

ORDINANCE NO. 26-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 35, "EMPLOYEE POLICIES AND BENEFITS", BY REPEALING "PUBLIC EMPLOYEE RELATIONS", SECTIONS 35.030 THROUGH 35.041 IN ITS ENTIRETY; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, it is the desire of the City Commission of the City of Delray Beach, Florida, to dissolve the Public Employee Relations Commission, also known as Mini-PERC; and

WHEREAS, it is the desire of the City Commission to permit the State of Florida Public Employees Relations Commission to assume the responsibilities of the Mini-PERC; and

WHEREAS, the City Commission has determined that the adoption of this ordinance in the best interests of the health, safety, and welfare of the citizens and the public at-large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, that:

Section 1. The recitations set forth above are ratified and incorporated herein.

Section 2. That Chapter 35, "Employee Policies and Benefits", Subheading "Public Employee Relations", Sections 35.030 through 35.064 of the Code of Ordinances of the City of Delray Beach, Florida, shall be repealed in its entirety as follows:

PUBLIC EMPLOYEE RELATIONS

~~Sec. 35.030. -- STATEMENT OF POLICY.~~

~~It is declared that the public policy of the City and the purpose of this subchapter is to provide implementation of Section 6, Article I, of the Constitution of the State, and to promote harmonious and cooperative relationships between government and its employees, both collectively and individually, and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. It is the intent of the City Commission that nothing herein shall be construed to either encourage or discourage organization of public employees. These policies are best effectuated by:~~

~~(A) Granting to public employees the right of organization and representation;~~

~~(B) Requiring the public employer to negotiate with bargaining agents duly certified to represent public employees;~~

- ~~(C) Creating a Public Employees Relations Commission to assist in resolving disputes between public employees and public employers; and~~
- ~~(D) Recognizing the constitutional prohibition against strikes by public employees and providing remedies for violations of that prohibition.~~

~~Sec. 35.031. - DEFINITIONS.~~

~~For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~*Bargaining agent.* The employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit as provided in Section 35.036(B), or its representative.~~

~~*Bargaining unit.* Either that unit determined by the Public Employees Relations Commission, or that unit determined by the public employer and the public employee organization and approved by the Commission to be appropriate for the purposes of collective bargaining. However, no bargaining unit shall be defined as appropriate which includes employees of two (2) employers that are not departments or divisions of the City or a subdivision or agency thereof.~~

~~*Chief executive officer for the public employer.* The person, whether elected or appointed, who is responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer.~~

~~*Civil Service.* Any career, civil, or merit system used by any public employer.~~

~~*Collective bargaining.* The performance of the mutual obligations of the public employer and the bargaining agent of the employee organization to meet at reasonable times, to negotiate in good faith and to execute a written contract with respect to agreements reached concerning the terms and conditions of employment, except that neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this subchapter.~~

~~*Commission.* The Public Employees Relations Commission created by Section 35.032.~~

~~*Confidential employees.* Persons who act in a confidential capacity to assist or aid managerial employees as defined in this Section.~~

~~*Employee organization or organization.* Any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents or seeks to represent any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.~~

~~*Good faith bargaining.* The willingness of both parties to meet at reasonable times and places, as mutually agreed upon, in order to discuss issues which are proper subjects of bargaining, with the intent of~~

~~reaching a common accord. It shall include an obligation for both parties to actively participate in the negotiations with an open mind and a sincere desire, as well as making a sincere effort to resolve differences and come to an agreement. In determining whether a party failed to bargain in good faith, the Public Employees Relations Commission shall consider the total conduct of the parties during negotiations as well as the specific incidents of alleged bad faith. Incidents indicative of bad faith shall include, but not be limited to, the following occurrences:~~

- ~~(1) — Failure to meet at reasonable times and places with representatives of the other party for purpose of negotiations.~~
- ~~(2) — Placing unreasonable restrictions on the other party as a prerequisite to meeting.~~
- ~~(3) — Failure to discuss bargainable issues.~~
- ~~(4) — Refusing, upon reasonable written request, to provide public information, excluding work products as defined in F.S. Section 447.605.~~
- ~~(5) — Refusing to negotiate because of an unwanted person on the opposing negotiating team.~~
- ~~(6) — Negotiating directly with employees rather than with their certified bargaining agent.~~
- ~~(7) — Refusing to reduce a total agreement to writing.~~

~~*Legislative Body.* The City Commission, unless the Public Employees Relations Commission determines that a unit or subdivision thereof, having authority to appropriate funds and establish policy governing the terms and conditions of employment, is the appropriate legislative body for the bargaining unit.~~

~~*Managerial Employees.*~~

- ~~(1) — Those employees generally having authority in the interest of the public employer who:~~
 - ~~(a) — Perform jobs that are not of a routine, clerical or ministerial nature and require the exercise of independent judgment in the performance of those jobs, and also to whom one or more of the following applies:~~
 - ~~(1) — Formulate or assist in formulating policies which are applicable to bargaining unit employees;~~
 - ~~(2) — May reasonably be required on behalf of the employer to assist in the preparation for and conduct of collective bargaining negotiating;~~
 - ~~(3) — Have a role in the administration of agreements resulting therefrom;~~
 - ~~(4) — Have a significant role in personnel administration;~~
 - ~~(5) — Have a significant role in employee relations; or~~
 - ~~(6) — Have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.~~

