CHAPTER 24

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CHAPTER 24

LABOR MANAGEMENT RELATIONS

SECTION 24-1. SHORT TITLE.

Sections 1 through 22 of this Ordinance may be cited as the "Kemmerer Labor Management Relations Ordinance".

SECTION 24-2. PURPOSE OF THE ORDINANCE.

It is the public policy of the City, and the purpose of this Ordinance, to promote harmonious, peaceful and cooperative relationships between the City and its employees and to protect the public by assuring at all times, the responsive, orderly and efficient operation of government.

SECTION 24-3. CONFLICTS.

In the event of conflict with other laws or ordinances, the provisions of the Labor Management Relations Ordinance shall not supersede other previously enacted federal, state or local legislation.

SECTION 24-4. DEFINITIONS.

As used in the Labor Management Relations Ordinance:

A. The appropriate bargaining unit means all public employees as defined in Section 4(E);

B. Certification means the designation by the City of a labor organization as the exclusive representative for all employees in the appropriate bargaining unit following election;

C. City means the City of Kemmerer, Wyoming;

D. To bargain collectively means to meet at reasonable times and place and to negotiate in good faith with respect to wages, hours and conditions of employment, including provisions for the hearing and resolution of grievances. There is no obligation on the part of either party to agree to a proposal of the other or to make a concession;

E. Public employee means a nonprobationary employee, who works 30 hours or more per week, of the City except:

1. Any elected official or person appointed to fill a vacancy in an elected

position, or any board or commission member or judicial officer;

2. Any supervisor;

3. Any employee employed on an irregular, casual or seasonal basis;

4. Any person who has access to confidential labor relations information or who serve the employer in an otherwise confidential capacity;

5. Any person whose inclusion as an employee under this Ordinance will place the person in a real or apparent conflict of interest situation between the normal requirements of the job and the exercise of rights as an employee under this Ordinance.

F. Employer means the City of Kemmerer;

G. Exclusive representative means a labor organization that, as a result of certification by the City, represents all employees in the appropriate bargaining unit for the purposes of collective bargaining;

H. Fact finding means the procedure following mediation whereby the parties involved in an impasse submit their differences to a third party for an advisory recommendation;

I. Governing body means the mayor and city council of the City of Kemmerer;

J. Impasse means failure of the employer and the exclusive representative, after good faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement;

K. Labor organization means any employee organization which represents or seeks to represent public employees in collective bargaining;

L. Lockout means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

M. Supervisor means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of hiring, firing, transferring, suspending, laying off, recalling, promoting, adjusting grievances, or to recommend any of the foregoing. The employer has the absolute right to choose and designate individuals who will be supervisors for purposes of this ordinance and collective bargaining and will have the absolute right to select its collective bargaining representative(s);

N. Mediation means assistance by an impartial third party to resolve an impasse between an employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice;

O. Strike means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence in whole or in part from the full, faithful, and proper performance of the duties of employment. The definition of strike includes, but is not limited to such actions as, sick outs, slow downs, traffic ticket writing campaigns, mass resignations and sympathy strikes.

SECTION 24-5. RIGHTS OF EMPLOYEES.

Employees other than management employees, supervisors and confidential employees, may form, join or assist any labor organization for the purpose of collective bargaining through representatives chosen by employees through representation elections without interference, restraint or coercion. Such employees also have the right to refuse, to form, join or assist any labor organization. Employees may not be required to pay "fair-share" contributions.

SECTION 24-6. MANAGEMENT RIGHTS.

Without limitation, but by way of illustration, the exclusive prerogatives, functions and rights of the employer shall include the following:

A. To determine the overall mission of the City;

B. To direct and supervise all operations, functions and the work of the employees;

C. To maintain and improve the effectiveness and efficiency of city government;

D. To determine the place to report for work, to determine methods, processes and manners of performing work;

E. To hire, lay off, promote, demote, assign, transfer, discipline, discharge or terminate employees and to relieve employees from duties because of lack of work or funds or under conditions where the employer determines continued work would be inefficient or non-productive;

F. To determine what, and by whom, services will be rendered, the job descriptions for the services so rendered, the operations to be performed, the technology to be utilized and the matters to be budgeted;

G. To assign shifts, work days, hours of work and work locations, and to designate, assign and reassign all work duties;

H. To determine the need for and the qualifications of new employees, and to determine the qualifications for and qualifications of employees considered for transfer and promotion;

I. Designate its representative(s) for the purposes of collective bargaining.

J. Make necessary selections as to who its confidential, supervisory and management employees may be. Representatives of the City will meet with the Union to determine whose inclusion in the bargaining unit would place the employee in a real or apparent conflict of interest. In the event of impasse, the issue will be forwarded to the governing body for final decision.

