

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: March 23, 2023

CALENDAR NO. 34,124

NO. _____ MAYOR COUNCIL SERIES

BY: COUNCILMEMBER MORENO

AN ORDINANCE to ordain Sections 114-400, 114-401, 114-402, 114-403, 114-404, 114-405, 114-406, 114-407, 114-408, 114-409, 114-410, 114-411, 114-412, 114-413, 114-414, 114-415, and 114-416 of the Code of the City of New Orleans to establish definitions, procedures, and rights relevant to the collective bargaining for employees of the City of New Orleans; and otherwise to provide with respect thereto.

WHEREAS, the Council of the City of New Orleans intends to improve working conditions for City Employees and empower them to organize to advocate for changes that will improve their productivity and the provision of public services; and

WHEREAS, City employees have been had union representation since 2001, when workers voted for union representation; and

WHEREAS, recent attempts by union representatives to reactivate and invigorate union activities have been met with delay and impediment by Administration officials; and

WHEREAS, the Council intends to codify the rights of city employees to organize and the the process by which collective bargaining will occur; and

WHEREAS, the Council intends to develop clear and concise language to guide this process with the input of stakeholders and city employees to ensure collaboration and buy-in from the community; and

WHEREAS, the Council intends to form a working group to draft and define the final language of the legislation that includes representatives from among city employees, the civil service department, the city council staff, outside experts and community stakeholders; **NOW THEREFORE**

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Sections 114-400, 114-401, 114-402, 114-403, 114-404, 114-405, 114-406, 114-407, 114-408, 114-409, 114-410, 114-411, 114-412, 114-413, 114-414, 114-415, and 114-416 of the Code of the City of New Orleans be ordained to read as follows:

CHAPTER 114. – CITY EMPLOYEES

* * *

ARTICLE V. - COLLECTIVE BARGAINING.

Sec. 114-400. – Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them in this section:

Arbitration means the procedure by which the City and an exclusive bargaining representative when involved in a labor-management dispute or impasse, as defined in this Article, submit their differences to a third party for a final and binding decision subject to the provisions of this Article.

Benefits means all forms of non-wage compensation.

City means the City of New Orleans acting through its Mayor or the Mayor's designee.

Collective Bargaining means to perform the mutual obligation of the City, by its representatives, and the exclusive bargaining representative of employees in an appropriate bargaining unit to meet and negotiate in good faith at reasonable times and places, with the good faith intention of

reaching an agreement, subject to appropriation of funds by the City Council, regarding terms and conditions of employment, including wages, salaries, and all forms of monetary compensation; benefits; personnel policies and practices, working conditions, and hours and scheduling of work, provided that matters reserved as City management rights in Section 114-402 are subject to collective bargaining only as provided therein. The City shall not negotiate as to matters controlled or preempted by any federal or state constitutional provision, law, rule, or regulation.

Collective bargaining agreement means the written legal contract between the City and an exclusive bargaining agent representing the employees in a bargaining unit authorized by this Article and resulting from collective bargaining as defined in this section. Any collective bargaining agreement negotiated under this Article shall continue in effect following the expiration of its term until such time as superseded by a later agreement.

Employee means any employee of the city in classified or unclassified service as defined in the city charter, Article 8-105.

Employee organization means an organization in which employees participate, and that exists for the purpose, in whole or in part, of representing employees in collective bargaining concerning labor disputes, wages, hours, and other terms and conditions of employment.

Exclusive bargaining representative and exclusive bargaining agent means the employee organization recognized by the City as the only organization to bargain collectively for all employees in a bargaining unit (as defined in Sec. 114-403).

Impasse means the failure of the City and an exclusive bargaining representative to reach agreement in the course of collective bargaining negotiations within the timeframes specified in this Article.

Labor-management dispute means a difference of position as between the City and an exclusive bargaining agent concerning administration or interpretation of the collective bargaining agreement between them; action challenged as a prohibited practice under Section 114-413; negotiability of subject matters under this Article; and questions of eligibility of disputes for resolution by mediation or arbitration. It shall not mean disciplinary or other adverse personnel actions within the meaning of Louisiana state statutes, as implemented by the uniformly applicable City grievance procedure, and specialized state statutory procedures applicable to law enforcement officers and fire and emergency medical services employees.

Mediation means an effort by a neutral, third-party fact finder chosen under the terms of this Article to assist confidentially in resolving an impasse, or other labor-management dispute as defined in this section, arising in the course of collective bargaining between the City and the exclusive bargaining agent of a bargaining unit.

