

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. 05-044

Approve the updated and revised Employer-)
Employee Relations Resolution No. 78-303)
which was re-written as required by the)
Public Employment Relations Board)
Decision in the matter of SF-CE-41-M; SF-)
CE-63-M and update and correct various)
minor sections of the Resolution to align the)
document with the law, decision and County)
practices.)
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The Board of Supervisors of the County of Monterey does hereby resolve as follows.

The previous Employer-Employee Relations policy as set forth in Resolution No. 78-303 is repealed and a new policy to be known, as the Employer-Employee Relations Resolution of Monterey County shall be established as set forth below.

Section I. 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.) captioned "Local Public Employee Organizations" by providing orderly procedures for the administration of employer-employee relations between the County and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of federal or state law, County ordinances, resolutions and rules which establish and regulate personnel and employee relations, or which provide for other methods of administering employer-employee relations. This Resolution is intended, instead, to strengthen the existing methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employee organizations and the County.

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 (or County Ordinance).

However, nothing herein shall be construed to restrict any legal or inherent exclusive County rights, with respect to matters of general legislative, or managerial policy, which include among others: the exclusive right to determine the methods, means, and personnel by which County government operations are to be conducted as well as to exercise complete control and discretion over its organization, operations and the technology of performing its work and to determine the mission, function and necessity of all or part of each of its constituent departments, boards, and commissions and to take all necessary actions to carry out their mission, functions and necessity, or any part thereof, as well as to set standards of service to the public.

The County also retains the sole right to administer the County Personnel Policies and Practices Resolution; to classify or reclassify positions; to add or delete positions or classes to or from the County Budget or Salary Resolution; to establish standards for employment, promotion, and transfer of employees; to direct its employees, to establish rules and regulations; to take disciplinary action for proper cause; to establish work schedules and work assignments; and to relieve its employees from duty for lack of work or other legitimate reasons. The County retains the right to be the sole judge of the qualifications and competence of its officers and employees.

The County reserves the right to take whatever action may be necessary in an emergency situation. However, an Exclusively Recognized Employee Organization affected by the action shall be notified promptly of any such emergency action that affects matters within the scope of representation.

Section II. DEFINITIONS

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

- A. **APPROPRIATE UNIT** means a unit of employee classes or positions established pursuant to this document.
- B. **COUNTY** means the County of Monterey, and where appropriate, refers to the County Board of Supervisors or any duly authorized County representative as herein defined.
- C. **CONFIDENTIAL EMPLOYEE** means an employee, who, in the course of his or her duties, has access to information relating to the County's administration of employer-employee relations, is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions, and is designated by the County Administrative Officer as confidential.
- 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. It does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to the Impasse Procedures in this Resolution.
- E. **DAY** means calendar day unless expressly stated otherwise.
- F. **EMPLOYEE** means any person employed by the County in an authorized position as listed in the current County Budget, except elected officers.
- G. **EMPLOYEE ORGANIZATION** means any bona fide organization which includes employees of the County and which has as one of its primary purposes representing such employees in their relations with the County; provided, however, that said organization has no restriction on membership based on race, color, creed, gender, or national origin, or age (age 40 and over), marital status, denial of Family and Medical Care Leave, disability (mental and

physical) including HIV and AIDS, medical condition (cancer and genetic characteristics), religion, sex and sexual orientation.

- H. **EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION** means an organization that has been formally acknowledged by the County as the sole employee organization representing the employees in an appropriate representation unit pursuant to this Resolution, 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 without regard to race, color, creed, gender, or national origin, or age (age 40 and over), marital status, denial of Family and Medical Care Leave, disability (mental and physical) including HIV and AIDS, medical condition (cancer and genetic characteristics), religion, sex and sexual orientation.
- I. **EMPLOYEE RELATIONS OFFICER** means the County Administrative Officer or his or her duly authorized representative.
- J. **IMPASSE** means that the representatives of the County and an Exclusively 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.
- K. **MAJORITY** for the purposes of this Resolution shall mean 50% plus 1.
- L. **MANAGEMENT EMPLOYEE** means any employee, designated by the Administrative Officer, who is a department head or assistant department head, or who has significant responsibilities for the formulation or administration of County policies and programs, or who regularly gives personnel, management or policy level advice to a department head or an assistant department head.
- M. **MANAGEMENT REPRESENTATIVE** means the County Administrative Officer and/or person(s) duly authorized by the County Administrative Officer to act as a representative of the County for Employer-Employee relations.