K. To retain all rights not specifically prohibited by a collective bargaining agreement or the Kemmerer Labor Management Relations Ordinance.

SECTION 24-7. ELECTIONS.

A. Upon the request of a labor organization for an election, the City and the labor organization shall each designate one election judge and the two appointed shall designate a third to conduct the election and certify the results thereof.

B. Whenever, in accordance with regulations prescribed by the governing body, a petition is filed with the city clerk by a labor organization containing the valid signatures of at least thirty percent of the employees in the appropriate bargaining unit, the election judges shall conduct a secret ballot representation election.

C. Once a labor organization has filed a valid petition with the city clerk calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the valid signatures of not less than ten percent of the public employees in the appropriate bargaining unit no later than ten days after the employer posts a written notice that the petition containing the signatures of not less than thirty percent of the public employees has been filed by a labor organization.

D. Every election shall include the option for no representation.

E. In the event of an election with two or more organizations on the ballot where neither of the choices received a majority of the votes cast, then and in such an event a run-off election shall be held within thirty days. The choices in the run-off election shall consist of the employee organization which received the greatest number of votes in the original election and the choice of "no representation."

F. Where a majority of the public employees in the bargaining unit cast votes in favor of

representation by a labor organization, the election judges shall certify the labor organization as the exclusive representative for all public employees in the appropriate bargaining unit.

G. No election shall be conducted if an election or run-off election has been conducted in the 24 month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in Section 10 of the Labor Management Relations Ordinance.

H. Election disputes shall be resolved by the election judges.

I. The cost of elections shall be borne equally by the parties.

SECTION 24-8. REQUIRED FILINGS.

To be certified and receive benefits and protections of this Ordinance, an employee organization must:

A. File two copies of the constitution and bylaws governing the employee organization with the city clerk who shall make them public. All changes to amendments thereto shall be promptly reported to the city clerk.

B. File employee organization financial reports annually with the city clerk which shall be made public and shall include:

1. The names and addresses of any parent organization, its officers, agents and representatives;

2. The names and addresses of any parent organization or organizations with which it is affiliated;

3. The name and address of the individual(s) who will be the labor organization's spokesperson(s) with the city for purposes of any collective bargaining under this ordinance, which may be amended from time to time;

4. The name and address of its local agent for service of process.

5. A general description of the public employees which it currently represents and which it seeks to represent;

6. (Deleted 4/8/96 by Ordinance #96-722)

C. (Deleted 4/8/96 by Ordinance #96-722)

D. (Deleted 4/8/96 by Ordinance #96-722)

SECTION 24-9. EXCLUSIVE REPRESENTATION.

A. A labor organization upon election shall represent the employees in the appropriate bargaining unit and shall be the exclusive representative of all employees in the appropriate bargaining unit. The exclusive representative shall act for all employees in the appropriate bargaining unit and negotiate a collective bargaining agreement. The exclusive representative shall represent the interests of all employees in the appropriate bargaining unit without discrimination or regard to the membership or non-membership in the labor organization.

B. The existence of an exclusive bargaining representative shall not prevent employees in or out of a bargaining unit from informally taking their grievances or prohibited practices to their supervisor. Any adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the employer and the exclusive representative.

SECTION 24-10. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.

A. Any member of a labor organization or the labor organization itself may initiate its decertification of a labor organization as the exclusive representative if thirty percent of the employees in the appropriate bargaining unit make a written request to the city clerk for a decertification election. Decertification elections shall be held in the manner described hereinabove for elections.

B. When there is a collective bargaining agreement in effect, a request for decertification election shall be made to the city clerk no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, that a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board shall not accept a request for a decertification earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

SECTION 24-11. SCOPE OF BARGAINING.

A. Except for retirement programs provided under state law or other municipal deferred compensation plans, employers and exclusive representatives shall bargain in good faith on wages, retirement contribution rates, hours and other terms and conditions of employment. However, neither the employer nor the exclusive representative shall be required to agree to a proposal or to make a concession. All collective bargaining agreements between the parties shall be reduced to writing.

B. The obligation to bargain collectively imposed by the Labor Management Relations Ordinance shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with the provisions of any statute or ordinance of the City, state, federal government.

