LABOR RELATIONS ORDINANCE

TABLE OF CONTENTS

		PAGE
ARTICLE I. GENERAL PROVISIONS		1
Section 1.	Title	1
Section 2.	Purpose.	1
Section 3.	Severability	2
Section 4.	Amendments	2
Section 5.	Administration	2
Section 6.	Definitions	2
ARTICLE II. COUNTY AND EMPLOYEE RIGHTS		5
Section 1.	County Rights	5
Section 2.	Employee Rights	5
Section 3.	Limitation of Employee Rights	6
ARTICLE III. REGISTRATION OF EMPLOYEE ORGANIZATIONS		6
Section 1.	Application for Registration	6
Section 2.	Approval of Registration: Notice of Registration	7
Section 3.	Denial of Registration	7
Section 4.	Appeal of Denial	7
Section 5.	Registered Employee Organization: Rights	8
Section 6.	Duration of Registration.	9
ARTICLE IV. RECOGNIZED EMPLOYEE ORGANIZATIONS		10
Section 1.	Recognized Employee Organization: Rights	10
Section 2.	Memorandum of Agreement	13
Section 3.	Impasse; Impasse Procedure; Exhaustion of Impasse	13
Section 4.	Fact Finding	14
ARTICLE V. REPRESENTATION UNITS		16
Section 1.	Criteria for Determination of Appropriate Unit	16
Section 2.	Modification of Appropriate Unit	17
Section 3.	Deleting Unused (Obsolete) Job Classifications from the Appropriate Unit	17
Section 4.	Assignment or Non-Assignment of New Job Classification to Unit	18
Section 5.	Appeal of Assignment	18

ARTICLE VI. REPRESENTATION PETITIONS 19
Section 1. Form of Petition 19
Section 2. Time for Filing Petitions 20
Section 3. Proof of Employee Support Required 20
Section 4. Required Registration of Employee Organizations 21
Section 5. Processing Petition for Hearing 22
Section 6. Intervention 23
Section 7. Pre-Hearing Motions 23

ARTICLE VII. UNFAIR LABOR PRACTICES 23
Section 1. Unfair Labor Practice 23
Section 2. Form of Charge 24
Section 3. Time for Filing Charge 25
Section 4. Response to Charge 25
Section 5. Attempt to Resolve 25
Section 6. Assignment of Hearing Officer and Scheduling of Hearing 26

ARTICLE VIII. NEUTRAL APPELLATE AUTHORITY 27
Section 1. Neutral Hearing Officers 27
Section 2. Assignment of Cases to Hearing Officers 27
Section 3. Payment of Costs for Hearing Officer 27
Section 4. Authority of Hearing Officer 27
Section 5. Duties of the Hearing Officer Prior to Representation Petition Hearing 28
Section 6. Conduct of Hearings 28
Section 7. Rights and Duties of the Parties at a Hearing 29
Section 8. Evidence, Records and Witnesses for a Hearing 30
Section 9. Duties of Hearing Officer Following Hearing 31
Section 10. Exceptions 32
Section 11. Decision and Order 32

ARTICLE IX. REPRESENTATION ELECTIONS 35
Section 1. Eligible Voters 36
Section 2. Ballot Proposal 36
Section 3. Majority Participation 36
Section 4. Determination by Majority of the Voters 36
Section 5. Removal of Participant from Ballot 36
Section 6. Participation of Parties in Election 37
Section 7. Objections to the Conduct of the Election 37
Section 8. Certification of Election Results 37
Section 9. Runoff Elections 38
Section 10. Duties of Hearing Officer Following Election 39

EFFECTIVE DATE 39

INDEX

PAGE

Administration 2
Amendments 2
Appeal of Assignment 18
Appeal of Denial 7
Application for Registration 6
Approval of Registration: Notice of Registration 7
Assignment of Cases to Hearing Officers 27
Assignment of Hearing Officer and Scheduling of Hearing 26
Assignment or Non-Assignment of New Job Classification to Unit 18
Attempt to Resolve 25
Authority of Hearing Officer 27
Ballot Proposal 36
Certification of Election Results 37
Conduct of Hearings 28
County and Employee Rights 5
County Rights 5
Criteria for Determination of Appropriate Unit 16
Definitions 2
Deleting Unused (Obsolete) Job Classifications from the Appropriate Unit 17
Denial of Registration 7
Determination by Majority of the Voters 36
Duration of Registration 9
Duties of Hearing Officer Following Election 39
Duties of Hearing Officer Following Hearing 31
Duties of the Hearing Officer Prior to Representation Petition 28
Effective Date 39
Eligible Voters 36
Employee Rights 5
Evidence, Records and Witnesses for a Hearing 30
Exceptions 32
Fact Finding 14
Form of Charge 24
Form of Petition 19
General Provisions 1
Impasse; Impasse Procedure; Exhaustion of Impasse 13
Intervention 23
Limitation of Employee Rights 6
Majority Participation 36
Memorandum of Agreement 13
Modification of Appropriate Unit 17

Neutral Appellate Authority 27
Neutral Hearing Officers 27
Objections to the Conduct of the Election 37
Participation of Parties in Election 37
Payment of Costs for Hearing Officer 27
Pre-Hearing Motions 23
Processing Petition for Hearing 22
Proof of Employee Support Required 20
Purpose 1
Recognized Employee Organization: Rights 10
Recognized Employee Organizations 10
Registered Employee Organization: Rights 8
Registration of Employee Organizations 6
Removal of Participant from Ballot 36
Representation Elections 35
Representation Petitions 19
Representation Units 16
Required Registration of Employee Organizations 21
Response to Charge 25
Rights and Duties of the Parties at a Hearing 29
Runoff Elections 38
Severability 2
Time for Filing Charge 25
Time for Filing Petitions 20
Title 1
Unfair Labor Practice 23
Unfair Labor Practices 23

ORDINANCE NO. 8588 (NEW SERIES)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY LABOR RELATIONS ORDINANCE FOR THE PURPOSE OF REVISING THE IMPASSE PROCEDURE, THE APPOINTMENT PROCEDURE TO THE NEUTRAL APPELLATE AUTHORITY, UNIT MODIFICATION PROCESS, AND MAKING OTHER ADJUSTMENTS.

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. ***The Labor Relations Ordinance (Ordinance No. 6273) is hereby amended to read as follows:***

ARTICLE I. GENERAL PROVISIONS

Section 1. Title.

This Ordinance shall be known as the County of San Diego LABOR RELATIONS ORDINANCE.

Section 2. Purpose.

It is the purpose of this Ordinance to establish uniform and orderly methods of communication between the County and its employees concerning their respective rights and duties as provided in the "Meyers-Milias-Brown Act" (Government Code § 3500 et seq) and the San Diego County Charter.

It is the purpose of this Ordinance to promote full communication between the County and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the County and recognized employee organizations.

It is also the purpose of this Ordinance to promote the improvement of personnel management and employer-employee relations within the County by providing a uniform basis for recognizing the rights of County employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the County.

Nothing contained herein shall be construed to supersede the provisions of existing state law or the San Diego County Charter which establish and provide for the administration of those employer-employee relations of the Personnel System. This Ordinance is intended, instead, to establish reasonable rules and regulations permitted by Government Code Section 3507 for the administration of those employer-employee relations which concern the rights of County employees to

form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation, and the rights of County employees to refuse to join or participate in the activities of employee organizations and represent themselves individually.

Section 3. Severability.

This Ordinance is subject to all current and future federal and state laws and the San Diego County Charter. If any part or provision of this Ordinance is held to be invalid or unenforceable by any tribunal of competent jurisdiction, such part or provision shall be suspended and superseded by the applicable provision or provisions of federal or state laws or the Charter and the remainder of this Ordinance shall not be affected thereby.

The enactment of this Ordinance shall not be construed as making the provisions of Section 923 of the Labor Code applicable to County employees.

Section 4. Amendments.

The Board of Supervisors may, from time to time, amend this Ordinance after consultation in good faith with representatives of recognized and registered employee organizations.

Section 5. Administration.

The Chief Administrative Officer shall implement and administer the provisions of this Ordinance. The Chief Administrative Officer and an assigned hearing officer have authority to administratively interpret this Ordinance.

Section 6. Definitions.

For the purpose of this Ordinance, the following definitions shall apply:

(a) **"Board":** The Board of Supervisors of the County of San Diego.