Official time: means any employee representing an exclusive bargaining agent in the negotiation of an agreement under this Article, including in an impasse resolution proceeding, or in the representation of other employees in grievances shall be authorized to use time when the employee otherwise would be in a duty status to the extent and in a manner deemed reasonable in the mutual agreement of the City and the exclusive bargaining agent with due consideration for City operational and service demands at the time, or in accordance with negotiated terms of an existing collective bargaining agreement (if applicable).

Sec. 114-401. – Employee Rights.

- (a) Employees shall have the right to
 - (1) organize, form, join, assist, participate in, and pay dues or contributions to a union.

(2) to bargain collectively through an exclusive bargaining representative of their own choosing and to receive fair representation from a union.

(3) and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection insofar as such activity is not inconsistent with this Article.

(4) Employees shall also have the right to refrain from any or all such activities described above.

(c) The City and each employee organization will refrain from any intimidation or coercion of employees who choose to exercise their rights under this Article.

Sec. 114-402. – Employee Use of Work Time for Employee Organization Matters

(a) Employees shall have the right to hold informal conversations and interactions with one another to discuss workplace and employee organization issues while on duty, provided that such conversations do not interfere with the employee's job duties. Employee organizations shall not hold formal meetings that interfere with the work time of employees, except as provided for in this Article or in a collective bargaining agreement.

(b) Employees shall have the right to use City electronic communication systems to discuss employee organization business or activities, or employee organizing activity.

Sec. 114-403. – Bargaining units.

The City shall recognize the following bargaining units for the purposes of collective bargaining:

(a) Police: The police employees' bargaining unit shall consist of all sworn uniformed

employees of the police department, except those excluded by definition under Section 114-400;

(b) Fire: The fire employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals and emergency communications employees, except those excluded by definition under Section 114-400; and

(c) General Government: All other City employees, including Emergency Medical Services, except those excluded by definition in Section 114-400.

Sec. 114-404. – Labor Relations Administrator.

(a) Labor Relations Administrator shall be retained by the Council in the manner set forth in subsection (d) of this section to carry out the duties set out in subsection (j) below.

(b) Notwithstanding the formal appointment of a Labor Relations Administrator to administer the terms of this Article, the City and the exclusive bargaining agent for each bargaining unit may provide, in a collective bargaining agreement, for regular informal meetings between them in the form of an informal labor relations committee or other similar group staffed by representatives of labor and management. This committee or similar group should endeavor to address problems and concerns before they require the formal attention of the LRA

(c) The Council shall release a request for proposals, consistent with the rules of the Council, seeking qualified individuals to serve as LRA. The LRA must be experienced in the field of labor relations and not be directly employed by either the City or an employee organization either with exclusive bargaining rights or seeking exclusive bargaining rights for a City bargaining unit. The term of the

contract shall be annual, renewable for four additional one-year terms.

(j) The LRA shall:

- (1) ratify card-check recognition, hold and conduct elections for certification or decertification pursuant to the provisions of this Article, and issue the certification or decertification, or cause these actions to occur;
- (2) request from the City or an employee organization, and the City or such organization shall provide, any relevant assistance, service, and data that will enable the administrator to properly carry out duties under this Article;
- (3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents, to the extent permitted by applicable law, in proceedings within the responsibility of the administrator under this Article;
- (4) exercise any other powers and perform any other duties and functions specified in this Article of an administrative nature.

Sec. 114-405. - Recognition of exclusive bargaining agent.

- (a) If at the of the implementation of this ordinance, an employee organization has been recognized as having the exclusive bargaining rights of a bargaining unit of City employees, whether by a Memorandum of Understanding (MOU) with the City and/or by another process legally recognized with the City of New Orleans, then that bargaining agent shall have the rights and responsibilities vested by the ordinance. All other provisions of the ordinance shall henceforth apply to all

recognized bargaining agent(s) and the bargaining units they represent.

- (b) A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in Section 114-404 if the employee organization is selected by a majority of the employees whether by recognition of signed union authorization or membership cards or petition of more than 50% (50% + 1) of the bargaining unit, or by secret ballot election, if the petitioning employee organization and City mutually agree to hold an election. If both parties agree to an election, it shall occur amongst the employees of the appropriate bargaining unit in a secret ballot election conducted pursuant to Section 114-407, and rules and procedures adopted by the LRA, following a request for recognition. Elections shall be conducted by mail-in ballots unless all parties agree otherwise. The postage costs of such election shall be shared equally by the parties involved.