- (b) ~~Serve as police chiefs, fire chiefs, or directors of public safety of any police, fire, or public safety department. Other police officers, as defined in F.S. Section 943.10(1), and firefighters, as defined in F.S. Section 633.30(1), may be determined by the Public Employees Relations Commission to be managerial employees of those departments. In making determinations the Commission shall consider, in addition to the criteria established in division (1) of this definition, the paramilitary organizational structure of the department involved.~~
- (2) ~~However, in determining whether an individual is a managerial employee pursuant to either division (1)(a) or (b) of this definition, the Commission may consider the historic relationship of the employee to the public employer and to coemployees.~~

Membership dues deduction. ~~The practice of a public employer of deducting dues and uniform assessments from the salary or wages of a public employee. This term also means the practice of a public employer of transmitting the sums so deducted to the employee organization.~~

Professional employee.

- (1) ~~Any employee engaged in work in any two (2) or more of the following categories:~~
 - (a) ~~Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;~~
 - (b) ~~Involving the consistent exercise of discretion and judgment in its performance;~~
 - (c) ~~Of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and~~
 - (d) ~~Requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship or training in the performance of routine mental or physical processes; or~~
- (2) ~~Any employee who:~~
 - (a) ~~Has completed the course of specialized intellectual instruction and study described in division (1) of this definition; and~~
 - (b) ~~Is performing related work under supervision of a professional person to qualify himself to become a professional employee as defined in division (1) of this definition.~~

Public employee. ~~Any person employed by the City and any subdivision or agency thereof except:~~

- (1) ~~Those persons elected by the people, agency heads, members of boards, and Commissions;~~
- (2) ~~Individuals acting as negotiating representatives for employer authorities;~~
- (3) ~~Those persons who are designated by the Public Employees Relations Commission as managerial or confidential employees pursuant to criteria contained herein.~~

~~Public employer or employer.~~ The City and any subdivision or agency thereof which the Public Employees Relations Commission determines has sufficient legal distinctiveness to properly carry out the functions of a public employer.

~~Strike.~~ The concerted failure to report for duty, the concerted absence of employees from their positions, the concerted stoppage of work, the concerted submission of resignations, the concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer, for the purpose of inducing, influencing, condoning or coercing a change in the terms and conditions of employment or the rights, privileges or obligations of public employment or participating in a deliberate and concerted course of conduct which adversely affects the services of the public employer, the concerted failure to report for work after the expiration of a collective bargaining agreement and picketing in furtherance of a work stoppage. The term "strike" shall also mean any overt preparation, including, but not limited to, the establishment of strike funds with regard to the above-listed activities.

~~Strike funds.~~ Any appropriations by an employee organization which are established to directly or indirectly aid any employee or employee organization to participate in a strike in the State.

Sec. 35.032. - PUBLIC EMPLOYEES RELATIONS COMMISSION.

(A) ~~(1) [Commission created.]~~ There is created and established the Public Employees Relations Commission, hereinafter referred to as the Commission.

- ~~(a) The Commission shall be composed of three (3) members and one alternate to be appointed by the City Commission. Members of the local Commission established pursuant to this division shall be appointed so that the composition of the local Commission is as follows: One appointee who is a person who, on account of previous vocation, employment or affiliation, is, or has been, classified as representative of employers; one appointee who is a person who, on account of previous vocation, employment or affiliation, is, or has been, classified as representative of employees or employee organizations; and all other appointees, including alternates, shall be persons who on account of previous vocation, employment or affiliation, are not or have not been classified as representative of employers or of employees or employee organizations.~~
- ~~(b) The City Commission shall designate one member as Chairperson.~~
- ~~(c) The Chairperson and all members of the local Commission shall be appointed for four year staggered terms.~~
- ~~(d) Neither the Chairperson nor any member shall be employed by, or hold any Commission with, any governmental unit in the State or any employee organization while serving in that office.~~

- ~~(e) — A vacancy for the unexpired term of a member shall be filled in the same manner as herein provided for an original appointment.~~
- ~~(f) — The presence of three (3) members shall constitute a quorum of any called meeting of the Commission.~~
- ~~(g) — The Commission in the performance of its duties and powers under this subchapter shall not be subject to the control, supervision or direction by the City Manager or City Commission.~~
- ~~(2) — The Chairperson and the remaining members of the Commission shall devote their time as is necessary to the performance of their duties hereunder, and shall be compensated as established by resolutions adopted by the City Commission from time to time. The Chairperson and other members shall also be reimbursed for reasonable expenses under this chapter as provided for in F.S. Section 112.061. The Chairperson shall be responsible for the administrative functions of the Commission and upon authorization by the City Commission shall have the authority to employ personnel as may be necessary to carry out the provisions of this subchapter. The Chairperson shall also have the authority to call the alternate Commissioner to serve during those times as the alternate Commissioner's presence is necessary to complete a quorum for the conduct of City Commission business. Until that time as the Commission has submitted a budget which is funded by the City Commission, the Commission shall, upon request of the Chairperson to the City Manager, have its fiscal needs provided for by appropriations from the unappropriated surplus.~~