(b) **"Chief Administrative Officer":** The Chief Administrative Officer of the County of San Diego and his or her designee(s).

(c) **"Clerk" or "Clerk of the Board":** The Clerk of the Board of Supervisors of the County of San Diego and his or her designee(s).

ARTICLE I (Continued)

(d) **"Confidential Employee":** An employee engaged in work which makes the employee privy to the decision making process of the County affecting labor relations or personnel and employment transactions.

(e) **"Consult" or "Consultation":** Verbal or written communication for the purpose of presenting and obtaining views or advising of intended actions.

(f) **"County":** The County of San Diego, a political subdivision of the State of California.

(g) **"Days":** Calendar days, unless otherwise specified.

(h) **"Department":** An office, department or agency operated by the County.

(i) **"Department Head":** The Chief Executive Officer and/or appointing authority of a County department and his or her designee.

(j) **"Designated Representative of the Board":** The person or persons who have been specified by the Board as authorized to represent the Board in labor relations matters.

(k) **"Emergency":** An unforeseen circumstance requiring immediate implementation of an action.

(l) **"Employee" or "County Employee":** Any person employed by the County, excepting those persons elected by popular vote or appointed to office by the Governor of the state.

(m) **"Employee Organization":** Any organization which includes employees of the County and which has as one of its primary purposes representing such employees in their employment relations with the County.

(n) **"Employer-Employee Relations":** The relationship between the County and its employees on matters of employment.

(o) **"Labor Relations":** The relationship between the County and its employees on matters concerning employees' rights to choose to be or not to be represented by employee organizations; and the relations between the County and employee organizations.

(p) **"Management Employee":** An employee engaged in work having significant responsibility for the formulation of the County's program

objectives and/or the development of policies and procedures for their accomplishment.

(q) **"Mediate" or "Mediation":** The effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between the County and recognized employee organizations through interpretation, suggestion and advice.

(r) **"Meet and Confer in Good Faith":** The mutual obligation of the designated representative of the Board and representatives of a recognized employee organization, personally to meet and confer upon request 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.

(s) **"Peace Officer":** An employee who is a full-time "peace officer" as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(t) **"Professional Employee":** An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, usually of a prolonged nature in a post-secondary institution of higher learning or a hospital, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers and the various types of physical, chemical, and biological scientists.

(u) **"Recognized Employee Organization":** A registered employee organization which has been recognized by the County as the employee organization which is the exclusive representative of an appropriate representation unit of employees.

(v) **"Registered Employee Organization":** An employee organization which has complied with the provisions of Article III hereof and which may desire to become the recognized employee organization for an appropriate representation unit of employees.

(w) **"Scope of Representation":** All matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment; except, however, the scope of representation does not include consideration of the

merits, necessity, or organization of any service or activity provided by law, by executive order, by the Charter or by Board order.

(x) **"Supervisory Employee":** An employee having authority to exercise independent judgment in carrying out County policy to: hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or to adjust their grievances; or effectively 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.

(y) **"Unit" or "Representation Unit":** A group of County job classifications where employees employed in the classifications included in the group have been identified as having a community of interest appropriate for the purpose of being represented and are represented by a recognized employee organization on matters within the scope of representation.

ARTICLE II. COUNTY AND EMPLOYEE RIGHTS

Section 1. County Rights.

It is the exclusive right of the County to determine the merits, necessity and organization of each of its constituent departments, boards and commissions; set standards for services to be provided to the public, and exercise control and direction over service operations. It is also the exclusive right of the County to direct its employees, take disciplinary action for proper cause, relieve its employees from duty because of lack of work or reduced levels of service and determine the methods, means and personnel by which the County's operations are to be conducted.

Section 2. Employee Rights.

Except as otherwise provided by law, County employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. County employees shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County.

ARTICLE II (Continued)

Section 3. Limitation of Employee Rights.

The Board of Supervisors may at any time establish reasonable standards to designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by separate resolution or ordinance adopted at a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so. However, the Board may not prohibit the right of its employees who are full-time "peace officers", as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and the advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization the right of employees to form, join and participate in the activities of employee organizations shall not be restricted by the County on any grounds other than those set forth in this section.

ARTICLE III. REGISTRATION OF EMPLOYEE ORGANIZATIONS

Section 1. Application for Registration.

An organization which desires to become a registered employee organization shall file a written application with the Chief Administrative Officer, which shall include:

(a) Its name and address;

(b) The names and titles of its officers;

(c) The name and address of one person designated to receive written materials on its behalf;

(d) The names of those persons who are authorized as its representatives in any communications with the County;

(e) A statement that it has as one of its primary purposes representation of County employees in their relations with the County;

(f) A statement that it has no restriction on membership based on race, color, creed, national origin, political affiliation, sex or age.

The Chief Administrative Officer shall determine whether the application fulfills the requirements of this Section. The Chief Administrative Officer shall not unreasonably withhold registration.

Section 2. Approval of Registration: Notice of Registration.

When the Chief Administrative Officer determines that an organization's application for registration hereunder fulfills the requirements of Section 1, the Chief Administrative Officer shall approve the application and send written Notice of Approval to the representative designated by the organization pursuant to Section 1 (c). The Chief Administrative Officer shall cause County Office and department heads to be notified of the name and address of the newly registered employee organization and the names of its authorized representatives. The Chief Administrative Officer shall file the approved application with the Clerk of the Board and shall notify registered and recognized employee organizations of the name and address of the newly registered employee organization.

Section 3. Denial of Registration.

If the Chief Administrative Officer determines that an organization's application for registration does not fulfill the requirements of Section 1, the application shall be denied and the Chief Administrative Officer shall send written notice to the organization specifying the reasons for denial. The organization seeking to become registered may, within thirty (30) days of mailing of the denial, amend its application to meet the requirements of registration fully. After such thirty (30) days, and unless replaced by an accepted application, the Chief Administrative Officer shall file the denied application and written notice specifying reasons for denial with the Clerk of the Board.

Section 4. Appeal of Denial.

Notwithstanding the provisions of Article VII, Section 1 hereof, a charge alleging unreasonable withholding of registration may be filed by an employee organization seeking to become registered in accordance with Article VII.

Section 5. Registered Employee Organization: Rights.

A registered employee organization shall have the rights specified in this Section:

(a) **Access to Employees:** An authorized representative of a registered organization shall have the right to reasonable access to non-work locations during employees' non-work time upon timely request to the department head and in the absence of overriding circumstances. Such a representative shall obtain authorization from the department head prior to each entry into any non-work location of a County facility.

(b) **Distribution of Materials:** An authorized representative of a registered employee organization shall have the right to distribute representation information materials by leaving a reasonable number of copies of such materials in non-work locations of a County facility upon timely request to the department head and in the absence of overriding circumstances. All such materials shall be dated and shall contain the name of the employee organization. Materials which are thirty (30) days old or older shall be discarded. A department head shall not be held responsible for the maintenance, treatment or any other aspect of handling materials distributed by an employee organization.

(c) **Access to Employee Information:** Upon validation of a representation petition, and prior to a representation election ordered under Article VIII, Section 11 (a)(2) herein, a registered employee organization shall have the right to be provided by the Auditor and Controller, upon request, with payroll information on County employees' names, classifications and work locations relating to the petition. Such information shall be requested and provided according to the rules and regulations of the Auditor and Controller and the registered employee organizations shall pay any fees required by the Auditor and Controller for such information. In no event shall any County official except the Auditor and Controller provide any payroll information on County employees to a registered employee organization.

(d) **Meeting Places:** A registered employee organization shall have the right to the use of County facilities for meetings composed of County employees, upon timely request to the appropriate County official and in the absence of overriding circumstances. Such meetings shall be held outside regularly scheduled working hours for the group which is meeting. The registered employee organization shall also obtain any necessary permit or approval for use of a meeting room in a County facility pursuant

to the requirements of the appropriate County official responsible for the facility.

(e) **Payroll Deduction:** A registered employee organization may be granted use of the County's payroll system for deduction of membership dues and other deductions which are authorized in writing by employees in classifications which are not included in a representation unit for which the County has recognized an employee organization. All use of the County's payroll system for such deductions shall be subject to the rules and regulations of the Auditor and Controller.