C. Payroll deduction of the exclusive representative's membership dues and assessments is a negotiable item by either party and shall be certified in writing by an official of the labor organization. These shall not include penalties or fines of any type levied by the exclusive representative.

D. Any agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds.

E. The following meetings shall be closed:

1. Meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations;

2. Collective bargaining session(s); and

3. Consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

SECTION 24-12. NEGOTIATIONS AND IMPASSE RESOLUTION.

A. The following negotiation procedures shall apply to the employer and the exclusive representatives:

1. Negotiations shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Such request shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date. The parties may open negotiations at any time by mutual agreement.

2. Negotiating teams will consist of persons designated by the exclusive representative and persons designated by the governing body.

3. All negotiations will be conducted in closed sessions. Negotiations will be held at the facilities and at a time mutually agreed upon by the negotiating teams.

4. Recesses and study sessions may be called by either team. Prior to these recesses or study sessions the reconvening time will be agreed upon. A caucus may be taken as needed.

5. A maximum of two (2) employees who are members of the exclusive representative's negotiating team will be released from their normal duties during normal work hours with pay to participate in negotiating sessions.

6. Tentative agreement reached during negotiations will be reduced to writing, dated and initialed by each team spokesperson.

7. Agreement on contract negotiations is accomplished when the union president and the mayor sign the agreement after ratification by the bargaining unit employees and governing body, respectively. Multi-year agreements, which include economic increases in subsequent years shall be considered ratified if and when the governing body appropriates the funds necessary to fund the increase for subsequent years.

B. The following impasse procedure shall be followed by the employer the and exclusive representatives:

1. If an impasse occurs, either party may request a mediator. Unless the parties can agree on a mediator, a mediator from the Federal Mediation and Conciliation Service will be requested to assist negotiations.

2. If the impasse continues after a thirty day mediation period, either party may request that a fact-finder be assigned to the negotiations. A fact-finder will be selected by the parties from a list of individuals requested from the Federal Mediation and Conciliation Service.

3. The fact-finders shall conduct hearings and submit written findings and recommendations to the parties. The fact-finder may take into account only the following factors:

(i) past collective bargaining contracts between the parties including the past bargaining history that lead to such contracts;

(ii) comparison of wages, hours and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the market area and the employee classifications involved;

(iii) comparison of wages, hours and conditions of employment as reflected by public employers in general, and as paid by the same or similar public employers reasonably proximate to the City;

(iv) the interests and welfare of the public; and

(v) the ability of the City to finance economic adjustments and the effect of such adjustments on the normal standard of public services provided by the City.

4. The fact-finder may not create his own settlement but may recommend a potential settlement.

5. If no agreement has been reached within thirty (30) days of the issuance of the fact finder's recommendation, the recommendation of the fact finder will be forwarded to the governing body; the governing body, following opportunity for the exclusive representative and the City's bargaining agent(s) to fully present their respective positions, may accept or modify the fact finder's recommendation as they see fit. The decision of the governing body is final and binding on both parties and shall be incorporated into a contract.

6. The cost of the impasse proceeding that requires a third party shall be borne equally by the parties to the impasse.

7. (Deleted 4/8/96 by Ordinance #96-722)

SECTION 24-13. VOID PROVISIONS.

A. Any terms of a collective bargaining agreement which purport to restrict the rights of management and of the public as contained in Section 6 shall be null and void and wholly unenforceable.

B. Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. Unless renewed or extended as provided above, no agreement shall be valid if it extends for less than one year nor for more than three years.

C. The terms of any collective bargaining agreement whose implementation would be inconsistent with spending, or budget, or would substantially impair or limit the performance of any statutory duty by the City shall be null and void and wholly

unenforceable.

SECTION 24-14. EMPLOYERS PROHIBITED PRACTICES.

A. Neither the City nor its representatives shall:

1. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership or non-membership in a labor organization certified under the provisions of this ordinance;

2. Interfere with, restrain or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Ordinance;

3. Dominate or interfere in the formation, existence or administration of any labor organization;

4. Discriminate in regard to hiring, tenure or any term or condition of employment in order to encourage or discourage membership in a labor organization;

5. Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, grievance or complaint or given any information or testimony under the provisions of the Labor Management Relations Ordinance or because an employee is forming, joining or choosing to be represented by a labor organization;

6. Refuse to bargain collectively in good faith with the exclusive representative;

7. Refuse or fail to comply with any provision of the Labor Management Relations Ordinance, or;

8. Refuse or fail to comply with any collective bargaining agreement.

B. In the event of a violation of this Section by the City or its representative(s), the aggrieved employee or labor organization may file a grievance with the governing body or file a civil action to enjoin the violation in the Third Judicial District Court in and for Lincoln County, Wyoming.

