VENTURA
PORT DISTRICT
Established 1952

RESOLUTION NO. 3464

RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE VENTURA PORT DISTRICT ESTABLISHING A NEW EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS POLICY

WHEREAS, this Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 *et seq.*) captioned "Local Public Employee Organizations," (the Meyers-Milias-Brown Act) by providing orderly procedures for the administration of employer-employee relations between the Ventura Port District ("District") and its employee organizations.

WHEREAS, on March 18, 1992, the Board of Port Commissioners adopted Resolution No. 2562 establishing the Employer-Employee Relations, Procedures, Rules and Policies.

WHEREAS, the District contracted with Liebert Cassidy Whitmore to review and revise the 1992 Employer-Employee Relations Procedures, Rules and Policies pursuant to applicable statutory changes and mandates.

NOW THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the Ventura Port District hereby establishes a new Employer-Employee Organization Relations Policy set forth herein as Exhibit A and rescind Resolution No. 2562.

PASSED, APPROVED, AND ADOPTED at a Regular meeting of the Board of Port Commissioners of the Ventura Port District held on this 1st day of February 2023, by the following vote:

AYES: Commissioners Gardina, Rainey, Brennan, Stephens
NOES:
ABSTAIN:
ABSENT: Chair Blumenberg

Michael Blumenberg, Chair

Attest:

Anthony Rainey, Secretary

VENTURA PORT DISTRICT INCORPORATED APR. 15, 1952 CALIFORNIA

EXHIBIT A
EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS POLICY

Article I -- General Provisions

Sec. 1. Statement of Purpose:

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 *et seq.*) captioned "Local Public Employee Organizations," (the Meyers-Milias-Brown Act) by providing orderly procedures for the administration of employer-employee relations between the Ventura Port District ("District") and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of state law, ordinances, resolutions and rules which establish and regulate the civil service system, or which provide for other methods of administering employer-employee relations. This Resolution is intended, instead, to strengthen civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the District.

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

Sec. 2. Definitions:

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

a. "Appropriate unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

b. "Board" means the Board of Port Commissioners of Ventura Port District.

c. "Confidential Employee" means an employee who, in the course of his or her duties, has access to confidential information relating to the District's administration of employer-employee relations.

d. "Consult/Consultation in Good Faith" means to communicate orally or in writing with all effected recognized employee organizations for the purpose of presenting and obtaining views or advising of proposed actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the

required scope of the meet and confer process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV hereof.

e. "Day" means calendar day unless expressly stated otherwise.

f. "District" means the Ventura Port District, and, where appropriate herein, refers to the Board of Port Commissioners or any duly authorized District representative as herein defined.

g. "Employee Relations Officer" means the General Manager or his/her duly authorized representative.

h. "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the District as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II hereof, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.

Such recognition status may only be challenged by another employee organization as set forth in Article II section 8.

i. "Impasse" means that the representatives of the District and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

j. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of District policies and programs.

k. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorizations, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within ninety (90) days prior to the filing of such proof of support.

l. "Supervisory Employee" means any employee having authority, in the interest of the District, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

m. Terms not defined herein shall have the meanings as set forth in the MMBA.

Article II -- Representation Proceedings

Sec. 3. Filing of Recognition Petition by Employee Organization:

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

a. Name and address of the employee organization.

b. Names and titles of its officers.

c. Names of employee organization representatives who are authorized to speak on behalf of the organization.

d. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the District.

e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.

f. Certified copies of the employee organization's constitution and bylaws.

g. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.

h. A statement that the employee organization has no restriction on membership based on race, color, religion, creed, sex, national origin, age, sexual orientation, mental or physical disability or medical condition.

i. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the District. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.

k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

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

Sec. 4. District Response to Recognition Petition:

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

a. There has been compliance with the requirements of the Recognition Petition, and

b. The proposed representation unit is an appropriate unit in accordance with Sec. 9 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing.

The petitioning employee organization may appeal such determination in accordance with Sec. 12 of this Resolution.

Sec. 5. Open Period for Filing Challenging Petition:

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Sec. 3 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Sec. 9 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Sec. 12 of this Article II.

Sec. 6. Granting Recognition Without an Election:

If the Petition is in order, and the proof of support shows that a majority of the employees in the appropriate unit have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative

determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the Exclusive Recognized Employee Organization for the designated unit.

Sec. 7. Election Procedure:

Where recognition is not granted pursuant to Sec. 6, the Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with such party's rules and procedures subject to the provisions of this Resolution. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the District. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the District in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

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

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

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

Sec. 8 Procedure for Decertification of Exclusively Recognized Employee Organization:

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.

c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

d. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent, that includes the allegation and information required under this Section 8, and otherwise conforms to the requirements of Section 3 of this Article.

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

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Sec. 7 of this Article II.

During the "open period" specified in the first paragraph of this Sec. 8, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Sec. 8, which the Employee Relations Officer shall act on in accordance with this Sec. 8.

If, pursuant to this Sec. 8, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

Sec. 9. Policy and Standards for Determination of Appropriate Units:

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the District and its compatibility with the primary responsibility of the District and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.

b. History of representation in the District and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.

c. Consistency with the organizational patterns of the District.

d. Effect of differing legally mandated impasse resolution procedures.

e. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.

f. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Sec. 2 of this Resolution, are determining factors in establishing appropriate units hereunder, and therefore managerial, supervisory and confidential employees may only be included in a unit consisting solely of managerial, supervisory or confidential employees respectively. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

Peace Officers have the right to be represented in separate units composed solely of such peace officers.

Also, under the MMBA, professional employees have the right to be represented separately from non-professional employees.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section. The decision of the Employee Relations Officer shall be final.

Sec. 10. Procedure for Modification of Established Appropriate Units:

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Sec. 8 of this Article II. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Sec. 3 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Sec. 9 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may by his own motion propose that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Sec. 9 of this Article II and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 12 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Sec. 3 hereof.

Sec. 11. Procedure for Processing Severance Requests:

An employee organization may file a request to become the recognized employee organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another recognized employee organization. The timing, form and processing of such request shall be as specified in Sec. 10 for modification requests.

Sec. 12. Appeals:

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer; or an employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 3), Challenging Petition (Sec. 5), Decertification Petition (Sec. 8), Unit Modification Petition (Sec. 10) --- or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 8) or Severance Request (Sec. 11) --- has not been filed in compliance with the applicable provisions of this Article, may, within ten (10) days of notice of the Employee Relations Officer's final decision, request to submit the matter to mediation by the State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the District Board for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of mediation proceedings, whichever is later.

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

Article III -- Administration

Sec. 13. Submission of Current Information by Recognized Employee Organizations:

All changes in the information filed with the District by an Exclusively Recognized Employee Organization under items (a.) through (h.) of its Recognition Petition under Sec. 3 of this Resolution shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

Exclusively Recognized Employee Organizations that are party to an agency shop provision shall provide annually to the Employee Relations Officer and to unit members within 60 days after the end of its fiscal year the financial report required under Government Code Section 3502.5 (f) of the Meyers-Milias Brown Act.

Sec. 14. Employee Organization Activities -- Use of District Resources:

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

Sec. 15. Administrative Rules and Procedures:

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

Article IV -- Impasse Procedures

Sec. 16. Initiation of Impasse Procedures:

If the meet and confer process has reached impasse as defined in Section 2 of this Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

a. To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and

b. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Sec. 17. Impasse Procedures:

Impasse procedures are as follows:

a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

b. If the parties agree to, and do participate in mediation, and if mediator is unable to effect settlement of the controversy, the employee organization may present a request to the District and the Public Employment Relations Board (PERB) to submit the impasse to fact-finding. This request by the employee organization to submit the impasse to fact-finding must be made no sooner than 30 days, but no later than 45 days, following the selection of a mediator by the parties.

c. If the parties do not agree to participate in mediation, the employee organization may present a request to the District and PERB to submit the impasse to fact-finding no later than 30 days following the date that either party has provided the other a written notice of declaration of impasse.

d. Within five (5) working days after PERB's determination that the request for factfinding is sufficient, a fact-finding panel of three (3) shall be appointed in the following manner: One member of the panel shall be appointed by the Employee Relations Officer, and one member shall be appointed by the Exclusively Recognized Employee Organization. PERB shall, within five (5) working days after making its determination that the request for fact-finding is sufficient, submit the names of seven persons, drawn from the list of neutral fact-finders established pursuant to Government Code section 3541.3(d). PERB shall thereafter designate one of the seven persons to serve as the chairperson unless notified by the parties within five (5) working days that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by PERB.

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

(1) The panel shall, within ten (10) days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. The panel shall have subpoena power with regard to hearings, investigations and inquiries.

(2) Subject to the stipulations of the parties, the fact-finders shall consider, weigh and be guided by the following measures and criteria in arriving at their findings and recommendations:

a. State and federal laws that are applicable to the employer.
b. Local rules, regulations, or ordinances.
c. Stipulations of the parties.
d. The interests and welfare of the public, and the financial ability of the public agency.

e. Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

f. The consumer price index for goods and services, commonly known as the cost of living.

g. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

h. Any other facts not confined to those specified in paragraphs (a)-(g), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations, including, but not limited to:

(i.) Maintaining appropriate compensation relationships between classifications and positions within the District;

(ii.) Other legislatively determined and projected demands on agency resources (i.e., budgetary priorities as established by the governing body);

(iii.) Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s);

(iv.) Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s);

(v.) Assurance of sufficient and sound budgetary reserves; and

(vi.) Constitutional, statutory, and Municipal Code/ Charter limitations on the level and use of revenues and expenditures.

(3) Within thirty (30) days after the appointment of the fact-finding panel, or, upon agreement by both parties within a longer period, the panel shall make written findings of fact and advisory recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairperson of the fact-finding panel shall serve such findings and recommendations on the Employee Relations Officer and the designated representative of the Exclusively Recognized Employee Organization before they are made available to the public.

f. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the District shall make them public by submitting them to the District Clerk for consideration by the District Board in connection with the Board's legislative consideration of the impasse.

g. After any applicable mediation and fact-finding procedures have been exhausted, but no earlier than ten (10) days after the fact finders' written findings of fact and recommended terms of settlement have been submitted to the parties, the District Board may hold a public hearing regarding the impasse, and take such action regarding the impasse as it in its discretion deems appropriate as in the public interest, including implementation of the District's last, best and final offer. Any legislative action by the District Board on the impasse shall be final and binding.

h. The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with PERB. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and PERB. The parties shall make payment directly to the chairperson.

i. Any other mutually incurred costs shall be borne equally by the parties. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

Sec. 18. Costs of Impasse Procedures:

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

Article V -- Miscellaneous Provisions

Sec. 19. Construction:

This Resolution shall be administered and construed as follows:

(a) Nothing in this Resolution shall be construed to deny to any person, employee, organization, the District, or any authorized officer, body or other representative of the District, the rights, powers and authority granted by federal or state law (or District Charter provisions).

(b) This Resolution shall be interpreted so as to carry out its purpose as set forth in Article I.

(c) Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to District employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the District, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights accorded them under District law or contract.

Sec. 20. Severability:

If any provision of this Resolution, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.