(f) **Representation:** A registered employee organization may represent its members who are County employees in their individual grievances. The County is not obligated to meet and confer in good faith or enter into memoranda of understanding or agreement with a registered employee organization. The County shall not meet and confer nor enter into memoranda of understanding or agreement with a registered employee organization where the County has recognized an employee organization as representing employees in a unit.

Section 6. Duration of Registration.

(a) An employee organization, except a recognized employee organization, shall retain registration for a period of one full year from the date of the Notice of Approval. In the event an employee organization does not re-register within ten (10) County business days after registration expires, the Chief Administrative Officer shall cause written notice to be distributed to County department heads that the employee organization is no longer a registered employee organization and that the rights provided pursuant to Section 5 of this Article have lapsed. The Chief Administrative Officer shall mail a copy of the notice to the employee organization and file one copy with the Clerk of the Board.

(b) An employee organization which has been recognized pursuant to this Ordinance shall be deemed registered as to employees for which it is not recognized upon filing a letter with the Chief Administrative Officer requesting such registration. The said recognized employee organization shall be deemed registered until such time as it files a written request for withdrawal of registration.

ARTICLE IV. RECOGNIZED EMPLOYEE ORGANIZATIONS

An employee organization which is recognized by the County as the representative organization for an appropriate unit of employees shall be the sole and exclusive employee organization which shall represent such employees on matters within the scope of representation with the County; provided, however, that an individual employee who is included in an appropriate unit represented by a recognized employee organization may appear in his or her own behalf in his or her employment relations with the County. The County is not, however, obligated to meet and confer in good faith nor to enter into memoranda of understanding or agreement with such individual employee. A recognized employee organization shall remain recognized until such date that recognition is withdrawn from the organization or another employee organization is recognized for the representation unit of employees. The County shall not unreasonably withhold recognition of an employee organization.

Section 1. Recognized Employee Organization: Rights.

A recognized employee organization shall have the rights set forth herein only with respect to the employees in the unit for which the organization is recognized as the exclusive representative.

(a) **Access to Employees:** A recognized employee organization shall have the right to reasonable access to non-work locations during employees' non-work time upon timely request to the department head and in the absence of overriding circumstances, and such additional rights as may be lawfully granted, and are granted, a recognized employee organization pursuant to the provisions of a Memorandum of Agreement between the County and the recognized employee organization.

(b) **Distribution of Materials:** A recognized employee organization shall have the right to distribute representation information materials by leaving a reasonable number of copies of such materials in non-work locations of a County facility, upon timely request to the department head and in the absence of overriding circumstances, and such additional rights as may be lawfully granted, and are granted, a recognized employee organization pursuant to the provisions of a Memorandum of Agreement between the County and the recognized employee organization. All such materials referred to herein, shall be dated and shall contain the name of the employee organization. Materials which are thirty (30) days old or older shall be discarded. A department head shall not be held responsible for the maintenance, treatment or any other aspect of handling materials distributed by an employee organization.

(c) **Use of Bulletin Boards:** A recognized employee organization shall have the right to use the bulletin board space in County departments for employees in the represented unit and such additional rights as may be lawfully granted, and are granted, a recognized employee organization pursuant to the provisions of a Memorandum of Agreement between the County and the recognized employee organization.

(d) **Access to Employee Information:** A recognized employee organization shall be provided with payroll information, upon request, by the Auditor and Controller, consisting of employees' names, classifications and work locations for employees in the represented unit, and such additional rights as may be lawfully granted, and are granted, a recognized employee organization pursuant to the provisions of a Memorandum of Agreement between the County and the recognized employee organization. Such information shall be requested and provided according to the rules and regulations of the Auditor and Controller and the recognized employee organizations shall pay any fees required by the Auditor and Controller for such information. In no event shall any County official except the Auditor and Controller provide any payroll information on County employees to a recognized employee organization.

(e) **Meeting Places:** A recognized employee organization shall have the right to the use of County facilities for meetings with employees in the represented unit upon timely request to the appropriate County official and in the absence of overriding circumstances, and such additional rights as may be lawfully granted, and are granted, a recognized employee organization pursuant to the provisions of a Memorandum of Agreement between the County and the recognized employee organization. Such meetings shall be held outside regularly scheduled working hours for the group which is meeting. The recognized employee organization shall obtain any necessary permit or approval for use of a meeting room in a County facility pursuant to the requirements of the appropriate County official responsible for the facility.

(f) **Payroll Deduction:** A recognized employee organization may request and be granted exclusive use of the County's payroll deduction system for the collection of membership dues and other employee-authorized deductions from employees in the represented unit. A recognized employee organization may at any time request the termination of such exclusive use of payroll deduction. Unless excluded by the recognized employee organization of a unit of employees, another recognized employee organization of another unit of employees may be authorized to use the

County's payroll system for deduction of membership dues and other employee-authorized deductions, whether such employees be employed in classifications included in the unit for which it is the recognized employee organization or in some other unit. All use of the County's payroll system shall be subject to the rules and regulations and fees of the Auditor and Controller and such provisions as may be included, and are included, in a Memorandum of Agreement between the County and the recognized employee organization.

(g) **Representation:** A recognized employee organization shall have the right to represent the employees in the represented unit on all matters within the scope of representation. Upon the request of a recognized employee organization, the designated representative of the Board shall meet and confer in good faith regarding those matters within the scope of representation, including wages, hours, and other terms and conditions of employment, with representatives of the recognized employee organization and shall consider fully such presentations as are made by the employee organization on behalf of the represented employees prior to arriving at a determination of policy or course of action.

(h) **Employee Representatives:** The County shall allow a reasonable number of County employees who are designated by a recognized employee organization as representatives of the organization, reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the designated representative of the Board. Such employees shall be employed in classifications which are included in the unit or units represented by the organization. Limitations: Employees who are identified by the County as "confidential" shall not serve as representatives of a recognized employee organization when formally meeting and conferring with the designated representative of the Board. Employees who are identified by the County as "supervisory" shall not serve as representatives of a recognized employee organization when formally meeting and conferring for nonsupervisory employees with the designated representative of the Board if such representation would constitute a conflict of interest. Added Limitations: Confidential, management, or supervisory employees shall not act as representatives on behalf of nonconfidential, nonmanagement or nonsupervisory employees on any matter of representation if such representation would constitute a conflict of interest.

(i) **Notification of Proposed Ordinance, Rule, Resolution or Regulation Affecting Scope of Representation:** Except in cases of emergency, as

provided in this subsection, the County shall give reasonable, written notice to a recognized employee organization affected, of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the County; and shall give such recognized employee organization the opportunity to meet with the County. In cases of emergency when the County determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the County shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation.

Section 2. Memorandum of Agreement.

If, after meeting and conferring in good faith, the designated representative of the Board and the representatives of a recognized employee organization reach agreement on wages, hours and other terms and conditions of employment, such representatives shall jointly prepare a written memorandum of agreement, which shall not be binding, and present it to the Board of Supervisors for determination. The written memorandum of agreement shall become binding on the County, on the recognized employee organization and the employees in the unit covered by the agreement, by approval of the Board of Supervisors.

Section 3. Impasse; Impasse Procedure; Exhaustion of Impasse.

(a) **Impasse:** The parties are at impasse when they have reached a point in meeting and conferring at which their differences in positions are substantial or prolonged and further meetings would be futile.

(b) **Initiating the Impasse Procedure:** The impasse procedure shall apply to a meet and confer process covering (1) an initial or successor comprehensive Memorandum of Agreement (MOA), (2) any matter included within the MOA which is subject to a re-opener provision requiring a further meet and confer process during the term of the MOA, (3) any matter to be included in the MOA by virtue of an amendment to the existing MOA, or (4) subjects relating to wages, hours, and other terms and conditions of employment. If during such a meet and confer process the parties reach impasse, either party may request mediation. The parties shall commence mediation within ten (10) days following the request for mediation by either party or at the earliest date thereafter that the mediator is available. The costs of mediation, if any, shall be shared equally by the parties.

(c) **Impasse Procedure:** The impasse procedure of mediation shall consist of a mediation session or sessions with a mediator from the State Mediation and Conciliation Service or other mutually agreed upon mediator. The impasse procedure also may consist of fact finding if all parties to the impasse mutually agree to fact finding.

(d) **Exhausting the Impasse Procedure:** If mediation results in an agreement, the parties shall proceed according to Section 2 of this Article. If mediation does not result in an agreement, and the parties have not mutually agreed to fact finding as provided in Section 4 below, such circumstance shall constitute exhaustion of the impasse procedure. At that time, the County's representative may submit its final proposals to the Board of Supervisors for final determination.

Section 4. Fact Finding.

Fact finding, which shall be advisory in nature, shall only be available by mutual agreement of the parties. If the parties mutually agree to advisory fact finding, the procedure shall be as follows:

(a) A time limitation of 120 days shall be imposed upon the fact finding process from the declaration of impasse to the conclusion of the meet and confer process provided for in subsection (j) below.

(b) If either party requests fact finding, such request must be made in writing and received by the other party within ten (10) days of declaration of impasse.

(c) If the matter(s) to be submitted to fact finding apply to all represented employees, the Chief Administrative Officer may consolidate the fact finding procedure into one proceeding before one fact finder.

(d) The selection of an individual fact finder shall be accomplished expeditiously by mutual agreement of the parties. If the parties are unable to agree upon a fact finder, a list of at least five fact finders shall be obtained from the State Mediation and Conciliation Service or other mutually agreeable source, and each party shall alternately strike one name from the list until only one name remains.

(e) The parties shall prepare a fact finding agreement which shall state the issues to be submitted to fact finding, and such other matters as are deemed appropriate.

(f) The fact finder may endeavor to mediate the dispute in which he or she has been selected as fact finder by agreement of the parties.

(g) The closure of the fact finding hearing shall be through presentation of oral closing arguments presented upon the record. The fact finder shall not allow closing briefs except in extraordinary circumstances. If closing briefs are allowed, the time fixed for filing shall not exceed ten (10) days from the close of the fact finding hearing. Briefs not filed timely shall be rejected by the fact finder.

(h) The use of hearing (court) reporters shall not extend the time limits for the fact finding process, including filing of closing briefs. Court reporting costs or fees shall be borne by the party employing such service.

(i) The advisory report of the fact finder:

(1) Shall be confidential unless the parties mutually agree to make it public;

(2) Shall be submitted directly to the parties within thirty (30) days of the close of the hearing or the submission of closing briefs;

(3) Shall be limited to the issues originally submitted to the fact finder; and

(4) Shall include recommendations.

(j) Upon receipt of the fact finder's report, the parties shall meet and confer. If agreement has not been reached within thirty (30) days after receipt of the fact finder's report, each party may submit a written statement of its position on the unresolved issues to the Board of Supervisors. Such statement shall include a copy of the fact finder's report. The written statement, if submitted, must be filed with the Clerk of the Board no later than forty-five (45) days after receipt of the fact finder's report. Following the forty-five (45) day period, the County's representative may submit its final proposals to the Board of Supervisors for final determination.

(k) The costs of fact finding shall be shared equally by the parties.

(l) If a fact finder fails to meet the 30-day deadline for issuance of his/her fact finding report, the Chief Administrative Officer may remove such fact

finder from consideration as a hearing officer in any County matter for a period of five (5) years.

(m) The waiver of any time specific provisions outlined above shall be operative only by mutual agreement of the parties to the fact finding in question.

ARTICLE V. REPRESENTATION UNITS

Section 1. Criteria for Determination of Appropriate Unit.

A representation unit shall be determined to be appropriate pursuant to these criteria. The principal criterion for determining an appropriate unit shall be: the largest feasible group of employees having an identifiable community of interest for purposes of representation on matters within the scope of representation. In order to minimize the fragmentation of units, the minimum number of units consistent with effective labor relations shall be established. In addition, the following shall be applied in determining an appropriate unit:

(a) Employees in a single classification shall all be included in the same unit.

(b) The effect of the unit on efficiency of County operations shall be considered.

(c) The history of determinations of appropriate units in the County shall be considered but shall not be the sole criterion.

(d) Confidential employees shall not be included in the same unit with nonconfidential employees.

(e) Supervisory employees shall not be included in the same unit with nonsupervisory employees.

(f) Management employees shall not be included in the same unit with nonmanagement employees.

(g) Professional employees shall not be required to be included in the same unit with nonprofessional employees.

Section 2. Modification of Appropriate Unit.

When a representation unit is determined to be appropriate, those job classifications which have been assigned to that unit shall define the unit except that the unit may be modified as follows:

(a) New job classifications established by the County may be added;

(b) Obsolete job classifications which do not apply to any County employees may be deleted;

(c) Existing job classifications may be added or deleted pursuant to a proceeding arising from a representation petition providing that the unit, as modified by the addition or deletion, is determined to be appropriate.

(d) Existing job classifications may be transferred between represented units by the County upon the agreement of: 1) a majority of the employees in the classification(s) which are proposed to be transferred between the existing represented units; 2) the employee organization(s) involved; and, 3) the County. Notice of such proposed unit modification shall be provided in writing by the County to the employees in the affected classification(s) and the employee organization(s) involved.

Section 3. Deleting Unused (Obsolete) Job Classifications from the Appropriate Unit.

When a job classification is no longer used by the County and no employee occupies a position in the classification, the Chief Administrative Officer shall provide written notification to the recognized employee organization of the unit that the job classification is:

(a) no longer used by the County;

(b) no longer occupied by any employee of the County; and

(c) to be deleted from the unit.

A copy of the notice shall be filed with the Clerk of the Board for inclusion in the official file on the unit.

Section 4. Assignment or Non-Assignment of New Job Classification to Unit.

After consultation with recognized and registered employee organizations, the Chief Administrative Officer shall:

(a) Determine whether each newly established job classification is "Confidential", "Supervisory", "Management", or "Professional", consistent with the definitions in this Ordinance; and

(b) Assign or not assign the new job classification to an existing unit pursuant to the criteria for determination of an appropriate unit established in this Ordinance; and

(c) Identify as "unrepresented" any new job classification which does not meet the criteria established herein for assignment to an existing unit and is therefore not assigned to an existing unit.

Upon identifying, assigning or not assigning a new job classification to a unit for purposes of representation, the Chief Administrative Officer shall provide written notice of the identification and assignment or non-assignment to: recognized and registered employee organizations, the department head(s) of affected departments with instructions to distribute and/or post the notice to affected employees, if any. In the event the new classification was assigned to a unit, a copy of the written notice shall be filed with the Clerk of the Board for inclusion in the official file on the unit. The identification, assignment or non-assignment of a new classification by the Chief Administrative Officer shall remain in effect unless changed by a proceeding resulting from a representation petition appealing the assignment which excludes the job classification from a unit, or adds such classification to a unit, or which places such classification in a new unit.

Section 5. Appeal of Assignment.

The assignment or non-assignment of a new classification may be appealed by an employee organization within thirty (30) days after the date the written notice was mailed. Such appeal shall be made by filing a representation petition under the procedures set forth in Article VI herein.

ARTICLE VI. REPRESENTATION PETITIONS

The investigation of a question of representation of employees shall be initiated by the filing of a petition with the Clerk of the Board. A petition for certification may be filed by any employee organization claiming to represent a majority of the employees in an appropriate or an alleged appropriate unit in accordance with the provisions of this Article for the following purposes:

(1) To become the recognized employee organization for an existing appropriate representation unit which is currently represented by a different employee organization;

(2) To become the recognized employee organization for an alleged appropriate representation unit composed of a classification or a group of classifications currently included in one or more existing representation units, or employees in classifications not currently represented; or

(3) To appeal the assignment or non-assignment of a new classification by the Chief Administrative Officer pursuant to Article V, Section 4.

A petition for decertification may only be filed by the employees in an appropriate unit or an alleged appropriate unit claiming that the majority of the employees in the unit;

(4) Desire to be unrepresented, and

(5) Wish the County to withdraw recognition from the organization which has been recognized as representing the majority of the employees in the unit of the petition.

Section 1. Form of Petition.

All representation petitions shall be in writing and contain:

(a) The name, title or classification and signature of the person filing the petition; and

(b) The name, title or classification, address and telephone number of the person to contact regarding the petition; and

(c) If filed by an employee organization, the name, affiliation (if any), and address of the organization; and

(d) A detailed description of the representation unit of the petition; and

(e) The approximate number of employees in the unit of the petition; and

(f) The name(s) of any other recognized employee organization(s) which represent any employees in the unit of the petition.

Section 2. Time for Filing Petitions.

Representation petitions may be filed with the Clerk of the Board on any County business day excepting:

(a) A petition which includes employees in a unit which participated in a valid representation election shall not be filed for a period of twelve full months subsequent to the date the election results were certified; and

(b) A petition which includes any employees in a unit for which the County recognized an employee organization shall not be filed for a period of twelve full months subsequent to the date upon which such recognition was granted; and

(c) A petition which includes employees covered by a Memorandum of Agreement which has been ratified by the unit and approved by the Board of Supervisors shall be filed no sooner than 240 days and no later than 210 days prior to the expiration of the Agreement. This bar shall only apply during the first two (2) years of a multi-year agreement.

(d) A representation petition appealing the identification, assignment or non-assignment of a new classification to a unit which was made by the Chief Administrative Officer shall be filed no later than thirty (30) calendar days after the date written notice of the identification, assignment or non-assignment was provided.

Section 3. Proof of Employee Support Required.

No question concerning representation shall be deemed to exist unless the petitioner raising such question by petition makes a showing of proof of employee support for the unit of the petition, as follows:

(a) A certification petition seeking to become the recognized employee organization for an existing appropriate representation unit which is currently represented by a different employee organization shall require 50% proof of employee support.

(b) A certification petition seeking to become the recognized employee organization for an alleged appropriate representation unit, or for employees not currently represented, shall require 30% proof of employee support.

(c) A petition appealing the assignment or non-assignment of a new classification shall require 30% proof of employee support of the employees in the classification, except that if there are no employees in the new classification at the time the petition is filed, no proof of support shall be required.

(d) A decertification petition filed by employees seeking to be unrepresented shall require 30% proof of employee support.

(e) A certification petition filed as a motion seeking to intervene in a proceeding filed pursuant to (a) or (b) above, shall require proof of employee support of 10%; except that if the employee organization desiring to intervene seeks a unit different from that claimed to be appropriate by the petitioner, the required proof of support shall be 30% of the different alleged appropriate unit. Motions for intervention are made in accordance with Article VIII, Section 6 (c).

Such support shall be documented by employee authorization cards or documents which contain a statement in support of the petition and which are signed and dated by employees within four months prior to the date of filing the petition. Authorization cards or documents shall provide the name of each employee identifiable for verification and the classification of each employee upon the date of his or her signature. Only employees whose salary is fixed at a biweekly rate by the County; whose names appear on the payroll records of the payday immediately preceding the date of filing; and whose proof of support documents can be validated, including employees on paid leave of absence, shall be counted as valid proof of employee support. In the event a petition seeks an accretion to an existing appropriate unit, it shall be necessary to submit the above-described proof of employee support only for the classification or classifications proposed to be accreted to the unit.

Section 4. Required Registration of Employee Organizations.

An employee organization which files a representation petition or desires to intervene in a representation petition hearing shall register, if the organization is not registered, or is not a recognized employee organization.

Section 5. Processing Petition for Hearing.

(a) **Proof of Employee Support:** Proof of support cards or documents are confidential. Upon receipt of a representation petition, the Clerk of the Board shall count the number of unverified signatures accompanying the petition as proof of employee support and immediately place the documents into an envelope which shall be sealed and outwardly identified as belonging with the petition which was filed. The Clerk shall request the Auditor and Controller to furnish the payroll records of the payday immediately preceding the date the petition was filed for the unit of the petition. Upon receipt of the necessary payroll records from the Auditor and Controller, the Clerk shall file such records with the proof of employee support envelope. The Clerk shall make the documents and records available only to the hearing officer assigned to investigate the petition upon the date of the hearing.

(b) **Assignment of Hearing Officer and Scheduling of Hearing:** Promptly upon receipt of a representation petition, the Clerk of the Board shall provide notice of the filing of the petition to:

(1) The Chief Administrative Officer;

(2) The petitioner;

(3) Any employee organization named in the petition as claiming to represent any employees in the unit of the petition;

(4) All recognized and registered employee organizations; and

(5) The department heads of affected employees with instructions to post and/or distribute to the employees affected.

The Clerk of the Board shall then request the Chief Administrative Officer to assign the investigation of the petition to a hearing officer and schedule the time and place for hearing which shall be a time mutually agreeable to the parties. Upon receipt of the hearing officer assignment and time and place for hearing from the Chief Administrative Officer, the Clerk shall provide a notice of hearing to those who were sent the notice of filing. The notice of hearing shall be provided at least fifteen (15) County business days in advance of the date specified for hearing. The notice shall state the date, time and place fixed for hearing and identify the name

of the hearing officer assigned to investigate the petition. A copy of the petition shall be served with the notice of hearing.

Section 6. Intervention.

An employee organization desiring to intervene in any representation petition hearing shall file a motion for intervention stating the grounds upon which such organization claims to have an interest in the proceeding, which motion shall be accompanied by proof of employee support of 10% of the unit of the petition. Motions for intervention made prior to the date of the hearing shall be filed in writing with the Clerk of the Board who shall provide copies to the petitioner and the Chief Administrative Officer. Motions for intervention made at the hearing shall be filed with the hearing officer in writing. Such motions for intervention may be filed to challenge:

(a) The validity of the petition, which includes a challenge to the employee proof of support submitted with the petition.

(b) The appropriateness of the alleged appropriate unit or units, which shall specify objections to the alleged appropriate unit and describe an alternative appropriate unit.

(c) The petitioner's right to be recognized for the unit of the petition.

Section 7. Pre-Hearing Motions.

Any party to a representation petition hearing may file a Pre-Hearing Motion or Motions with the Clerk of the Board no later than two (2) County business days prior to the date of hearing for a petition. Such Pre-Hearing Motions shall briefly state the action or relief sought and the grounds for such motion. A copy shall promptly be served by the moving party upon each of the other parties to the proceeding.

ARTICLE VII. UNFAIR LABOR PRACTICES

Section 1. Unfair Labor Practice.

The investigation of an unfair labor practice allegation shall be initiated by the filing of an Unfair Labor Practice Charge. An Unfair Labor Practice Charge may be filed by a representative of the County, a representative of an employee

organization, or an employee. It is an unfair labor practice for any representative of the:

(a) County or any employee organization to interfere with, intimidate, restrain, coerce or discriminate against County employees because of the exercise of their rights referred to in this Ordinance;

(b) County to dominate or interfere with the formation of any employee organization or contribute financial support to it, excepting that the rights granted to employee organizations in this Ordinance shall not be construed as financial support;

(c) County or a recognized employee organization to fail or refuse to meet and confer in good faith on wages, hours, and other terms and conditions of employment for represented employees.

Section 2. Form of Charge.

An Unfair Labor Practice Charge shall be filed with the Clerk of the Board and the required number of copies shall be provided by the charging party for distribution by the Clerk to the respondent(s), the Chief Administrative Officer, and all recognized and registered employee organizations. The charge shall give:

(a) The full name, title or classification, business address, affiliation (if any) and the signature of the person filing the charge.

(b) If filed by (or on behalf of) an employee organization, the name and address of the organization.

(c) The name and address of the person(s) alleged to have committed the unfair labor practice insofar as is known or can be reasonably ascertained.

(d) A citation of the specific practice(s) set forth in Section 1 hereof which is alleged to have been committed.

(e) A clear and concise statement of the facts supporting the charge, including the date(s), time(s), and place(s) of occurrence and the names of the person(s) allegedly engaged in such practice(s).

Section 3. Time for Filing Charge.

An Unfair Labor Practice Charge shall be filed within one hundred and twenty (120) days from the date upon which the alleged practice first occurred or within one hundred and twenty (120) days from the date upon which the charging party could reasonably be expected to have knowledge of such occurrence.

Section 4. Response to Charge.

The person(s) charged with an Unfair Labor Practice shall file a written response to the charge within 15 County business days of receipt of said charge with the Clerk of the Board who shall provide a copy to the charging party, the Chief Administrative Officer, and all recognized and registered employee organizations. The response:

(a) Shall specifically admit, deny, or otherwise respond to each of the allegations of the charge.

(b) May provide a separate and affirmative defense.

(c) May introduce a motion(s) for dismissal of the charge in whole or in part and, if introduced, shall briefly state the grounds for such motion(s).

(d) May request a meeting with the charging party to attempt to resolve the charge and, if no request for such meeting is made, shall request the charge be set for hearing.

Section 5. Attempt to Resolve.