- N. **MEDIATION** means the efforts of an impartial third person or persons functioning as an intermediary to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion, and advice.
- O. **MEET AND CONFER IN GOOD FAITH** means performance by duly authorized management representatives and by duly authorized representatives of an Exclusively Recognized Employee Organization of their mutual obligation to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. This mutual obligation shall not require either party to agree to a proposal or to make a concession.
- P. **PROFESSIONAL EMPLOYEES** means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including but not limited to attorneys, physicians, registered nurses, engineers, architects, and the various types of physical, chemical, and biological scientists.
- Q. **PROOF OF EMPLOYEE SUPPORT** shall mean the documentation presented by an employee organization to the Employee Relations Officer indicating approval by the required number of employees whom the employee organization purports to represent.
- R. **REPRESENTATION UNIT** means a unit composed of County employees for the purposes of employee representation, and which has been established in accordance with this Resolution.
- S. **SCOPE OF REPRESENTATION** means those matters relating to employment conditions and employer-employee relations, including wages, hours, and other terms and conditions of employment; except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order or any other matter covered by Section I of this Resolution.
- T. **SUPERVISORY EMPLOYEE** means any employee other than a management

employee who has the authority, in the interest of the County, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or the responsibility for directing the work or adjusting the grievance of other employees or effectively to recommend such actions. In connection with the foregoing, the exercise of authority for such action must not be merely of a routine or clerical nature, but must require the use of independent judgment.

Section III. EMPLOYEE RIGHTS

A. All Employees

Subject to the provisions of this Resolution, employees of the County shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation of all matters of employee relations.

Employees of the County shall also have the right to refuse to join or participate in the activities of employee organizations. Employees shall also have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against because of his/her exercise of these rights.

B. Designation in Selected Classifications/Position

Except where preempted by federal, state or local law(s), it is the sole right of the County to determine the placement of a classification or position to one of the designations referred to below:

1. The "Peace Officers" as set forth in Penal Code Sections 830.1 and 830.3(b) shall be represented by an organization that is comprised solely of such peace officers.
2. "Management Employees", to the extent authorized by law, may only be represented by an organization composed solely of management employees and which does not represent any other County employees.
3. "Confidential Employees" to the extent authorized by law, may only be represented by an organization composed solely of confidential employees and which does not represent any other County employees.
4. "Supervisory Employees" to the extent authorized by law, shall be represented in a recognized bargaining unit composed solely of supervisory employees.
5. "Professional Employees" to the extent authorized by law, have a right to a separate bargaining unit unless such employees determine by majority vote that the unit to which they choose to belong shall be comprised of Professional as well as other employees. (See election ballot procedures.)

Section IV. REPRESENTATION PROCEDURES

GENERAL PROVISIONS

A. Proof of Support

The required number of employees whom the employee organization purports to represent shall provide proof of employee support. Such support shall be by one or any combination of the following methods:

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:
3. Employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder. Each such card or petition shall indicate the purpose of the authorization card or petition and also contain the following information:
 - a. Printed name of the employee and signature;
 - b. Employee's job classification;
 - c. Employee's department;
 - d. Date on which the individual's signature was obtained. An undated signature or a signature dated more than one calendar year prior to the filing of the petition requiring employee support shall be invalid for the purpose of calculating proof of support. Any signature meeting the requirements of this section shall be considered valid even though the signatory has executed authorization for more than one employee organization;
 - e. In the event that more than one form of proof of employee support is submitted by an employee organization for the same employee, a petition or authorization card signed by the employee which bears the most recent date shall prevail;

- f. Only signatures of employees currently employed in permanent budgeted positions within the proposed representation unit on the date the petition is filed, and whose signatures have been executed within one calendar year prior to the date the petition is filed, shall be accepted as proof of employee support;
- g. Dues deduction authorizations for more than one employee organization for the bank account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization that shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee;
- h. The total number of employees in a proposed representation unit shall be determined by using the County Budget, adjusted to reflect the permanent budgeted positions occupied as of the closing date of the payroll period immediately preceding the date on which the petition is filed.

B. Window Period

A Petition of any nature under these rules shall be filed with the Employee Relations Officer during a window period of 30 calendar days which falls not more than 120 nor less than 90 calendar days before the expiration date of a Memorandum of Understanding.

C. Posting notices of Petitions

The County shall post a notice of any petition filed under this Resolution not later than 15 working days from its receipt. The notice will be posted conspicuously on employee bulletin boards in each facility of the County in which members of the unit claim to be appropriate are employed. The notice shall remain posted for 20 calendar days.

D. Petition for Recognition

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

and documentation:

1. Name and address of the employee organization;
2. Names and titles of its officers, as well as designation of the officials authorized to act as representatives of the organization in matters relating to employer-employee relations with the County.
3. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing the employees in their employment relations with the County.
4. A statement of whether or not the organization is a chapter or local of, or affiliated with, a regional or state, or national or international labor organization and, if so, the name and address of each such regional, state, national or international labor organization.
5. Certified copies of the national and local organization's constitution and/or bylaws if applicable.
6. A designation of the name and address of the person or office to which notices may be sent by regular United States mail, and which notices will be deemed sufficient notice to the organization for all purposes.
7. A statement that the organization has no restriction on membership based on race, color, creed, national origin, gender or age, religion, sexual orientation, mental or physical disability or medical condition.
8. The job classification(s) and/or position title(s) of County employees in the unit claimed to be appropriate.
9. A statement, accompanied by appropriate proof, that the employees in the unit claimed to be appropriate and the approximate number of employees therein.
10. A statement, accompanied by appropriate proof, that the employee organization has in its possession, proof of employee support as herein defined, to establish that at least thirty (30) percent of the employees in the unit claimed to be appropriate and have designated the employee

organization to represent them in their employment relations with the County. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.

11. A request that the Employee Relations Officer 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.
12. A statement that the organization, as does the County, agree to abide by all the provisions of this Resolution.
13. A certified copy of the dues structure. This statement shall be kept current by the organization.
14. 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.

E. Procedure Upon County Receipt of Petition

Upon receipt of the Petition, the Employee Relations Officer shall determine whether there has been compliance with the requirements of the Petition and whether the proposed representation unit is an appropriate unit in accordance with this Resolution.

1. Notice to Petitioning Organization

If the Employee Relations Officer makes an affirmative determination on the three matters in Paragraph A of this Section, 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 not take action on said request for thirty (30) days thereafter.

If either of the foregoing matters is not affirmatively determined, the Employee Relations Officer 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 VIII of this Resolution.

2. Notice to and Exclusively Recognized Employee Organization

If the petitioning organization seeks to represent employees who are then currently represented by an Exclusively Recognized Employee Organization, the Employee Relations Officer shall inform the Exclusively Recognized Employee Organization of the receipt of the petition and any action thereon by the Employee Relations Officer.

F. Challenges to petition for recognition

Within thirty (30) days of the date of such written notice, other Exclusively Recognized Employee Organizations may file a challenging petition seeking to become the Exclusively Recognized Employee Organization of the employees in the same or in an overlapping unit, 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 set forth in Section IV. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such petition for the purpose of ascertaining a more appropriate unit, at which time the petitioning employee organization shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section IV. The petitioning employee organization shall have fifteen (15) days from the date that notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section VIII.

G. Decertification Petitions

1. Filing Period

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 Employee Relations Officer only during the thirty (30) day period falling not more than one hundred twenty (120) days nor less than ninety (90) days

before the expiration of the Memorandum of Understanding.

2. Proof of Support

Such petition must be accompanied by proof of employee support, as set forth in this section, equal to at least thirty percent (30%) of the employees occupying permanent budgeted positions within the appropriate representation unit. 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 seeking decertification as a representative of the 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 (30) percent 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 Employee Relations Officer or to a mutually agreed disinterested third party within the time limits specified in the first paragraph of this Section.

3. Combined Petition

A petition for decertification may be combined with a petition that seeks to certify a Petitioning Employee Organization as an Exclusively Recognized

Employee Organization. If, pursuant to this Section, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

4. County Response to Petition for Decertification

The County shall respond in accordance with the provisions of Section IV of this Resolution. Upon the determination of a valid petition, as determined by the applicable provisions of this Resolution, the Employee Relations Officer or agency representative shall arrange for a secret ballot election using the procedure set forth in Section IV.J, to determine if the Employee Organization shall be decertified.

J. Election Procedures

1. Upon the appropriate showing of support by the petitioning Employee Organization(s) and, both the County and the Employee Organization have met the preconditions stated in Sections IV, the Employee Relations Officer shall notify the appropriate Employee Organization(s) and shall arrange for a secret ballot election to ascertain the free choice of employees within the representation unit.

When an election is required pursuant to this Resolution, it shall be conducted in the following manner consistent with the provisions of this Resolution and the provisions of the Meyers-Milias Brown Act (Government Code section 3500 *et seq.*):

- a. The Employee Relations Officer shall arrange for a secret ballot election to be conducted by an Election Supervisor appointed by the County Registrar of Voters, California State Mediation and Conciliation Service – a Division of the State Department of Industrial Relations, or other qualified agency.
- b. Employees entitled to vote in a representation election shall be those current employees in permanent budgeted positions, within the

representation unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days prior to the commencement of the election.

- c. Eligible voters shall include those persons who did not work during such period because of an authorized leave of absence and who are employed by the County in the same unit on the date of the election. However, employees on such authorized paid leave of absence shall not receive any special notice of election and no absentee ballots will be accepted.
- d. Employees eligible to vote in a representation election shall not suffer loss of wages or benefits for reasonable time spent in voting in such election.

2. Authority of Election Supervisor

The Election Supervisor shall have the final authority to make such arrangements and rulings, as he/she deems necessary to carry out the election. At least twenty (20) days prior to the election, the Election Supervisor shall meet with the eligible employee organizations and management representation to discuss the election, arrangements, and rules. Such rules shall be made available to the organizations no later than ten (10) days prior to the election. In the event the election is held by a qualified outside agency, the rules of that agency shall apply for the purposes of this paragraph.

3. Contents of Ballot and Cost

- a. In an election where there are more than two (2) choices on the ballot, including the choice of no representation organization, and none of the choices receive a majority of the votes cast by the employees within the representation unit, a run-off election shall be conducted between the choices receiving the largest and second largest number of votes.
- b. Each eligible Employee Organization shall submit to the Employee

Relations Officer the designation it desires on the ballot no later than twenty (20) calendar days before the election. Such designation shall be the official name of the organization as submitted in their bylaws, or an abbreviated version thereof. If any organization fails to submit such designation, the Employee Relations Officer shall prepare a designation for use on the ballot. Lot shall determine the order in which the eligible choices appear on the ballot.

- c. In the case of a decertification election, the incumbent Employee Organization shall be one choice on the ballot.
- d. The ballots shall pose the question "*For the purpose of being represented in respect to wages, hours, and other terms and conditions of employment, I select one of the following.*" The eligible choices, including the choice of no representation, shall be listed on the ballot in the order as determined by lot.
- e. The ballots shall also pose the question: "*Shall [Union] be elected as the exclusive representative of all employees including the Professional Employees associated with this unit?*"
- f. The ballots shall be printed at no expense to the concerned Recognized Employee Organizations.

4. Notice of Election and Observers

- a. A notice of election in a form approved by the Elections Supervisor shall be posted at locations serving employees in the unit involved at least five (5) calendar days prior to the election.
- b. Each eligible employee organization and the County are authorized to provide one observer at each polling place. Each party shall be responsible for the presence of his observers and no balloting or counting shall be delayed because of the absence of one or more observers.

5. Challenges to Voter Eligibility

- a. Any authorized observer may challenge the eligibility of a voter. It

shall be the duty of the Election Supervisor or his/her designee to place the challenged ballot in a sealed envelope indicating that the voter in question has cast a challenged ballot.

- b. The Election Supervisor shall subsequently determine the eligibility of the voter who cast a challenged ballot and either count or reject said vote. The decision of the Election Supervisor shall not be subject to appeal and shall be final and binding on all parties.

6. Voting Locations, Voter Rights and Electioneering

- a. Voting locations shall be agreed to by the parties or designated by the Election Supervisor after consultation with the parties no later than fifteen (15) days before the election.
- b. The election will be by secret ballot and voters will be allowed to vote without fear of restraint or coercion.
- c. Electioneering will not be permitted on the day of the election.

7. Election Supervisor Duties

- a. At the conclusion of the election, the Election Supervisor, after adjudicating the status of the challenged ballots, shall count all the ballots and certify the results of the election. These results shall be final and binding on the parties.
- b. The Election Supervisor is hereby authorized to make such administrative and procedural rulings, as he or she deems necessary to carry out the elections.
- c. A violation of these rules to the election may serve to void the election. The Election Supervisor shall have the sole authority to make a ruling under this section.

Section V. 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:

- A. The efficient operations of the County and its compatibility with the primary responsibility of the County and its employees to effectively and economically serve the public, and
- B. Effective representation based on recognized community of interest considerations.
- C. The appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered in community of interest analysis shall be:
 - 1. The unit shall include the broadest feasible groups of employees based upon internal and occupational community of interest. Fragmentation of units is to be avoided.
 - 2. Consistency with the organizational patterns of the County.
 - 3. The history of employee relations in the unit, among other employees in the County, and in similar public employment.
 - 4. Similarity of duties, qualifications, skills, and working conditions of employees.
 - 5. No County employment classification title shall be included in more than one representation unit. Supervisory employees and non-supervisory employees shall not be included in the same unit.
 - 6. Professional employees shall not be denied the right to be represented separately from non-professional employees by a professional employee organization consisting of such employees.
 - 7. Management and/or confidential employees shall not be included in any unit, which includes non-management and/or non-confidential employees.