Section 114-406. – Election of Exclusive Representative.

- (a) An employee organization may request an election be held by submitting a petition for an election to the LRA who shall notify the Mayor in accordance with procedures established and published by the LRA, including but not limited to provisions for notice to bargaining unit employees and public notice of election. The petition must represent a showing of interest by at least thirty (30) percent of the employees in a bargaining unit permitted by this Article based upon administratively acceptable evidence.
- (b) Any additional interested employee organization must submit a petition of intervention to the LRA, which must be accompanied by a showing of interest by thirty (30) percent of the employees in the appropriate bargaining unit, based

upon administratively acceptable evidence, within twenty-one (21) business days of notice of the filing of the petition. A petition for intervention may not be supported by any employee who already supported the initial petition for an election.

- (c) If the LRA determines, after a tabulation of the submitted showing of interest forms, that the petitioning employee organization or any intervening employee organization has not met the required showing of interest, then the LRA must allow not less than fourteen (14) additional business days for such employee organization to submit additional showing of interest forms. The 14-day period for submitting such forms commences on the date the LRA provides notice to the petitioning or intervening employee organization of the insufficiency of its forms.
- (d) An election under this Article shall be held within fifty-five (55) calendar days after written notice to all parties of the determination by the LRA of a valid petition for election in accordance with election procedures established by the LRA, which shall include, but not be limited to, provisions regarding employee organization receipt of bargaining unit employee contact information, ballot content, and procedures for mail-in voting. The City must furnish to the LRA and the petitioning and any intervening employee organizations, no more than five (5) business days after the LRA determines that that employee organization has met the required showing of interest, a list of all eligible employees in the bargaining unit. The election ballots must contain, as choices to be made by the voter, the name of the petitioning employee organization, the name(s) of any

employee organization that has intervened in accordance with the provisions of this Article, and a choice of “no representation” by any of the named employee organizations.

- (e) If an employee organization receives a majority of the valid ballots cast by the employees in a permitted bargaining unit, it shall be recognized by the City as the exclusive bargaining agent upon certification of the results. The LRA’s certification of results is final unless, within 14 business days after service of the election report and the certification, any party serves on all other parties and files with the LRA objections to the election. Objections must be verified and must contain a concise statement of facts constituting the grounds for the objections. The LRA must investigate the objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the LRA may determine the matter without a hearing. The LRA may invite, either by rule or by invitation, written or oral argument to assist it in determining the merits of the objections. If the LRA finds that the election was not held in substantial conformity with this Article, or if the LRA determines that the outcome of the election was affected, even if by third party interference, it shall require corrective action and order a new election under this section. Otherwise, the LRA must confirm the certification initially issued. In any event, the LRA must make a determination as to whether or not to certify the election within 21 days of the filing of objections.
- (f) Nothing in this Article shall require or permit an election in any bargaining unit within twelve (12) months after a previous election has been held in such

bargaining unit pursuant to this Article, notwithstanding the outcome of that election, except that this provision is inapplicable to any election that might be ordered by the LRA under (e).

- (g) No party shall have an advantage over the other in gaining access to employees during organizational or representation campaign activity.

Section 114-407. – Successorship

- (a) Successorship is defined as the process from which one exclusive bargaining agent transfers their rights to represent an employee organization to a different bargaining agent.
- (b) Successorship shall occur when the employee organization that is the recognized bargaining agent is placed under receivership or administratorship by its parent international union, or when such employee organization has become unable to carry out its duty of representation to its members and when another employee organization seeks to replace the bargaining agent.
- (c) The exclusive bargaining agent shall notify the LRA of these changes and ensure that the members of the employee organization are notified within thirty (30) days from the day it is put into receivership or administratorship by its parent international union. The LRA shall subsequently notify the City of New Orleans.
- (d) In order to succeed the exclusive bargaining agent, a successor employee organization must meet the criteria laid out for card-check recognition in 114-405 (b).
- (e) The collective bargaining agreement between the City and the bargaining agent in question, if the bargaining agreement is still within effect based on the terms of

agreement, shall remain in effect until the expiration of its term or until a new employee organization is certified by the LRA as the exclusive bargaining agent of the bargaining unit and a new collective bargaining agreement is negotiated.