Upon receiving a request to meet and attempt to resolve an Unfair Labor Practice Charge, the charging party shall make arrangements to meet with the respondent(s) within ten (10) County business days subsequent to the date of receipt of the request. Such meeting shall be set for a date, time and place mutually acceptable to the parties.

(a) **Failure or Refusal to Meet:** In the event the charging party fails or refuses to make arrangements to meet with the respondent within the time period specified, such failure or refusal shall constitute an abandonment of the charge by the charging party. In such event, the respondent requesting the meeting shall file a statement of failure to meet with the Clerk of the Board and shall provide a copy of such statement to the charging party and the Chief Administrative Officer. The charging party may, within ten (10)

County business days of mailing of the statement of failure to meet, file a response with the Clerk stating the reason(s) for failing to arrange a meeting and therein requesting such meeting. If no such response is filed within the time specified, the Clerk shall close the file on the charge.

(b) **Meet and Resolve:** In the event that the charging party and respondent(s) meet and resolve the charge, they shall jointly file a statement of resolution of charge with the Clerk of the Board and shall provide a copy of such statement to the Chief Administrative Officer. Upon receipt of the joint statement of resolution of charge, the Clerk shall close the file on the charge.

(c) **Meet and Fail to Resolve:** In the event that the charging party and the respondent(s) meet and fail to resolve the charge, the charging party may, subsequent to such meeting, file a request with the Clerk that the charge be set for hearing. A copy of the request for hearing shall be provided to the respondent(s) and the Chief Administrative Officer. Failure of the charging party to file such a request within sixty (60) days of the said meeting shall constitute an abandonment of the charge. In such event, the respondent shall file a statement of abandonment of the charge with the Clerk of the Board and shall provide a copy to the charging party and the Chief Administrative Officer. Upon receipt of such a statement, the Clerk shall close the file on the charge.

Section 6. Assignment of Hearing Officer and Scheduling of Hearing.

Promptly upon receipt of a request that a charge be set for hearing from a respondent or from the charging party, the Clerk of the Board shall request the Chief Administrative Officer to assign the investigation of the charge to a hearing officer and schedule the time and place for hearing. Upon receipt of the hearing officer assignment and establishment of time and place for hearing from the Chief Administrative Officer, the Clerk shall provide a notice of hearing to the Chief Administrative Officer, the charging party, and the respondent(s), and all recognized and registered employee organizations. The notice shall state the date, time and place fixed for hearing and shall identify the hearing officer assigned to investigate the charge.

ARTICLE VIII. NEUTRAL APPELLATE AUTHORITY

Section 1. Neutral Hearing Officers.

(a) **Neutral Hearing Officer:** A qualified neutral hearing officer must possess expertise in the field of labor relations and have the integrity and impartiality necessary to protect the public interest as well as the interest of the County and its employees.

(b) **Selection Procedure:** When a hearing is to be held, the representative of the Board and the other party(ies) shall jointly request the State Mediation and Conciliation Service, or other mutually agreeable source, to submit a list of at least five qualified neutral hearing officers. The parties shall alternately strike names from the list until only one remains, and that person shall serve as hearing officer.

Section 2. Assignment of Cases to Hearing Officers.

(a) **Assignment:** Each unfair labor practice and representation case filing shall be assigned to a hearing officer.

(b) **Consolidation of Cases:** When more than one case has been filed involving all or part of the same group of employees, or otherwise raising common issues, the Chief Administrative Officer may consolidate the assignment of such cases to the same hearing officer.

Section 3. Payment of Costs for Hearing Officer.

A hearing officer shall present such charges as are reasonably and customarily charged by such hearing officer for his or her services and attendant expenses at the conclusion of the hearing. The County and the employee organization(s) which are party to a representation petition proceeding or an unfair labor practice charge proceeding or an election, shall equally bear the costs presented by the hearing officer.

Section 4. Authority of Hearing Officer.

Upon assignment of a case to a hearing officer, he or she shall be granted the authority to conduct an investigation and hearing on behalf of the Board which shall be open to the public. A hearing officer shall be authorized to perform such other duties as are assigned to such hearing officer pursuant to the provisions of this Ordinance. A hearing officer shall not be authorized to add to, subtract from, nor to recommend any additions to, or subtractions from, the provisions of this Ordinance. A hearing officer shall not be authorized, nor shall attempt, to mediate

any issue submitted to him or her for hearing and investigation unless expressly requested by mutual agreement of the parties.

Section 5. Duties of the Hearing Officer Prior to Representation Petition Hearing.

On the date set for hearing a representation petition, the Clerk of the Board shall deliver the petition file to the appointed hearing officer who shall first examine the petition to ascertain whether it has been properly filed, and determine whether the proof of employee support is valid.

(a) **No Question of Representation:** If, after examining the petition and support documents, the hearing officer determines that there is no reasonable cause which demonstrates that a question of representation of County employees exists, the hearing officer shall so rule and shall order the hearing for the petition to be cancelled. As expeditiously as possible, the hearing officer shall prepare a written decision and order pursuant to Section 11, hereof.

(b) **Question of Representation:** If, after examining the petition and support documents, the hearing officer determines that there is reasonable cause which demonstrates that a question of representation of County employees exists, the hearing officer shall open the hearing on the petition and shall conduct such hearing pursuant to the provisions of Section 6, hereof.

Section 6. Conduct of Hearings.

An unfair labor practice case or a representation case hearing shall be conducted by the hearing officer selected pursuant to Section 1, hereof. Hearings shall be open to the public. It shall be the duty of the hearing officer to inquire fully into those matters at issue in order to provide a full and complete record.

(a) **Scheduling of Hearing:** The hearing officer may, at his or her discretion, continue a hearing from day to day, or adjourn it to a later day or to a different place, by announcement thereof at a hearing or by appropriate notice.

(b) **Motions:** All motions filed in writing or stated orally on the record at the hearing, or filed in writing after the hearing for good reason, as determined by the hearing officer, shall state briefly the action or relief sought and the grounds for such motion. Upon the filing of a written motion, the moving party shall immediately serve a copy to each of the other parties to the

proceeding. Written motions made prior to the date of the hearing shall be filed with the Clerk of the Board and shall be referred to the hearing officer for ruling. Written motions made at the hearing shall be filed with the hearing officer. Motions made after the close of the hearing shall be filed with the Clerk of the Board who shall serve a copy on the parties to the hearing and refer the motion to the hearing officer for ruling.

(c) **Intervention:** Any employee organization desiring to intervene in any hearing shall make a motion for intervention stating the grounds upon which such organization claims to have an interest in the proceeding. The hearing officer may, by order in writing or on the record, permit intervention to such extent and upon such terms as are proper under the provisions of this Ordinance. Upon such order, the intervenor shall become a party to the proceeding. In a representation petition hearing, the hearing officer shall allow:

(1) An employee organization, which is the recognized employee organization of any employees in the alleged appropriate unit of the petition, the right to intervene as a party to the proceeding; and

(2) An employee organization, which makes a showing of proof of employee support of at least 10% of the employees in the alleged appropriate unit of the petition, the right to intervene as a party to the proceeding.

Any employee organization desiring to intervene in a representation petition hearing for the purpose of seeking an election in a unit different from that claimed to be appropriate by the petitioner shall be required to make a showing of proof of employee support of at least 30% of the employees in the unit claimed to be appropriate by the organization seeking intervention.

Section 7. Rights and Duties of the Parties at a Hearing.

(a) **General:** The county shall be deemed a party to each proceeding. Any party to a hearing shall have the right to appear at the hearing in person, by counsel, or by other representative. A county employee who is serving as the representative of an employee organization or of a party to the hearing, shall have the right to be released from work without loss of compensation for the time required to perform their required function at the hearing. The hearing officer and any party to a hearing shall have the power to call, examine and cross-examine witnesses and to introduce into

the record documentary and other evidence. The hearing officer may exclude evidence deemed irrelevant, unduly repetitious, prejudicial, or privileged by law. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced into evidence with respect to any issue.

(b) **Objections Respecting Conduct of Hearing:** Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection and included in the record. No such objection shall be deemed waived by further participation in the hearing.

(c) **Motions, Rulings and Orders:** All motions, rulings and orders shall become a part of the record.

(d) **Argument:** Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the tape recorded record of the hearing.

(e) **Misconduct at Hearing:** Misconduct at any hearing shall be grounds for summary exclusion by the hearing officer from further participation in such hearing.

(f) **Briefs:** A hearing officer shall, upon request, allow the parties to a hearing to file written briefs following the completion of the hearing. Copies of such briefs shall be concurrently served upon all parties to the hearing.

Section 8. Evidence, Records and Witnesses for a Hearing.

(a) **Documentary Evidence and Records:** Each party to a hearing shall, at his or her own expense, produce all documentary evidence and records necessary to the presentation of his or her case, and shall provide a copy of such documentary evidence to all parties to the hearing. A hearing officer may request any of the parties to a hearing to produce such written materials or records which are deemed by the hearing officer as necessary to his or her full inquiry into all matters at issue. In the event the hearing officer requests the County to produce such written materials and records, the Chief Administrative Officer shall cause the production of all requested materials and records as may be lawfully provided to the hearing officer.

(b) **Witnesses:** Any expenses which may be charged by witnesses summoned before the hearing officer shall be paid by the party at whose instance the witness appears. Any party to a hearing who desires to call a County employee as a witness at a hearing shall file a request for witness release time with the Chief Administrative Officer no later than five (5) County business days prior to the date of hearing. This notice may be waived by written stipulation of the parties to the hearing, or by written order of the Chief Administrative Officer. The request shall contain the witness' name, classification, department and the name of the employee's immediate supervisor, and a statement as to the relevancy of the expected testimony. As soon as reasonably possible prior to the time set for the hearing, the Chief Administrative Officer shall consult with the affected department head(s) and notify the requesting party of the approval or disapproval of the request. The approved employee witness shall then be released from work with no loss of compensation or benefits for the time required to present their testimony. A party to the petition shall not request release time for more than one witness when the testimony of the second or additional witnesses is unduly repetitious of the testimony of the first witness. A party shall not request release time for a County employee for the purpose of observing a hearing proceeding unless the employee is a charging, or charged, party. Any employee who has not had release time approved by the Chief Administrative Officer and the department head and who is present at a hearing during his or her scheduled work time shall be considered to be on unauthorized unpaid leave. Allegations that the Chief Administrative Officer or the department head have unreasonably denied witness release time shall be presented to the hearing officer in writing at the hearing. The hearing officer may order that witness be released from work to attend a hearing to present evidence.

Section 9. Duties of Hearing Officer Following Hearing.

Upon the close of a hearing and submission of briefs in accordance with Section 7 (f) of this Article, if any, the hearing officer shall, as expeditiously as possible, prepare a Proposed Decision and Order.

(a) **Proposed Decision and Order:** The Proposed Decision and Order shall include a written analysis of the record and of the arguments of the parties and shall include the findings of fact and determination of the hearing officer on all submitted issues. In a representation proceeding, if the hearing officer determines that an election is to be held, the officer shall set forth the appropriate unit or units within which such election is to be

held and specify the categories of employees who shall be eligible to vote in such unit or units.

(b) **Record of the Proceedings:** The original of the Proposed Decision and Order, together with petition(s) or charge(s), responses, notices of hearing, written motions, rulings or orders, the tape recorded record of the hearing, stipulations, exhibits and documentary evidence and briefs shall constitute the record in the proceedings and shall promptly be forwarded to the Clerk of the Board by the hearing officer. A copy of the proposed Decision and Order shall immediately be served upon each of the parties.

Section 10. Exceptions.

Within ten (10) County business days from the date of service of the Proposed Decision and Order, any party may file with the hearing officer and serve on the parties a statement in writing setting forth exceptions to the findings of fact contained in the Proposed Decision and Order, alleging error(s) to the said findings of fact, together with a written brief in support of said exceptions. An allegation that the hearing officer has made an erroneous finding of fact(s) shall be the only basis for the filing of an exception to the Proposed Decision and Order. Any party may within ten (10) business days after such service, file a brief in support of the Proposed Decision and Order. A copy of such brief(s) shall immediately be served on the other parties to the proceeding.

Section 11. Decision and Order.

After the period for the filings pursuant to Section 10 above has expired, the hearing officer shall promptly decide the matters upon the record and shall issue a Decision and Order, which shall include a written analysis of the record of the arguments presented and exceptions filed by the parties along with the findings of fact and decision of the hearing officer upon the submitted issues. The hearing officer shall file such Decision and Order with the Chief Administrative Officer, and shall serve a copy upon all of the parties to the proceeding. The hearing officer shall also promptly forward a copy of the Decision and Order and all exceptions and briefs to the Clerk of the Board for inclusion in the record of the proceedings.

(a) **On Questions of Representation:**

(1) **No Question of Representation.** Upon receipt of a Decision and Order by the hearing officer determining that no reasonable cause was demonstrated to support a finding that a question of

representation of County employees existed, the Chief Administrative Officer shall direct that the file on the proceeding be closed.

(2) **Question of Representation.** Upon receipt of a Decision and Order by the hearing officer that an election is to be held on a representation case in which it is ordered that the election be held within such unit or units as he or she finds appropriate, and determining the categories of employees who shall be eligible to vote in such unit or units, the Chief Administrative Officer shall direct that such election be held and shall authorize the hearing officer who prepared the Decision and Order to retain jurisdiction in the case and investigate all issues which may arise out of the election.

(3) **Notice.** The Chief Administrative Officer shall cause notice of the actions taken in (1) and (2) above to be sent to the parties to the proceeding, to all department heads, and to all recognized and registered employee organizations.

(b) **On Unfair Labor Practice Charges:**

(1) **No Exceptions to Decision and Order.** If no exceptions to the hearing officer's Decision and Order are filed pursuant to subsection (2) hereof, within twenty (20) County business days of the date the Decision and Order is filed with the Chief Administrative Officer, the Decision and Order shall then stand. The parties shall then meet to develop the appropriate implementation procedure, if any is required.

(2) **Exceptions to Decision and Order.** Within twenty (20) County business days of the date the Decision and Order is filed with the Chief Administrative Officer, any party to the proceeding may file with the Chief Administrative Officer, a statement in writing setting forth exceptions to the Decision and Order alleging that it contains a misinterpretation(s) or violation(s) of County Policy or County Charter, together with a written brief in support of said exceptions. An allegation that the hearing officer's Decision and Order contains a misinterpretation(s) or violation(s) of County Policy or County Charter shall be the only basis for the filing of exceptions to the Decision and Order. Within fifteen (15) County business days after the period for the filing of exceptions has expired, the Chief

Administrative Officer shall determine whether the hearing officer's Decision and Order contains the alleged misinterpretation(s) or violation(s).

(3) **Determination of No Misinterpretation(s) or Violation(s) of County Policy or County Charter.** If the Chief Administrative Officer determines that no misinterpretation(s) or violation(s) of County Policy or County Charter has been made by the hearing officer, the Chief Administrative Officer shall affirm the Decision and Order, which shall then stand. The parties shall then meet and develop the appropriate implementation procedure, if any is required.

(4) **Determination of Misinterpretation(s) or Violation(s) of County Policy or County Charter.** If the Chief Administrative Officer determines that a misinterpretation(s) or violation(s) of County Policy or County Charter has been made by the hearing officer, the Chief Administrative Officer shall refer the matter for consideration, or reconsideration, or both, pursuant to (i) and (ii) below in his or her discretion, and give notice to all parties of such action:

(i) **Reconsideration by Hearing Officer.** The Chief Administrative Officer may refer the Decision and Order to the hearing officer by sending a statement identifying wherein the Decision and Order misinterprets or violates County Policy or County Charter and setting forth appropriate corrections and clarifications to the hearing officer. The hearing officer may amend the Decision and Order without convening a hearing of the parties, or may convene such hearing, at his or her discretion. Upon completion of the hearing officer's reconsideration, the Decision and Order, along with the record of any proceedings relating to the said reconsideration, and any amendments to the Decision and Order, shall be filed with the Chief Administrative Officer, and served on the parties. If the Chief Administrative Officer determines that the Decision and Order, as amended, no longer contains the said misinterpretation(s) or violation(s) of County Policy or County Charter, the Chief Administrative Officer shall affirm the amended Decision and Order, which shall then

stand. The parties shall then meet and develop the appropriate implementation procedure, if any is required.

(ii) **Consideration by Board of Supervisors.** The Chief Administrative Officer may docket the hearing officer's Decision and Order, together with a copy of the exception(s), the Chief administrative Officer's statement identifying wherein the Decision and Order misinterprets or violates County Policy or County Charter, the record of the proceedings, if any, any amendments to the Decision and Order made by the hearing officer pursuant to (i) immediately above and deemed by the Chief Administrative Officer to be insufficient to correct or clarify the misinterpretation(s) or violation(s) of County Policy or County Charter, and a recommendation by the Chief Administrative Officer as to the disposition of the Decision and Order. The Board shall consider the Decision and Order at a meeting which shall be open to the public, and may adopt, modify or reverse, in whole or in part, the Decision and Order of the hearing officer. The determination of the Board shall then stand. A copy of the Board's determination shall be served on the parties. The parties shall then meet to develop the appropriate implementation procedure, if any is required.

ARTICLE IX. REPRESENTATION ELECTIONS

Whenever the Chief Administrative Officer orders a representation election pursuant to the provisions of this Ordinance, the State Conciliation Service shall be requested to conduct a secret ballot election in accordance with its own procedures and regulations and in conformance to the requirements of this Article. In the event the State Conciliation Service declines to conduct the election, the hearing officer authorized by the Board to have jurisdiction over the election shall name the person who shall conduct the election, which person shall not be the hearing officer. The hearing officer shall prescribe for such person, such procedures and regulations as may be appropriate to the conduct of the election.

ARTICLE IX (Continued)

Section 1. Eligible Voters.

Unless otherwise specifically ordered pursuant to a hearing officer's Decision and Order, employees eligible to vote in a representation election are those in the unit whose salary is fixed at a biweekly rate by the County and whose names appeared as employees in the unit on the payroll records of the payday immediately preceding the date upon which the election was ordered, including employees on paid leave of absence.

Section 2. Ballot Proposal.

Every ballot in a representation election for employees currently unrepresented, or for employees in a new unit which has been found to be appropriate, shall contain a choice of "No Organization" in addition to the names of the employee organization(s) which qualified for placement on the ballot as determined by the hearing officer. The ballot in a decertification election shall state: "Do you wish to be represented by:

☐ No Organization ☐ (Name of the recognized employee organization)."

Section 3. Majority Participation.

A majority of the eligible voters must vote in a representation election or the election shall be of no effect and no further election shall be held based on the petition pursuant to which the election was held.

Section 4. Determination by Majority of the Voters.

When a majority of the eligible voters vote in an election, the results of the election shall be determined by a majority (fifty percent plus one) of the valid votes cast.

Section 5. Removal of Participant from Ballot.

Whenever two or more employee organizations are included as choices in an election, any participant may have its name removed from the ballot upon its prompt request to and approval thereof by the hearing officer, whose decision shall be final.

Section 6. Participation of Parties in Election.

Any party may be represented by an observer or observers of its own selection, subject to such limitations as the person conducting the election may prescribe. Any observer may challenge for good cause, the eligibility of any person to vote in the election. Each challenged ballot shall be impounded. Upon conclusion of the election, the person conducting the election shall cause a tally of the ballots to be furnished to each party.

Section 7. Objections to the Conduct of the Election.

Within five (5) County business days after the conclusion of the election, any party may file objections with the hearing officer to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons for the objections. The objecting party shall promptly serve a copy of such objections on each other party to the election.

Section 8. Certification of Election Results.

(a) If no objections are filed within the time period specified for such objections in Section 7 above; and, the number of challenged ballots are insufficient in number to affect the results of the election; and no runoff election is to be held pursuant to Section 9 below, the hearing officer shall promptly issue a Certification of the Results of the Election to the parties. The election procedures shall thereupon be closed.

(b) **Report on Objections and Challenged Ballots.** If objections to the conduct of the election are filed, or if the challenged ballots are sufficient in number to affect the results of the election, the hearing officer shall investigate such objections or challenges, or both, and shall prepare and cause to be served upon the parties a report on such objections or challenged ballots, or both. Within ten (10) County business days from the date of issuance of the report on such objections or challenged ballots, any party may file with the hearing officer, exceptions to such report. Immediately upon filing such exceptions, the filing party shall cause a copy thereof to be served upon the other parties. If no exceptions are filed to such report within the time period specified, the hearing officer's report shall constitute the decision as to the validity of such objections or challenged ballots. The hearing officer shall promptly issue a Certification of the Results of the Election to the parties. The election procedures shall thereupon be closed.

(c) **Hearing on Exceptions to Report.** If exceptions are filed on the report of the hearing officer respecting objections or challenges, or both, the hearing officer shall schedule a hearing and cause a notice of such hearing to be served upon all of the parties. Such notice shall state the date, time and place for such hearing and shall be served upon the parties at least five (5) County business days prior to the date set for hearing. Upon the close of the hearing, the hearing officer shall prepare and serve upon the parties, a written decision containing findings of fact and the determination of the hearing officer regarding the disposition of exceptions regarding the challenges or objections, or both. The hearing officer shall promptly issue a Certificate of Election Results to the parties. The election procedures shall thereupon be closed.

(d) **Record.** The hearing officer's decision and Certification of Election Results together with:

(1) The notice of hearing,
(2) Motions,
(3) Rulings,
(4) Orders,
(5) Tape record of the hearing,
(6) Stipulations,
(7) Documentary evidence and briefs,
(8) Objections to the conduct of the election or conduct affecting the results of the election,
(9) The report of the hearing officer on challenged ballots,
(10) The report of the hearing officer on objections, and
(11) Exceptions to the reports,

shall constitute the record in the case.

Section 9. Runoff Elections.

When an election in which a ballot providing for not less than three choices results in no choice receiving a majority of the valid votes cast, the hearing officer shall order a runoff election. The runoff election shall be held promptly following final disposition of any challenges, objections or exceptions which followed the prior election. Only one runoff election shall be held pursuant to this Section.

(a) **Eligible Voters:** Employees who were eligible to vote in the original election and who are employed in an eligible category on the payroll records of the payday immediately preceding the date upon which the

runoff election was called shall be the only employees eligible to vote in the runoff election.

(b) **Ballot Proposal:** The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the prior election. If the first election does not result in the selection of the largest and second largest number of valid votes cast, then the hearing officer shall determine the number of choices to be provided. In the event there was a tie in the number of valid votes cast in the prior election, the hearing officer shall determine the number of choices to be provided in the runoff election.

(c) The provisions of Section 3 through Section 8 shall be applicable to a runoff election.

Section 10. Duties of Hearing Officer Following Election.

Upon the close of an election proceeding, the hearing officer shall as expeditiously as possible, prepare a Declaration and Action. The Declaration and Action shall specify the results of the representation election and shall specify such actions as are appropriate to the results of the election; such as, but not limited to: granting recognition; withdrawing recognition; declaring the election a nullity, etc. The hearing officer shall forward the Declaration and Action to the Chief Administrative Officer, and shall promptly file a copy of such Declaration and Action along with the entire record on the case with the Clerk of the Board. The hearing officer shall cause a copy of the Declaration and Action to be served upon all of the parties to the election, to all department heads and to the recognized and registered employee organizations. The Chief Administrative Officer shall take such action as may be specified in the hearing officer's Declaration and Action.

Section 2. EFFECTIVE DATE.

This ordinance shall take effect and be in force thirty (30) days after its adoption. Within fifteen (15) days after its adoption, a summary shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY _____ DEPUTY

Section 3. Effective Date. This ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after the date of adoption of this ordinance, a summary shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED, AND ADOPTED this 26th day of September, 1995.

DIANNE JACOB, Chairwoman of the Board of Supervisors of the County of San Diego, State of California

The above ordinance was adopted by the following vote:

Supervisor Greg Cox	"AYE"
Supervisor Dianne Jacob	"AYE"
Supervisor Pam Slater	"AYE"
Supervisor Ron Roberts	"AYE"
Supervisor Bill Horn	"AYE"

ATTEST my hand and the seal of the Board of Supervisors this 26th day of September, 1995.

THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors

By _____
Susan Morgan, Deputy

This is a true certified copy of the original document on file or of record in my office. It bears the seal of the County of San Diego and signature of the Clerk of the Board of Supervisors, imprinted in purple ink.

Thomas J. Pastuszka
Clerk of the Board, San Diego County, California

Date 11-27-95 By Deputy

Ordinance No. 8588 (N.S.)
9/26/95 (45) sm