Section VI. ESTABLISHMENT OF REPRESENTATION UNITS

A. Petition

A representation unit may be established by a petition of employees within the proposed unit. The petition must be accompanied by proof of employee support equal to at least thirty percent (30%) of the employees within the requested unit. The petition shall be filed with the Employee Relations Officer. The Employee Relations Officer shall give notice of the filing to the employees in the proposed unit, Recognized Employee Organizations, and the Board of Supervisors.

The petition shall include a list of classifications to be included in the proposed unit (as such classifications are shown in the County's then current Salary Resolution) and departments to which they belong.

B. Appropriateness and Certification of Unchallenged Unit.

If the employees in the proposed unit are unrepresented and the Employee Relations Officer agrees that the proposed unit is appropriate according to this Resolution and no challenge as provided in Section VI, Paragraph C, is filed, the Employee Relations officer shall establish the unit and make appropriate notification. Such notification will include notification to the Board of Supervisors, affected departments, and employees in the representation unit, by posting notice on bulletin boards and with Recognized Employee Organizations that filed a written request for such notification.

If the Employee Relations Officer and the petitioner do not agree on the appropriateness of the unit and such disagreement cannot be resolved by mutual agreement, the parties will request the intervention of the California State Mediation and Conciliation Service – a Division of the State Department of Industrial Relations.

C. Challenge by Employees.

Employees or Exclusively Recognized Employee Organizations who desire to challenge the appropriateness of the proposed representation unit, or seek to establish a different unit consisting in whole or in part of the employees in the representation unit originally proposed, shall file a petition with the Employee Relations Officer within thirty (30) days of the date the notice is given to the employees of the originally proposed unit. Such petition shall be considered a challenging petition and must be accompanied by proof of

employee approval equal to at least thirty percent (30%) of the employees within the requested unit and 30% of the employees occupying permanently budgeted positions whose unit status is in dispute.

D. Amendment of Petition.

Upon receipt of a challenge, the Employee Relations Officer shall notify the original petitioners of such challenge. The original petitioners may file an amended petition within seven (7) calendar days from the date such notice was provided. . If no amended petition is filed and the disagreement cannot be resolved by mutual agreement among the parties, they shall request the intervention of the California State Mediation and Conciliation Service as provided below. Should the petitioner(s) and the County reach agreement on the matters in dispute, a written memorandum shall be prepared setting forth said agreement, which shall include a description of the unit to be established. The execution of the agreement shall resolve the matter and the Employee Relations Officer shall certify the unit(s) agreed upon and notify the parties.

E. Determination of Dispute

If a challenging petition(s) has been filed and the challenge has not been resolved by amendment of the original petition or by agreement, any of the parties or the County may petition to have the matter submitted to the appeal process set forth in Section X,

F. In the absence of a petition

In the absence of a petition to establish representation units, the Employee Relations Officer may establish appropriate representation units in accordance with the criteria in Section V after consultation with the Recognized Employee Organizations.

Section VII. MODIFICATION OF REPRESENTATION UNITS

- A. Employees or an employee organization may file a petition for modification of an established representation unit. The petition shall be submitted to the Employee Relations Officer, accompanied by proof of employee support that the petitioner represents more than fifty percent (50%) of the employees who, if the petition were successful would be placed in a separate or another bargaining unit.
- B. The petitioners shall also submit a list of the classifications to be included in the modified unit, the number of employees in each classification, as well as the divisions and departments to which they belong. Requests for modification of an established representation unit may be filed not more than 120 nor less than 90 days prior to the expiration of any governing MOU. The County may also propose a unit modification under the provisions of this section without proof of employee approval.
- C. The Employee Relations Officer shall give notice of the request for modification of an established representation unit to the employees in the proposed unit, to the recognized representative of the unit or units affected thereby, to affected departments, and to Recognized Employee Organization(s).
- D. Within thirty (30) days of the date the notice provided for in subdivision B above is given to the employees in the proposed modified unit, a challenge(s) to the appropriateness of the proposed modified unit or a petition for the establishment of a different unit, may be filed by employees representing at least thirty percent (30%) of the employees in the proposed modified unit or fifty percent (50%) of the employees in the original representation unit who would remain in said unit if the petition for modification of the original unit is granted, The challenge shall be filed with the Employee Relations Officer and accompanied by proof of support in the amounts stated above.
- E. If the Employee Relations Officer agrees that the proposed unit is appropriate and in accordance with the criteria and no challenge as provided in Section VI, Paragraph C is filed, the Employee Relations Officer shall establish the modified unit and make appropriate notification. Such notification shall include notification to the Board of Supervisors, affected departments, petitioners and employees in the modified representation unit.