- (f) Successor bargaining agent must provide administratively acceptable evidence that the membership of the employee organization consent to and approve the successorship to a new employee organization with exclusive bargaining agent status.
- (g) Successorship provisions can be further specified in the collective bargaining agreements of recognized exclusive bargaining agents, provided they do not violate the terms of this Section.
- (h) Within thirty (30) days from when the City of New Orleans is notified of the successorship, the Mayor or their representative must formally acknowledge the successorship of the exclusive bargaining agent through a Memorandum of Understanding (MOU) with the successor employee organization within thirty (30) days.

Section 114-408. – Rights Accompanying Exclusive Representation.

Any employee organization recognized as the exclusive bargaining agent for employees in an appropriate bargaining unit shall have the following rights:

- (a) To speak on behalf of all members of the unit and shall be responsible for representing the interests of all members of the bargaining unit without discrimination and without regard to employee organization membership.
- (b) To meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this Article, may be the subject of collective

bargaining, in an effort to reach an agreement, subject to the approval of the Mayor or their designee with responsibility for the employees in the bargaining unit.

- (c) To meet with bargaining unit employees on the premises of the City in non-secure areas during times when the employees are on break or in a non-duty status. Any other employee organization that has submitted a petition and established a valid question concerning representation of the bargaining unit shall also be permitted to meet with bargaining unit employees with the same limitations. This subsection shall not restrict an exclusive bargaining agent and the City from negotiating for greater access to employees by the exclusive bargaining agent as a provision of a collective bargaining agreement.
- (d) To receive quarterly a list of all bargaining unit employees, as well as to be informed of all new hires within ten calendar (10) days.
- (e) To use City communications systems to communicate with employees regarding collective bargaining, the administration of collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues, and internal union matters involving the governance or business of the exclusive bargaining agent.
- (h) To be represented at any formal discussion between one or more representatives of the City and one or more employees in the bargaining unit or their representatives concerning (1) any matter that is within the scope of collective bargaining as set forth in the definition of collective bargaining (see Section 114-400); or (2) any examination of bargaining unit employees by a

representative of the City in connection with an investigation if the employee reasonably believes that the examination involves matters covered by any collective bargaining agreement then in effect, and the employee requests representation. The City shall inform the employee that the employee has a right to union representation prior to any such discussion or interview, and the employee shall have a right to request union representation before proceeding with the discussion or interview. An individual employee may present a personal complaint or question at any time to the City without the intervention of an employee organization, provided that any such organization that is recognized by the City as the exclusive bargaining agent for the bargaining unit in which the employee is a member is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the matter and that any adjustment made shall not be inconsistent with the terms of any applicable collective bargaining agreement. Such employee or employees who utilize this avenue of presenting personal complaints to the City shall not do so under the name, or by representation, of an employee organization.

Sec. 114-409 – Good Faith Bargaining.

- (a) A written request for bargaining must be submitted by the exclusive bargaining agent to the Mayor and negotiations must begin no later than July 1 and conclude (including any required mediation or impasse procedures) by October 15 of any year where an agreement is sought to be effective at the beginning of the next fiscal year, in order to accommodate the City budget process. Failure of the parties to reach agreement by September 1, or at such earlier time as the parties

may agree in writing, shall constitute an impasse and trigger impasse resolution procedures under this Article.

(b) Good faith bargaining shall not include submission of or a response to a proposal that:

- (1) violates the rights of employees as set forth in this Article, or
- (2) impairs, restricts, or delegates the authority of the City as set forth in Section 114-402, other than as the City may expressly allow as a matter of permissive bargaining.

Section 114-410. – Approval of tentative agreement.

When an exclusive bargaining agent and the Mayor’s bargaining representative reach a tentative agreement, they shall reduce it to writing and execute it, signifying the approval of the bargaining agent and the Mayor.

Section 114-411. – Mediation and Arbitration.

The LRA shall serve as the mediator and arbiter of disputes in the collective bargaining process. In making a determination under this subsection, the LRA shall consider the following factors:

- (1) Stipulations of the parties;
- (2) The interests and welfare of the public;
- (3) The financial ability of the employer to meet the financial obligations in the proposed collective bargaining agreement;
- (4) The overall compensation presently received by the employees involved in the arbitration;
- (5) Comparison of wages, benefits, and working conditions of the employees

involved in the arbitration proceedings with the wages, benefits, and working conditions of other persons performing similar services in the public and private sectors, if applicable;

- (6) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, benefits, and working conditions;
- (7) Comparison of working conditions of other City of New Orleans personnel; and
- (8) Such other factors that are normally or traditionally taken into consideration in the determination of wages, benefits, and working conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public sector.