~~(B) — *Powers and Duties.*~~

- ~~(1) — After public hearing, the Commission shall adopt, promulgate, amend or rescind those rules and regulations as it deems necessary and administratively feasible to carry out the provisions of this subchapter, in accordance with F.S. Chapter 120. Prior to adoption of rules and regulations by the Commission, the Commission shall apply the effective rules and regulations, promulgated by the Public Employees Relations Commission of this State, as amended.~~
- ~~(2) — To accomplish the objectives and to carry out the duties prescribed by this subchapter, the Commission may subpoena witnesses, may issue subpoenas to require the production of books, papers, records and documents which may be needed as evidence of any matter under inquiry, and may administer oaths and affirmations.~~
- ~~(3) — In cases of neglect or refusal to obey a subpoena issued to any person, the circuit court of the county in which the investigations or the public hearings are taking place, and upon application by the Commission, may issue an order requiring that person to appear before the Commission and produce evidence about the matter under investigation. A failure to obey that order may be punished by the Court as a contempt.~~
- ~~(4) — Any subpoena, notice of hearing, or other process or notice of the Commission issued under the provisions of this subchapter shall be served personally or by certified mail.~~

~~A return made and verified by the individual making the service and setting forth the manner of that service is proof of service and a returned post office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under the provisions of this subchapter shall be served in the county wherein the persons required to be served reside or may be found.~~

- ~~(5) The Commission shall adopt rules as to the qualifications of persons who may serve as mediators and special masters, shall maintain lists of other qualified persons who are not employees of the Commission and may initiate dispute resolution procedures by special masters pursuant to the provisions of this subchapter.~~
- ~~(6) Pursuant to its established procedures, the Commission shall resolve questions and controversies concerning Claims for recognition as the bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining and investigate charges of unfair labor practices, and violations of Section 35.047(A) by public employees.~~
- ~~(7) The Commission shall provide by rule a procedure for the filing and prompt disposition of petitions for a declaratory statement as to the applicability of any statutory provision or any rule or order of the Commission. This rule shall provide for, but not be limited to, an expeditious disposition of petitions posing questions relating to potential unfair labor practices. Commission disposition of petitions shall be final agency action.~~

~~Sec. 35.033. -- PUBLIC EMPLOYER'S RIGHTS.~~

~~It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operation. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of these rights shall not preclude employees or their representatives from raising grievances should decisions on the above matters have the practical consequences of violating the terms and conditions of any collective bargaining agreement in force, or civil or career service regulation.~~

~~Sec. 35.034. -- PUBLIC EMPLOYEES' RIGHTS; ORGANIZATION AND REPRESENTATION.~~

- ~~(A) Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in any employee organization of their own choosing.~~
- ~~(B) Public employees shall have the right to be represented by any employee organization of their own choosing, to negotiate collectively through a certified bargaining agent with their public employer in the determination of the terms and conditions of their employment. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.~~

- ~~(C) — Public employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in those activities.~~
- ~~(D) — Nothing in this subchapter shall be construed to prevent any public employee from presenting, at any time, his own grievances, in person or by legal counsel, to his public employer, and having those grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of those grievances.~~
- ~~(E) — Any full-time employee or officer of any public employer or employee organization may represent his employer or any member of a bargaining unit in any proceeding authorized in this part, excluding the representation of any person or public employer in a court of law by a person who is not a licensed attorney.~~

~~Sec. 35.035. -- DUES; DEDUCTION AND COLLECTION.~~

~~Any employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of those dues and uniform assessments, provided that the authorization is revocable at the employee's request upon thirty (30) days' written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of the deductions shall be a proper subject of collective bargaining. The right to deduction, unless revoked pursuant to Subsection 35.047(B), shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.~~

~~Sec. 35.036. -- EMPLOYEE ORGANIZATION; REGISTRATION AND CERTIFICATION.~~

~~(A) — *Registration of Employee Organization.*~~

- ~~(1) — Every employee organization seeking to become a certified bargaining agent for public employees shall Register with the Public Employees Labor Commission pursuant to the procedures set forth in F.S. Section 120.60 prior to requesting recognition by a public employer, and prior to submitting a petition to the Commission requesting certification as an exclusive bargaining agent. Further, if the employee organization is not Registered, it may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive bargaining agent. The application for registration required by this Section shall be under oath and in a form as the Public Employees Relations Commission may prescribe and shall include:~~

- ~~(a) — The name and address of the organization and of any parent organization or organization with which it is affiliated;~~
 - ~~(b) — The names and addresses of the principal officers and all representatives of the organization;~~
 - ~~(c) — The amount of the initiation fee and of the monthly dues which members must pay;~~
 - ~~(d) — The current annual financial statement of the organization;~~
 - ~~(e) — The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where that person can be reached;~~
 - ~~(f) — A pledge, in a form prescribed by the Commission, that the employee organization will conform to the laws of the City and State and that it will accept members without regard to age, race, sex, religion or national origin; and~~
 - ~~(g) — A copy of the current constitution and bylaws of the employee organization.~~
 - ~~(h) — A copy of the current constitution and bylaws of the State and national groups with which the employee organization is affiliated or associated. In lieu of this provision, and upon adoption of a rule by the Commission, a State or national affiliate or parent organization of any Registering labor organization may annually submit a copy of its current constitution and bylaws.~~
- ~~(2) — A registration granted to an employee organization pursuant to the provisions of this Section shall run for one year from the date of issuance. A registration shall be renewed annually by filing application for renewal under oath with the Commission, which application shall reflect any changes in the information provided to the Commission in conjunction with the employee organization's preceding application for registration or previous renewal, whichever is applicable. Each application for renewal of registration shall include a current annual financial report signed by its President and Treasurer or corresponding principal officers containing the following information in detail as may be necessary accurately to disclose its financial condition and operation for its preceding fiscal year:~~
- ~~(a) — Assets and liabilities at the beginning and end of the fiscal year;~~
 - ~~(b) — Receipts of any kind and the sources thereof;~~
 - ~~(c) — Salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during that fiscal year, received more than ten thousand dollars (\$10,000.00) in the aggregate from the employee organization and any other employee organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international employee organization;~~