F. If the Employee Relations Officer and the petitioners do not agree on the appropriateness of the unit and such disagreement cannot be resolved by mutual agreement, the matter will be referred to the appeal process, as provided in Section VIII, for hearing and final decision. If the matter is resolved by agreement, the Employee Relations officer shall certify the modified unit and make appropriate notification.

G. If a challenge is filed, the Employee Relations Officer shall notify the petitioners who submitted the original petition for modification of the representation unit and the employees of the existing representation unit. If an amended petition for modification is not filed within seven (7) calendar days of such notice and/or the parties cannot resolve the challenge by mutual agreement, the challenge shall be submitted to the appeal process for determination, as provided in Section VIII of this Resolution. The County may also challenge modification petition(s) or amendments thereto.

H. If a challenging petition(s) has been filed and the challenge has not been resolved by agreement, amendment of the original petition, or withdrawal of the challenging petition(s), any of the parties, including the County, may petition to have the matter submitted to the appeal process in accordance with the procedure as prescribed in Section VIII of this Resolution.

I. Within thirty (30) days of any final action creating or changing a classification title, the County Administrative officer shall assign such classification title to an existing or a new representation unit or declare that no assignment to a representation unit shall be made.

J. Employees or Exclusively Recognized Employee Organizations who desire to challenge action taken under Paragraph G or H of this section and seek to establish a different unit consisting in whole or in part of employees within such classification title, shall file a petition with the Employee Relations Officer within thirty (30) days of the date the notice is given pursuant to Paragraph G or H of this section. The petition must be accompanied by proof of employee support equal to at least thirty percent (30%) of the employees within such new or changed classification title. Such challenge may be resolved by mutual agreement and, in the event the County and petitioners reach agreement on the matter in dispute, they shall jointly prepare a statement that shall include a description of the units to be established. The execution of the agreement

shall resolve the matter and the Employee Relations Officer shall establish the units agreed upon. If the parties do not settle the matters disputed by the challenge, such challenge shall be resolved in accordance with the appeal procedure as prescribed in Section VIII of this Resolution.

K. During August and February, the Employee Relations Officer, after consultation with affected Exclusively Recognized Employee Organizations, may assign existing job classifications to a more appropriate unit if he/she finds there is a more appropriate unit to which such job classification can be assigned and the Exclusively Recognized Employee Organization (s) agrees to such reassignment. In the absence of an agreement on the assignment or reassignment of an existing job classification to another unit, the Employee Relations Officer's authority to make such assignment shall be limited to those instances where there has occurred a material change in the circumstances affecting the unit determination of the class in question. Examples of material changes and circumstances shall include, but not in any way be limited to, substantial reorganization of a County department, a consolidation and/or elimination of a County department(s) or a substantial change in the duties or obligations of a County department or a County job classification.

Section VIII. APPEALS

In the event agreement is not reached between the County and affected employee organizations concerning the appropriateness of a proposed representation unit or a modification thereof the employee organization may, within ten (10) days of notice thereof request the intervention of the California State Mediation and Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter, appeal such determination to the County Board of Supervisors for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Section 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a registration request or a representation petition or a decertification petition or a unit modification petition has not been filed in compliance with the applicable provision of this Resolution may, within fifteen (15) days of notice of such determination appeal the determination to the Board of Supervisors for final decision.

Appeal to the Board of Supervisors shall be filed in writing with the Clerk to the Board, and a copy thereof served on the Employee Relations Officer. The Board of Supervisors shall begin consideration of the matter within thirty (30) days of the filing of the appeal. The Board of Supervisors may, in its discretion, refer the dispute to a third party hearing process. Any decision of the Board of Supervisors on the use of such procedure, and/or any decision of the Board of Supervisors determining the substance of the dispute shall be final and binding.

Any costs incurred as a result of the use of the appeals process shall be borne by the party incurring them, provided, however, that costs incurred for the services of a third party hearing officer and/or panel as may be requested solely by the Board for an advisory opinion shall be borne by the County.

Section IX. MEETING AND CONFERRING

A. Only Exclusively Recognized Employee Organizations shall be entitled to meet and confer with duly designated management representatives on wages, hours, and other terms and conditions of employment for such units. The number of employees receiving paid released time to act as representatives of such employee units shall be limited to three (3) at any one meeting. However, employee organizations may request additional representatives to receive paid released time, dependent upon the type of negotiations. Criteria for consideration of additional table representatives shall include whether multiple units are represented and other compelling factors presented by the bargaining unit. When same table multi-unit meeting and conferring is agreed upon, additional employee paid released time will be allowed at the rate of one representative per additional unit, up to a maximum of five (5) total employee representatives".

All meet and confer sessions shall be conducted in private and observers shall only be allowed upon mutual consent of all the parties. This shall not preclude individual employees from consulting with duly designated management representatives on the same matters.

B. The County is under no obligation to meet and confer with Exclusively Recognized Employee Organizations that do not comply satisfactorily with the requirements this Resolution or willfully violate any of the provisions of this Resolution, or who are engaged in any illegal action against the County.

C. Meeting and conferring shall not be required on any subject preempted by federal or state law, or implementing rule or regulation issued pursuant thereto; nor shall meeting and conferring be required on County Rights as defined in Section I. Proposed amendments to this Resolution shall be subject to consultation after reasonable notice.

D. Each County employee designated by an Exclusively Recognized Employee Organization to represent the members of a collective bargaining unit shall be employed in a job classification, which is included in the unit represented by the organization at the bargaining table unless otherwise agreed in the MOU of the Exclusively Recognized Employee Organization.

E. A County employee whose position has been identified by the County as "confidential" shall not act as a representative of a non-confidential employee in any

matter within the scope of representation, including the meet and confer process.

F. A County employee whose job position has been identified by the County as "supervisory" shall not act as a representative of a non-supervisory employee in any matter within the scope of representation, including the meet and confer process.

G. A County employee whose job position has been identified by the County as "management" shall not act as a representative of a non-management employee in any matter within the scope of representation, including the meet and confer process.

H. This section shall not otherwise limit the right of employees to be members of and to hold office in an employee organization.

I. Agreements reached as a result of meeting and conferring shall be incorporated in a written Memorandum of Understanding signed by the County Administrative Officer, his/ her designee when appropriate, and the duly designated representatives of the Exclusively Recognized Employee Organization with whom the agreement has been reached. Signed Memorandums of Understanding shall be mutually submitted to and supported in total before the Board of Supervisors, but shall not be in effect or binding on the parties, until formally approved by the Board of Supervisors.

Section X. IMPASSE PROCEDURES

A. Initiation of Impasse Procedures

If the meet and confer process has reached an 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 disputed issues. The Employee Relations Officer shall then schedule an impasse meeting promptly. The purpose of such impasse meeting shall be:

1. To identify and specify in writing the issue or issues that remain in dispute.
2. To review the position of the parties in a final effort to resolve such disputed issue or issues.
3. If the dispute is not resolved, to discuss arrangements for the possible utilization of the impasse procedures provided herein.

B. Impasse Procedures

1. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be promptly submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues nor shall an employee organization or County representative provide such information to the public or media, unless the County and employee organization agree otherwise.
2. If mediation is not used or successful, the parties may mutually agree on the facts and issues, which will be submitted to fact-finding in accordance with the procedures outlined below, provided, however, that no fact, issue or matter, which has not been a matter of discussion between the parties during prior meet and confer, shall be submitted to fact-finding.
3. If the parties agree on fact-finding, they may agree on the appointment of one or more fact-finders. If they fail to so agree on one or more fact-finders, a fact-finding panel of three (3) shall be appointed in the following manner: One member of the panel shall be appointed by the Employee Relations Officer, one member shall be appointed by the Recognized

Employee Organization, and those two shall name a third, who shall be the chairperson. If they are unable to agree upon a third, they shall select by agreement the third member from one or more lists of names to be provided by the American Arbitration Association or the California State Mediation and Conciliation Service.

The following constitute the jurisdictional and procedural requirements for fact-finding:

- a. The fact-finder(s) shall consider and be guided by applicable federal and state laws, this Resolution, (and Ordinance provisions).
- b. Subject to the stipulations of the parties, the fact-finders shall determine and apply the following measures and criteria in arriving at their findings and recommendations:
 - i. As relevant to the issues in dispute, the fact-finders shall compare the total compensation, hours and conditions of employment of the employees involved in the fact-finding proceeding with the total compensation, hours and conditions of employment of other employees performing similar services in public and private employment in the same and comparable communities. "Total compensation, shall mean all wage compensation, including but not limited to premium, incentive, minimum, standby, out-of-class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits; medical and hospitalization benefits; and insurance, pension and welfare benefits.
 - ii. The fact-finder(s) shall then adjust the results of the above comparisons based on the following factors:
 - a. Equitable benefit relationships between job classifications and positions within the County.