Section 114-412. – Neutrality

Neither the City nor any exclusive bargaining agent shall refuse to negotiate in good faith with respect to matters within the scope of collective bargaining as defined in Section 114-400.

(a) The City and its agents shall not:

- (1) Interfere with, restrain, or coerce employees in the exercise of rights granted by this Article;
- (2) Dominate or interfere in the administration of any employee organization;
- (3) Deter or discourage employees or applicants for City positions from becoming or remaining members of an employee organization, or from authorizing dues deductions, or voting to authorize union

representation, or exercising any of their rights under this Article.

- (4) Encourage or discourage membership in any employee organization, committee, or association including by discrimination in hiring, tenure, or other terms and conditions of employment, provided that use of City property and time for meetings and the City's communication system for employee organization business, as may be permitted by this Article or a collective bargaining agreement, shall not be deemed encouragement prohibited by this subsection;
- (5) Discharge or discriminate against any employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this Article or because the employee has formed, joined, or chosen to be represented by any exclusive bargaining agent;
- (6) Deny the rights accompanying certification as the exclusive bargaining agent as conferred by this Article;
- (7) Refuse to bargain collectively with the exclusive bargaining agent as provided in this Article;
- (8) Refuse to participate in good faith in any agreed-upon impasse resolution procedures or those set forth in this Article;
- (9) Refuse to reduce a collective bargaining agreement to writing and sign such agreement provided all conditions for an enforceable agreement, as set forth in this Article, have been met; or
- (10) Enforce any rule or regulation which is plainly in direct conflict with any

applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.

- (b) No employee organization or its agents shall:
 - (1) Interfere with, restrain, or coerce any employee with respect to rights granted in this Article or with respect to selecting an exclusive representative;
 - (2) Fail to represent an employee who is in a bargaining unit exclusively represented by the employee organization fairly and without discrimination provided such failure is willful or deliberate;
 - (3) Refuse to bargain collectively with the City as provided in this Article;
 - (4) Refuse to participate in good faith in or violate any agreed-upon impasse resolution procedures or those set forth in this Article; or
 - (5) Engage in conduct which is plainly in direct conflict with any applicable collective bargaining agreement.

Section 114-413. – Decertification.

- (a) If a petition for decertification of a recognized exclusive bargaining agent is presented to the LRA showing, by administratively acceptable evidence, that at least sixty (60) percent of the employees in the bargaining unit no longer want the employee organization to be their bargaining agent, then the LRA shall hold an election pursuant to Section 114-406 of this Article.
- (b) A petition for decertification of a recognized exclusive collective bargaining agent in an appropriate unit may be filed in the sixty (60)- day period between

the one hundred eightieth (180th) and one hundred twentieth (120th) day prior to expiration of any existing collective bargaining agreement for that bargaining unit.

- (c) For a period of one (1) year following recognition or certification of an exclusive bargaining agent, no decertification petitions may be filed.
- (d) If a majority of the employees in an appropriate bargaining unit vote in a secret ballot decertification election to no longer be represented by the employee organization, that organization no longer shall be recognized as the exclusive bargaining agent of the employees in the bargaining unit.

Section 114-414. – Time limits.

Any time limits in this Article may be extended by written agreement of the City, the employee organization, and any other appropriate parties.

Section 114-415. – Notices.

Any notice required under the provisions of this Article shall be in writing, but service of any such notice shall be sufficient if mailed by certified mail, return receipt requested, addressed to the last-known address of the parties, unless otherwise provided in this Article or by the rules of the LRA, which rules shall provide for the electronic service of documents. Refusal of certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice.

Section 114-416. – Annual Public Hearing.

The Council shall hold a public hearing to hear presentations from city employee unions or labor representatives about the needs of city workers. At said hearings, labor representatives or city employees may discuss recommendations for addressing workplace concerns, civil service

requests, employee pay or leave change requests, recommendations for city facility upgrades, budgetary recommendations, or other labor or workplace issues that affect city employees.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS _____

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON _____

APPROVED:
DISAPPROVED: _____

MAYOR

RETURNED BY THE MAYOR ON _____ **AT** _____

CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS:

NAYS:

ABSENT:

RECUSED: