- (7) to relieve employees from duties because of lack of work or funds or under conditions where the City determines continued work would be inefficient or nonproductive;
- (8) 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; or
- (9) to take actions to carry out the missions of the City as the governmental unit in situations of emergency. 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. "Appropriate bargaining unit" means the unit designated by the Board to be appropriate for the purpose of collective bargaining.
- b. "Board" means the State of Oregon's Employment Relations Board.
- c. "Certifications" means official recognition by the Board or the City Council that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.
- d. "City" means the City of Baker.
- e. "Collective bargaining" means the performance of the mutual obligation of the City and representative of its employees 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.

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

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

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

i. "Factfinding" means the process in which an interest dispute is investigated by a duly appointed panel with the objective of:

(1) reconciling or mediating the dispute confidentially between the parties, or failing this,

(2) the panel submitting a report to the parties and recommending which of the final offers submitted is most reasonable within the context of this ordinance

j. "Fair Share Agreement" means an agreement between the City 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 the majority of the employees in the bargaining unit.

k. "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 regardless of whether the disputants stand in the proximate relationship of employer and employee.

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

m. "Legislative body" means the City Council of the City of Baker.

n. "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 the 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.

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 costs for services of the exclusive representative in negotiations and contract administration as agreed to by the parties. This amount shall not exceed normal dues.

q. "Public Employee" means an employee of the City of Baker but does not include

elected officials, persons appointed to serve on boards or commissions, or persons who are confidential employees or supervisory employees.

r. "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 the 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.

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

t. "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

SECTION 4. Rights of City 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 Baker on matters concerning employment relations.

SECTION 5. Certification and Recognition. a. A labor organization certified by the State of Oregon's Employment Relations Board, or 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. Nevertheless, any agreements entered into involving union security or fair-share agreement must safeguard the rights of non-association for employees based on a bona-fide religious tenets or teachings of a church or a religious body of which such employee is a member. Such employee shall pay an amount of money agreed upon through negotiations to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to his employer that this has been done.

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. Nothing in this section prevents the City from recognizing a labor organization which represents at least a majority of employees as an exclusive

representative of the employees of the City when the Board has not designated the appropriate bargaining unit or when the Board has not certified an exclusive representative in accordance with ORS 243.686.

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 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 a public 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 arbitrate or to accept the terms of an arbitration award 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 employment relations.

(7) To dominate or to interfere with the administration of the City, or to contribute financial or other political support to the City, its agents, representatives or candidates seeking election or appointment to City legislative and executive office including commissions determining or enforcing city policy.

c. An injured party may file a written complaint with the Board not later than 180 days following the occurrence of an unfair labor practice.

SECTION 7. Processing Unfair Labor Practices. Whenever a written complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice listed in Section 6, the Board or its agent shall follow the procedures set out in ORS 243.676.

SECTION 8. Representation Questions. If a question of representation exists, the Board shall follow the procedures outlined in ORS 243.682.

SECTION 9. Representation Election. Representation elections shall be conducted and shall be governed by the Board's regulations.

SECTION 10. Collective Bargaining Procedures. 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 December 1 in the last year of an agreement and shall normally conclude prior to the official adoption of the budget by the City Council. Minutes of all meetings between the City and the bargaining agent with regard to contract negotiations shall be public records and available for inspection at all reasonable times.

SECTION 11. Impasse Procedures.

a. If after a reasonable period of negotiation (usually not to exceed 90 days and mutually agreed to by the parties) over the terms of an agreement, after a reasonable time following certification, or recognition of an exclusive representative, no agreement has been signed; either or both of the parties may request that mediation be provided by the State of Oregon Employment Relations Board or its successor.

b. Where the Board, on the request of one of the parties or on its own motion, has determined that the parties have failed to achieve agreement through negotiation, the Board shall render assistance to resolve the labor dispute according to the following schedule.

(1) Mediation shall be provided by the State Conciliation Service as provided by ORS 662.405 to 662.455.

(2) If the labor dispute has not been settled after 15 calendar days after commencement of mediation, either party or the parties jointly may petition in writing to the City Recorder to initiate factfinding. The parties shall exchange a final offer and may, at the same time, exchange an alternative offer. These offers shall be officially received by the City Recorder and preserved for the Board of Factfinders. Such offers shall constitute a complete draft of a proposed collective bargaining agreement or both parties may mutually agree to submit for factfinding, a package proposal on specific impasse items. If only such proposals on specific items are submitted, all items previously agreed upon shall be filed with the City Recorder. The decisions of the Board of Factfinders can be made binding only by mutual agreement of all the parties.

(3) The Factfinding Board shall consist of three members, one member appointed by the City, one appointed by the bargaining agent and one appointed by the two previously appointed members. These appointments shall be made within four days of the request for the initiation of factfinding. The third member appointed shall be the chairman of the Factfinding Board. No member of the Factfinding Board shall be a full-time employee of the City of Baker. Disinterested parties to the dispute shall be selected and whenever possible shall have experience in labor management relations. All persons selected to the Factfinding Board shall be residents of that part of the State of Oregon lying east of the crest of the Cascade Mountain range. Nothing in this section prohibits citizens of Baker from being appointed to the Factfinding Board.

(4) If, after four days, this third member has not been mutually agreed upon, a list of five names shall be requested by the appointees from the Baker County Bar Association. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining member shall become Chairman of the Factfinding Board. The Chairman shall hold a hearing within ten days thereafter at a location within the City of Baker designated by the Chairman.

(5) If a vacancy should occur on the Factfinding Board due to death or resignation, the selection for replacement of such member shall be in the same manner as the resigned or deceased member was chosen. Such a vacancy shall not impair the right of the remaining members to exercise all of the powers of the Factfinding Board except that no final selection under subsection (8) of this section shall be made by the Factfinding Board until the vacancy has been filled.

(6) From the time of appointment until such time as the Factfinding Board makes its selection, there shall be no communication by the members of the Factfinding

Board with other parties other than the City's designated representative and the employee representative concerning recommendations for settlement of the dispute. This shall not preclude the Factfinding Board from, on its own initiative, obtaining whatever information from whatever sources it deems appropriate to assist in its selection.

- (7) The Factfinding Board shall have ten days from the commencement of its hearing to make its selection from the final offers submitted. The Factfinding Board shall also have the power to subpoena any person or persons necessary to arrive at a decision and shall conduct formal or informal hearings to discuss offers submitted by both parties.
- (8) 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:
- (a) Past Collective bargaining contracts between the parties including the bargaining that led up to such contract;
 - (b) 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;
 - (c) Comparison of wages, hours and conditions of employment as reflected in Oregon public employers in general and specifically Municipalities reasonably proximate to the City;
 - (d) 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.
- (9) The Factfinding Board shall not compromise or alter the final offer that it selects. Selection of an offer shall be based on the content of that offer and also consideration shall be given to and evidence received concerning collective bargaining in this dispute, not, however, including offers of settlement not contained in the offers submitted to the Factfinding Board unless there is mutual agreement to submit package proposals on specific impasse items.
- (10) The offer 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 tendered to the parties. The parties shall notify the City Recorder of the status of negotiations five working days after receiving the findings of act. If such notice indicates that one or both of the parties do not accept the Factfinding Board's recommendations or that the parties have not otherwise settled the dispute, the City Recorder may publicize the final offer selected by the Board of Factfinders no sooner than five days after it has been received.
- (II) Within 30 days of receipt of the factfinding report, the City Manager shall inform the City Council of the status of negotiations including any mutual settlement on continued impasse proceedings under this ordinance.
- (a) In the event of either party refusing to accept the Factfinding Board's recommended selection, the Exclusive Representative may file a notice of intent to strike. Such notice shall be filed with the City Recorder and shall be delivered by registered or certified mail to the other party in interest.

- (12) Should a strike occur or be threatened, the Council and City Manager may determine that a strike or a threatened strike creates a clear and present danger or threat to the public health and safety. Should they so determine, they shall direct the City Attorney to seek injunctive relief in the Circuit Court of Baker County.
- (13) If after a hearing, the Court finds that the strike creates a clear and present danger or threat to the public health and safety and further finds that there is no other feasible method for the protection of the public health and safety, it shall grant any appropriate relief. If the Circuit Court so orders, the parties shall submit the labor dispute to final and binding arbitration within ten days of the Court's order. Each party shall submit one final offer of settlement to the arbitrator accompanied by a statement of the reasons for the party's position. The arbitrator shall, within five days and without hearing, select the most reasonable of offers thus presented in accordance with subsection "8" and "9" of this section. Such selection shall be incorporated into the labor agreement.
- (14) Nothing in this section shall be construed to prohibit the parties at any time from voluntarily agreeing to make the award of the Factfinding Board final and binding on both parties.
- c. No collective bargaining agreement or arbitrator's decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the City's funds, spending, budget or substantially impair or limit the performance of any statutory duty of the City. A collective bargaining agreement or arbitrator's award may provide for benefits conditional upon specified funds to be obtained by the City, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or a lesser amount is obtained.

SECTION 12. Strikes.

- a. Participation in a strike shall be unlawful for any public employee who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the Board or recognized by the City.
- b. It shall be lawful for a public employee who is not prohibited from striking under subsection a of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike after:
- (1) The requirement of Section 11 of this ordinance relating to the resolution of labor disputes have been complied with in good faith;
 - (2) The proceedings for prevention of any prohibited practice have been exhausted;
 - (3) Thirty days have elapsed since the Factfinders findings of fact and recommendation have become public; and
 - (4) The exclusive representative has given ten days notice by certified or registered mail of its intent to strike and stating its reasons for its intent to strike to the City. The notice shall include the date and time the strike will begin.
- c. No labor organization shall declare or authorize a strike of public

employees which is or would be in violation of this section. When it is alleged in good faith by the City that a labor organization has declared or authorized a strike of public employees which is or would be in violation of this section, the employer may seek relief pursuant to Section 14 of this ordinance.

d. When a labor organization or individual disobeys an order of the appropriate Circuit Court issued pursuant to enforcing an order of the Board, they shall be punished according to the provisions of ORS Chapter 33 except that the amount of the fine shall be at the discretion of the Court.

e. An unfair labor practice by the City shall not be a defense to a prohibited strike. The Board, on the filing of an unfair labor practice alleging that the City has committed an unfair labor practice during or arising out of the collective bargaining procedures shall take immediate action on such charge and if required petition the court of competent jurisdiction for appropriate relief or a restraining order.

f. Public 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 the section pertaining to prohibited strikes.

SECTION 13. Costs. Costs of factfinding, bargaining unit determination, and certification or decertification elections shall be borne equally by the City and the bargaining unit. Any labor organization seeking certification as a bargaining agent shall be required to demonstrate financial responsibility to meet the requirements of this section to the satisfaction of the City.

SECTION 14. Ordinance Enforcement Enforcement and compliance with the provisions of this ordinance shall be by one of the following two methods:

a. Suit in equity brought in the Circuit Court of the State of Oregon for Baker County by the City or by a duly elected bargaining representative against any person or party who it is claimed has violated this ordinance.

b. A person violating any of the provisions of this ordinance shall upon conviction in the Municipal Court pay a fine of not to exceed \$500.00 for each violation and pay the costs of the proceedings. Each day's violation of a provision of this ordinance shall constitute a separate offense.

SECTION 15. 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 16. Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health and safety of the City of Baker, 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 approval by the Mayor.

PASSED by the City Council and approved by the Mayor of the City of Baker, Oregon this 13th day of January, 1976.