- b. The pattern of change that has occurred in the total compensation of the employees in the unit at impasse as compared to the pattern of change in the average consumer price index for goods and services, commonly known as the cost of living index.
 - c. The benefits of job stability and continuity of employment.
 - d. The difficulty, or lack thereof, of recruiting and retaining qualified personnel.
 - iii. The fact-finder(s) shall then determine recommendations based on the comparisons, as adjusted above, subject to the financial resources of the County to implement them, taking into account:
 - a. Other legislatively determined and projected demands on agency resources, and
 - b. Assurance of sufficient and sound budgetary reserves, and
 - c. Statutory limitations on tax and other revenues and expenditures.
- c. The fact-finder(s) shall make written findings of fact and recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairperson of the fact-finding panel shall serve such findings and recommendations on the Employee Relations Officer and the designated representative of the Exclusively Recognized Employee Organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the fact-finder or the chairperson of the fact-finding panel shall make them public by submitting them to the Clerk of the Board for consideration by the Board of

Supervisors in connection with the Board's legislative consideration of the issues at impasse.

4. If the parties agreed to submit the impasse directly to the Board of Supervisors, or if the parties did not agree on mediation or the selection of a mediator and did not agree on fact-finding, or having so agreed, the impasse has not been resolved through such mediation and/or fact-finding, the Board of Supervisors shall take such action regarding the impasse as it in its discretion deems appropriate as in the public interest. Any action by the Board of Supervisors on the impasse shall be final and binding.

C. Cost of impasse procedures

The costs for the services of a mediator and fact-finder or chairperson of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding shall be borne equally by the County and the Exclusively Recognized Employee Organization. The cost for a fact-finding panel member selected by each party, and other separately incurred costs shall be borne by such party.

Section XI. PAYROLL DEDUCTIONS ON BEHALF OF EMPLOYEE ORGANIZATIONS

Upon acknowledgement by the County of an Exclusively Recognized Employee Organization under this Resolution, only such Exclusively Recognized Employee Organization may be provided payroll deductions of membership dues and programs upon the written authorization of employees in the unit represented by the Exclusively Recognized Employee Organization on forms approved therefore by the County. The providing of such service to the Recognized Employee Organization by the County shall be contingent upon the Recognized Employee Organization's conformance with the terms of this Resolution and in accordance with the provisions of the Memorandum of Understanding and/or applicable administrative procedures.

Section XII. EMPLOYEE ORGANIZATION ACTIVITIES – USE OF COUNTY RESOURCES

Access to County work locations and the use of County paid time, facilities, equipment and other resources by employees or recognized organizations and those representing them shall be authorized only to the extent provided for in Memorandum of Understanding and/or administrative procedures, shall be limited to activities pertaining directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of County operations.

Section XIII. CONSTRUCTION

This Resolution shall be administered and construed as follows:

- A. Nothing in this Resolution shall be construed to deny any person, employee, organization, the County, or any authorized officer, body or other representative of the County, the rights, powers and authority granted by federal or state law (or County Ordinance provisions).
- B. This Resolution shall be interpreted so as to carry out its purposes as set forth in

Section I.

C. Nothing in this Resolution shall be construed as making the provision of California Labor Code, Section 923, applicable to County employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In the event employees engage in such actions, they shall subject themselves to discipline, up to and including termination, and may be deemed to have abandoned their employment. Furthermore, employee organizations may thereby forfeit all rights accorded them under this Resolution and other County law for a period of up to one (1) year from commencement of such activity.

Section XIV. SEVERABILITY

If any provision of this Resolution, or the application of such provision to any person 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.

OPERATIVE DATE

This resolution shall become effective on February 15, 2005.

Resolution No. 78-303 is hereby repealed.

PASSED AND ADOPTED on this 15th, day of February, 2005, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Lindley, and Smith

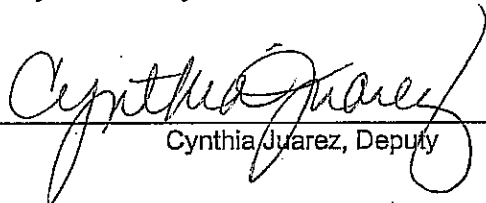
NOES: None

ABSENT: Supervisor Potter

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 72, on February 15, 2005.

Dated: March 2, 2005

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By 
Cynthia Juarez, Deputy