SECTION 24-15. PUBLIC EMPLOYEES - LABOR ORGANIZATIONS PROHIBITED PRACTICES.

A. A public employee, labor organization or its representatives shall not:

1. Discriminate against an employee with regard to labor organization

membership or because of race, color, religion, creed, age, sex, national origin or disability;

2. Discriminate against an employee because of non-membership in a labor organization;

3. Solicit membership for an employee or labor organization during the employee's duty hours except up to 1/2 hour during new employee indoctination;

4. Interfere with, restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance or by state or federal law;

5. Interfere with, restrain or coerce any elected official, employee or representative of the employer in the conduct of his duties;

6. Refuse to bargain collectively in good faith with the employer;

7. Refuse or fail to comply with any collective bargaining or other agreement with the employer;

8. Refuse or fail to comply with any provision of the Labor Management Relations Ordinance; or

9. Interfere with or coerce the employer in the selection of its agent(s) for bargaining;

10. Interfere with the normal process of negotiations between the duly authorized negotiating teams of the employer and the exclusive representative;

11. Dominate or interfere with the administration of the City.

B. A labor organization shall not make any contribution out of the funds of the labor organization in support of any candidate for the governing body, provided, however, this section shall not prohibit voluntary contributions by individuals.

C. Violation of this Ordinance by an employee may result in disciplinary action up to and including termination.

SECTION 24-16. STRIKES AND LOCKOUTS PROHIBITED.

A. No employee or labor organization shall engage in a strike. No employee labor organization shall cause, instigate, encourage or support a strike. No employer shall

cause, instigate or engage in any employee lockout.

B. (Deleted 4/8/96 by Ordinance #96-722)

C. Any employee(s) who engages in "strike" activity as defined at Section 4(O) hereof, may be lawfully discharged or temporarily or permanently replaced.

D. The City may, under this Ordinance, bring suit to recover from a labor organization all incidental costs and expenses incurred by the City in responding to or operating during a strike, slow down, walk out or similar prohibited job action called by, caused by, supported by, or instigated by the labor organization. Any money saved by the City resulting from wages not paid during a strike shall not be set off against expenses incurred by the City for purposes of determining liability under this section.

SECTION 24-17. AGREEMENTS VALID - ENFORCEMENT.

All collective bargaining agreements and other agreements between employers and exclusive representatives are valid and enforceable according to their terms when entered into in accordance with the provisions of the Labor Management Relations Ordinance.

SECTION 24-18. USE OF OFFICIAL TIME.

Solicitation of membership, except during employee orientation, or dues, payments, or other internal business of an employee organization, shall be conducted during the non-duty hours of the employees involved. Except as provided in Section 24-12 (A) (5), employees who represent or act on behalf of a certified employee organization shall not be on paid working time when bargaining collectively with the City or when adjusting grievances.

SECTION 24-19. SEVERABILITY.

If any part or application of the Labor Management Relations Ordinance is held invalid, the remainder of its application to other situations or persons shall not be affected.

SECTION 24-20. EFFECTIVE DATE.

The effective date of the City of Kemmerer Labor Management Relations Ordinance is November 1, 1992.

SECTION 24-16. STRIKES AND LOCKOUTS PROHIBITED.

A. No employee or labor organization shall engage in a strike. No employee labor organization shall cause, instigate, encourage or support a strike. No employer shall cause, instigate or engage in any employee lockout.

B. Any bargaining representative or labor organization whose public employees participate in, cause, instigate, encourage or support a public employee strike, walkout or slow-down may be decertified by the City as the exclusive representative. In such a case, the collective bargaining agreement shall be null and void, the exclusive representative for that appropriate bargaining unit may not collect dues, negotiate or represent employees in any fashion, and shall be barred from serving as the exclusive representative of any City employees for a period of not less than three years.

C. Any employee(s) who engages in "strike" activity as defined at Section 4(O) hereof, may be lawfully discharged or temporarily or permanently replaced.

D. The City may, under this Ordinance, bring suit to recover from a labor organization all incidental costs and expenses incurred by the City in responding to or operating during a strike called by, caused by, supported by, or instigated by the labor organization. Any money saved by the City resulting from wages not paid during a strike shall not be set off against expenses incurred by the City for purposes of determining liability under this section.

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