- ~~(d) — Direct and indirect loans made to any officer, employee or member, which aggregated more than two hundred fifty dollars (\$250.00) during the fiscal year, together with a statement of the purpose, security, if any, and arrangement for repayment; and~~
 - ~~(e) — Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; all in those categories as the Commission may prescribe.~~
 - ~~(3) — A registration fee shall accompany each application. The amount charged for an application for registration or renewal of registration shall not exceed fifteen dollars (\$15.00). All money collected by the Commission shall be deposited in the General Revenue Fund.~~
 - ~~(4) — Notification of registrations and renewals of registration shall be furnished at regular intervals by the Commission to the Division of Labor, Employment and Training of the Department of Labor and Employment Security.~~
 - ~~(5) — Every employee organization shall keep accurate accounts of its income and expenses, which accounts shall be open for inspection by any member of the organization or by the Commission at all reasonable times.~~
 - ~~(6) — (a) If an employee organization is properly Registered with the State Public Employees Relations Commission and the employee organization furnishes to the City Public Employees Relations Commission proof of proper Registration, either through:
 - ~~(1) — Certified copies of the registration material filed with the State Public Employees Relations Commission; or~~
 - ~~(2) — (a) Copies of the registration material supplied to the State Public Employees Relations Commission; and~~
 - ~~(b) A statement from the State Public Employees Relations Commission that the employee organization is properly Registered with the State Public Employees Relations Commission.~~~~
 - ~~(b) — The City Public Employees Relations Commission then will accept proof of proper registration with the State Public Employees Relations Commission in lieu of the other registration requirements provided in this subchapter. In the event that an employee organization has not begun the registration process with the State Public Employees Relations Commission or has not completed the registration process within the time required by law, then the employee organization shall properly Register with the City Public Employees Relations Commission in the manner provided for in this subchapter.~~
- ~~(B) — *Certification of Employee Organization.*~~

- ~~(1) (a) Any employee organization which is designated or selected by a majority of public employees in an appropriate unit as their representative for purposes of collective bargaining shall request recognition by the public employer. The public employer shall, if satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, recognize the employee organization as the collective bargaining representative of employees in the designated unit. Upon recognition by a public employer, the employee organization shall immediately petition the Public Employees Relations Commission for certification. The Commission shall review only the appropriateness of the unit proposed by the employee organization. If the unit is appropriate according to the criteria used in this subchapter, the Commission shall immediately certify the employee organization as the exclusive representative of all employees in the unit. If the unit is inappropriate according to the criteria used in this part, the Commission may dismiss the petition.~~
- ~~(b) Whenever a public employer recognizes an employee organization on the basis of majority status and on the basis of appropriateness in accordance with division (B)(4)(f)(5) of this Section, the Commission shall, in the absence of inclusion of a prohibited category of employees or violation of Section 35.043, certify the proposed unit.~~
- ~~(2) If the public employer refuses to recognize the employee organization, the employee organization may file a petition with the Commission for certification as the bargaining agent for a proposed bargaining unit. The petition shall be accompanied by dated statements signed by at least thirty (30) percent of the employees in the proposed unit indicating that the employees desire to be represented for purposes of collective bargaining by the petitioning employee organization. Once a petition for certification has been filed by an employee organization, any Registered employee organization desiring placement on the ballot in any election to be conducted pursuant to this division may be permitted by the Commission to intervene in the proceeding, upon a motion, accompanied by dated statements signed by at least ten (10) percent of the employees in the proposed unit, indicating that those employees desire to be represented for the purpose of collective bargaining by the moving employee organization. Any employee, employer, or employee organization having sufficient reason to believe any of the employee signatures were obtained by collusion, coercion, intimidation, or misrepresentation, or are otherwise invalid, shall be given a reasonable opportunity to verify and challenge the signatures appearing on the petition.~~
- ~~(3) (a) The Commission or one of its designated agents shall investigate the petition to determine its sufficiency; if it has reasonable cause to believe that the petition is sufficient, the Commission shall provide for an appropriate hearing upon due notice. A hearing may be conducted by an agent of the Commission. If the Commission finds the petition to be insufficient, it may dismiss the petition. If the Commission finds upon the record of the hearing that the petition is sufficient, it shall immediately:~~

- ~~(1) Define the proposed bargaining unit and determine which public employees shall be qualified and entitled to vote at any election held by the Commission;~~
- ~~(2) Identify the public employer or employers for purposes of collective bargaining with the bargaining agent;~~
- ~~(3) Order an election by secret ballot, the cost of the election and any required runoff election to be borne equally by the parties, except as the Commission may provide by rule. The Commission's order assessing costs of an election may be enforced pursuant to the provisions of this subchapter.~~
- ~~(b) Where an employee organization is selected by a majority of the employees voting in an election, the Commission shall certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.~~
- ~~(c) In any election in which none of the choices on the ballot receives the vote of a majority of the employees voting, a runoff election shall be held according to rules promulgated by the Commission.~~
- ~~(d) No petition may be filed seeking an election in any appropriate bargaining unit to determine the exclusive bargaining agent if a representation election has been conducted within the preceding twelve-month period. Furthermore, if a valid collective bargaining agreement covering any of the employees in a proposed unit is in effect, a petition for certification may be filed with the Commission only during the period extending from one hundred fifty (150) days to ninety (90) days immediately preceding the expiration date of the agreement, or at any time subsequent to its expiration date but prior to the effective date of any new agreement. The effective date of a collective bargaining agreement means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively; or its actual effective date, if the agreement becomes effective after its ratification date.~~
- ~~(4) In defining a proposed bargaining unit, the Commission shall take into consideration:~~
 - ~~(a) The principles of efficient administration of government;~~
 - ~~(b) The number of employee organizations with which the employer might have to negotiate;~~
 - ~~(c) The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public;~~
 - ~~(d) The power of the officials of government at the level of the unit to agree or make effective recommendations to other administrative authority or legislative body with respect to matters of employment upon which the employee desires not to negotiate.~~
 - ~~(e) The organizational structure of the public employer.~~

- ~~(f) Community of interest among the employees to be included in the unit, considering:

 - ~~(1) The manner in which wages and other terms of employment are determined;~~
 - ~~(2) The method by which jobs and salary classification are determined;~~
 - ~~(3) Interdependence of jobs and interchange of employees;~~
 - ~~(4) Desires of the employees;~~
 - ~~(5) The history of employee relations within the organization of the public employer concerning organization and negotiation, and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship;~~~~
- ~~(g) The statutory authority of the public employer to administer a classification and pay plan;~~
- ~~(h) Any other factors and policies as the Commission may deem appropriate, provided that no unit shall be established or approved for purposes of collective bargaining which includes both professional and nonprofessional employees unless a majority of each group votes for inclusion in that unit.~~
- ~~(5) (a) Any employee or group of employees who no longer desires to be represented by the certified bargaining agent may file with the Commission a petition to revoke certification. The petition shall be accompanied by dated statements, signed by at least thirty (30) percent of the employees in the unit, indicating that the employees no longer desire to be represented for purposes of collective bargaining by the certified bargaining agent. The time of filing the petition shall be governed by the provisions of subsection (B)(3)(d) of this Section, relating to petitions for certification. Any employee or employee organization having sufficient reason to believe any of the employee signatures were obtained by collusion, coercion, intimidation, or misrepresentation, or are otherwise invalid, shall be given a reasonable opportunity to verify and challenge the signatures appearing on the petition. The Commission or one of its designated agents shall investigate the petition to determine its sufficiency. If the Commission finds the petition to be insufficient it may dismiss the petition. If the Commission finds that the petition is sufficient, it shall immediately:

 - ~~(1) Identify the bargaining unit and determine which public employees shall be qualified and entitled to vote in the election held by the Commission;~~
 - ~~(2) Identify the public employer or employers;~~
 - ~~(3) Order an election by secret ballot, the cost of the election to be borne equally by the parties, except as the Commission may provide by rule. The Commission's order assessing costs of an election may be enforced pursuant to the provisions of this subchapter;~~~~

- ~~(b) If a majority of the employees voting in the election vote against the continuation of representation by the certified bargaining agent, the certification of the employee organization as the exclusive bargaining agent for the employees in the bargaining unit shall be revoked.~~
- ~~(c) If a majority of the employees voting in the election do not vote against the continuation of representation by the certified bargaining agent, the certification of the employee organization as the exclusive bargaining agent for the employees in the unit shall be retained by the organization.~~

~~Sec. 35.037. -- COLLECTIVE BARGAINING; APPROVAL OR REJECTION.~~

- ~~(A) After an employee organization has been certified pursuant to the provisions of this subchapter, the bargaining agent for the organization, and the chief executive officer of the appropriate public employer or employers, jointly shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit. The chief executive officer, or his representative, and the bargaining agent, or its representative, shall meet at reasonable times and bargain in good faith. In conducting negotiations with the bargaining agent, the chief executive officer or his representative shall consult with, and attempt to represent the views of the legislative body of the public employer. Any collective bargaining agreement reached by the negotiators shall be reduced to writing, and the agreement signed by the chief executive officer and the bargaining agent. Any agreement signed by the chief executive officer and the bargaining agent shall not be binding on the public employer until the agreement has been ratified at a regularly scheduled meeting of the public employer and by public employees who are members of the bargaining unit, subject to the provisions of divisions (B) and (C) of this Section.~~
- ~~(B) Upon execution of the collective bargaining agreement, the chief executive shall, in his annual budget request, or by other appropriate means, request the legislative body to appropriate those amounts as shall be sufficient to fund the provisions of the collective bargaining agreement.~~
- ~~(C) If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to that law, ordinance, rule or regulation. Unless and until the amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective.~~
- ~~(D) If the agreement is not ratified by the public employer or is not approved by a majority vote of employees voting in the unit, in accordance with procedures adopted by the Public Employees Relations Commission, the agreement shall be returned to the chief executive officer and the employee organization for further negotiations.~~

- ~~(E) — Any collective bargaining agreement shall not provide for a term of existence of more than three (3) years, and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during that term, except those in applicable merit and civil service rules and regulations.~~

~~Sec. 35.038. — GRIEVANCE PROCEDURES.~~

~~Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. The grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties; however, an arbitrator or other neutral shall not have the power to add to, subtract from, modify, or alter the terms of a collective bargaining agreement. If an employee organization is certified as the bargaining agent of a unit, the grievance procedure then in existence may be the subject of collective bargaining, and any agreement which is reached shall supersede the previously existing procedure. All public employees shall have the right to a fair and equitable grievance procedure, administered without regard to membership or nonmembership in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization. A career service employee shall have the option of utilizing the civil service appeal procedure or a grievance procedure established under this Section, but an employee cannot use both a civil service appeal and a grievance procedure.~~

~~Sec. 35.039. — RESOLUTION OF IMPASSES.~~

- ~~(A) — If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, a dispute exists between a public employer and a bargaining agent, an impasse shall be deemed to have occurred when one of the parties so declares in writing to the other party and to the Public Employees Relations Commission. Where an impasse occurs, the public employer, or the bargaining agent, or both parties acting jointly, may appoint or secure the appointment of a mediator to assist in the resolution of the impasse.~~
- ~~(B) — If no mediator is appointed, or upon the request of either party, the Commission shall:~~
- ~~(1) — Appoint a special master and submit all unresolved issues to a special master acceptable to both parties. If the parties are unable to agree on the appointment of a special master, the Commission shall appoint, in its discretion, a qualified special master. However, nothing in this Section shall preclude the parties from using the services of a mediator at any time during the conduct of collective bargaining.~~
- ~~(a) — When both parties agree in writing to waive the appointment of a special master when an impasse in collective bargaining negotiations occur, the parties may proceed directly to resolution of the impasse by the legislative body.~~
- ~~(2) — The special master shall hold hearings in order to define the areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all~~

~~unresolved contract issues. The hearings shall be held at times, dates, and places to be established by the special master in accordance with rules promulgated by the Commission. The special master shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on his own behalf. Within fifteen (15) calendar days after the close of the final hearing, the special master shall transmit his recommended decision to the Commission and to the representatives of both parties, by Registered mail, return receipt requested. The recommended decision shall be discussed by the parties and each special master recommendation shall be deemed approved by both parties unless specifically rejected by either party by written notice, filed with the Commission within twenty (20) calendar days after the date the party received the special master's recommended decision. The written notice shall include a statement of the cause for each rejection and shall be served upon the other party.~~

~~(3) — In the event that either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special master:~~

~~(a) — The chief executive officer of the governmental entity involved shall, within ten (10) days after rejection of a recommendation of the special master, submit to the legislative body of the governmental entity involved a copy of the findings of fact and recommended decision of the special master, together with the chief executive officer's recommendations for settling the disputed impasse issues. The chief executive officer shall also transmit his recommendations to the employee organization.~~

~~(b) — The employee organization shall submit its recommendations for settling the disputed impasse issues to the legislative body and to the chief executive officer.~~

~~(c) — The legislative body or a duly authorized Committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the rejected recommendations of the special master.~~

~~(d) — Thereafter, the legislative body shall take any action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues.~~

~~(e) — Following the resolution of the disputed impasse issues by the legislative body, the parties shall reduce to writing an agreement which includes those issues agreed to by the parties and those disputed impasse issues resolved by the legislative body action taken pursuant to subsection (B)(3)(d) of this Section. The agreement shall be signed by the chief executive officer and the bargaining agent and shall be submitted to the public employer and to the public employees who are members of the bargaining unit for ratification. If the agreement is not ratified by all parties, pursuant to the provisions of Section 35.037, the legislative body action taken pursuant to the provisions of subsection (B)(3)(d) of this Section shall take effect as of the date of the~~

~~legislative body action for the remainder of the first fiscal year which was the subject of negotiations. However, the legislative body action shall not take effect with respect to those disputed impasse issues which establish the language of contractual provisions which could have no effect in the absence of a ratified agreement, including, but not limited to, preambles, recognition clauses, and duration clauses.~~

~~Sec. 35.040. -- FACTORS TO BE CONSIDERED BY SPECIAL MASTER.~~

~~The special master shall conduct the hearings and render his recommended decision with the objective of achieving a prompt, peaceful and just settlement of disputes between the public employee organizations and the public employer. The factors, among others, to be given weight by the special master in arriving at a recommended decision shall include:~~

- ~~(A) — Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.~~
- ~~(B) — Comparison of the annual income of employment of the public employees in question with the annual income employment of public employees in similar public employee governmental bodies of comparable size within the state.~~
- ~~(C) — Interest and welfare of the public.~~
- ~~(D) — Comparison of peculiarities of employment in regard to other trades or professions, specifically:
 - ~~(1) — Hazards of employment;~~
 - ~~(2) — Physical qualifications;~~
 - ~~(3) — Educational qualifications;~~
 - ~~(4) — Intellectual qualifications;~~
 - ~~(5) — Job training and skills;~~
 - ~~(6) — Retirement plans;~~
 - ~~(7) — Sick leave;~~
 - ~~(8) — Job security; and~~
 - ~~(9) — Availability of funds.~~~~

~~Sec. 35.041. -- COMPENSATION OF MEDIATOR AND SPECIAL MASTER; STENOGRAPHIC AND OTHER EXPENSES.~~

~~The compensation of the mediator and special master and all stenographic and other expenses shall be borne equally by the parties.~~

~~Sec. 35.042. -- RECORDS.~~

~~All records which are relevant to or have bearing upon any issues raised by the proceedings conducted by the special master shall be made available to the special master by request in writing to any of the parties to the impasse proceedings. Notice of the request shall be furnished to all parties. Any records which are made available to the special master shall also be made available to any other party to the impasse proceedings upon written request.~~

~~Sec. 35.0425. -- FINANCIAL URGENCY.~~

~~In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed fourteen (14) days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred and one of the parties shall so declare in writing to the other party and to the Commission. The parties shall then proceed to the provisions of Section 35.039, "Resolution of Impasses". An unfair labor practice charge shall not be filed during the fourteen (14) days during which negotiations are occurring pursuant to this Section.~~

~~Sec. 35.043. -- UNFAIR LABOR PRACTICES.~~

~~(A) — Public employers or their agents or representatives are prohibited from:~~

- ~~(1) — Interfering with, restraining or coercing public employees in the exercise of any rights guaranteed them under this subchapter;~~
- ~~(2) — Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment;~~
- ~~(3) — Refusing to bargain collectively or failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the certified bargaining agent for the public employees in the bargaining unit;~~
- ~~(4) — Discharging or discriminating against a public employee because he has filed charges or given testimony under this subchapter;~~
- ~~(5) — Dominating, interfering with, or assisting in the formation, existence, or administration of any employee organization, or contributing financial support to an organization;~~
- ~~(6) — Refusing to discuss grievances in good faith, pursuant to the terms of the collective bargaining agreement with either the certified bargaining agent or the public employee or employees involved.~~

~~(B) — A public employee organization or anyone acting in its behalf, its officers, representatives, agents, or members are prohibited from:~~

- (1) ~~Interfering with, restraining or coercing public employees in the exercise of any rights guaranteed them under this subchapter; or from interfering with, restraining or coercing managerial employees by reason of their performance of job duties or other activities undertaken in the interests of the public employer;~~
 - (2) ~~Causing or attempting to cause a public employer to discriminate against an employee because of the employee's membership or nonmembership in an employee organization or to attempt to cause the public employer to violate any of the provisions of this subchapter;~~
 - (3) ~~Refusing to bargain collectively or failing to bargain collectively in good faith with a public employer;~~
 - (4) ~~Discriminating against an employee because he has signed or filed an affidavit, charge, petition, or complaint, or given any information or testimony in any proceedings provided for in this subchapter;~~
 - (5) ~~Participating in a strike against the public employer by instigating or supporting, in any positive manner, a strike. Any violation of this Section shall subject the violator to the penalties provided in this subchapter;~~
 - (6) ~~Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students, or institutions of higher learning.~~
- (C) ~~Notwithstanding the provisions of subsections (A) and (B), the parties' rights of free speech shall not be infringed upon, and the expression of any argument or opinions shall not constitute or be evidence of an unfair employment practice or of any other violation of this subchapter, if an expression contains no promise of benefits, nor threat, reprisal, or force.~~

Sec. 35.044. -- CHARGES OF UNFAIR LABOR PRACTICES.

~~It is the intent of the City Commission that the Public Employees Relations Commission act as expeditiously as possible to settle disputes regarding alleged unfair labor practices. To this end, violations of the provisions of Section 35.043 shall be remedied by the Commission in accordance with the following procedures and in accordance with F.S. Chapter 120; however, to the extent that F.S. Chapter 120 is inconsistent with the provisions of this Section, the procedure contained in this Section shall govern:~~

- (A) ~~A proceeding to remedy a violation of the provisions of Section 35.043 shall be initiated by the filing of a charge with the Commission by an employer, employee, or employee organization, or any combination thereof. A charge shall contain a clear and concise statement of facts constituting the alleged unfair labor practice, including the names of all individuals involved in the alleged unfair labor practice and specific reference to the provisions of Section 35.043 alleged to have been violated, and any other relevant information as the Commission may by rule require or allow. Service of the charge shall be made upon each named respondent at the time of filing with the Commission. The charge must be accompanied by sworn statements and documentary evidence sufficient to establish a prima facie violation of the~~

~~applicable unfair labor practice provision. The supporting evidence is not to be attached to the charge and is to be furnished only to the Commission.~~

- ~~(B) The Commission or any agent designated by it for that purpose, shall thereupon review the charge to determine its sufficiency.~~
 - ~~(1) If upon review it is determined that the charge is insufficient, the Commission or its designated agent may issue a summary dismissal of the charge. A charging party whose charge is dismissed by a designated agent may appeal the dismissal to the Commission within twenty (20) days after the date of issuance of the dismissal. If the Commission finds the charge to be sufficient, it shall reinstate the charge.~~
 - ~~(2) If upon review it is determined that the charge is sufficient, the Commission shall notify the parties. Each respondent so charged shall thereupon file an answer to the charge with the Commission, and serve a copy upon the charging party, no more than twenty (20) days after service of notification of the sufficiency of the charge, unless otherwise allowed by the Commission. The Commission, in its discretion, may allow a charge or answer to be amended at any time. The Commission may also, in its discretion, allow other interested parties to intervene in the proceeding.~~
 - ~~(3) Upon completion of the review, the evidence filed with the Commission in support of the charge shall be made available upon request in accordance with the provisions of F.S. Chapter 119.~~
- ~~(C) Whenever a charging party alleges that a respondent has engaged in unfair labor practices and that the charging party will suffer substantial and irreparable injury if he is not granted temporary relief, the Commission may petition the Circuit Court for appropriate injunctive relief pending the final adjudication by the Commission with respect to that matter. Upon the filing of any petition, the court shall cause notice thereof to be served upon the parties and, thereupon, shall have jurisdiction to grant temporary relief or restraining order as it deems just and proper.~~
- ~~(D) The Commission may issue prehearing orders requiring the parties to provide written statements of relevant issues of fact and law, and any other information as the Commission may require to expedite the resolution of the case. These orders may further direct the parties to identify witnesses, exchange intended exhibits and documentary evidence, and appear at a conference before the Commission or a member thereof, or a designated hearing officer, for the purpose of handling those matters as will aid the Commission in expeditiously resolving the case before it.~~
- ~~(E) Whenever the proceeding involves a disputed issue of material fact and an evidentiary hearing is to be conducted:~~
 - ~~(1) The Commission shall issue and serve upon all parties a notice of hearing before an assigned hearing officer at a time and place specified therein. The notice shall be issued at least fourteen (14) days prior to the scheduled hearing.~~

- (2) ~~The evidentiary hearing shall be conducted by a hearing officer designated by the Commission. The hearing officer may be the Commission itself, a member of the Commission, or an agent designated by the Commission for that purpose, provided that the agent shall be an employee of the Commission and a member of the State bar.~~
- (3) ~~Not later than forty-five (45) days, unless extended by the Commission with the consent of all parties, after the close of the evidentiary hearing, the hearing officer shall submit to the Commission and to all parties a recommended order which shall include findings of fact and recommended rulings on procedural matters. The recommended order may also include recommended conclusions of law if requested by the Commission. If the hearing was held before the Commission or a member of the Commission, the Commission may elect to issue a final order which is in compliance with F.S. Sections 120.58(1)(c) and 120.59.~~
- (F) (1) ~~If, upon consideration of the record in the case, the Commission finds that an unfair labor practice has been committed, it shall issue and cause to be served an order requiring the appropriate party or parties to cease and desist from the unfair labor practice and take positive action, including reinstatement of employees with or without back pay, as will best implement the general policies expressed in this subchapter. However, no order of the Commission shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. The order may further require the party to make periodic reports showing the extent to which it has complied with the order. If, upon consideration of the record in the case, the Commission finds that an unfair labor practice has not been or is not being committed, it shall issue an order dismissing the case.~~
- (2) ~~If the Commission determines that the alleged unfair labor practice occurred more than six (6) months prior to the filing of the charge, the Commission shall issue an order dismissing the case unless the person filing the charge was prevented from doing so by reason of service in the armed forces, in which case the six-month period shall run from the date of the person's discharge.~~
- (3) ~~The Commission may award to the prevailing party all or part of the costs of litigation, reasonable attorney's fees, and expert witness fees, whenever the Commission determines that an award is appropriate.~~
- (4) ~~Final orders of the Commission issued pursuant to this Section shall be enforced pursuant to the provisions of Section 35.045 and shall be reviewed pursuant to the provisions of Section 35.046.~~

Sec. 35.045. -- ENFORCEMENT OF COMMISSION ORDERS.

~~In case of any failure by any employer, employee, or employee organization to comply with any order of the Public Employees Relations Commission, upon application of the Commission or, notwithstanding the provisions of F.S. Section 120.69(1)(b)1, upon application of any person who is a resident of the State and who is substantially interested in an order, any circuit court of this State shall have jurisdiction to enforce the order pursuant to the provisions of F.S. Section 120.69. However, if one or more~~

~~petitions for enforcement and a notice of appeal involving the same agency action are pending at the same time, the district court of appeal considering the notice of appeal shall order all actions transferred to and consolidated in the district court of appeal. If a petition for enforcement is filed after the time for filing notice of appeal has expired, the respondent may assert as a defense only that the agency action was not intended to apply to respondent or that respondent has complied with the agency action. Petitions for enforcement filed under this Section shall be heard expeditiously by the circuit court to which presented, and shall take precedence over all other civil matters except prior matters of the same character.~~

~~Sec. 35.046. -- JUDICIAL REVIEW.~~

- ~~(A) — The district courts of appeal are empowered, upon the filing of an appropriate notice of appeal, to review final orders of the Public Employees Relations Commission pursuant to F.S. Section 120.68. A copy of the notice of appeal shall be filed with the Commission. The record in the proceeding, certified by the Commission, shall be filed with the court in accordance with the Florida Appellate Rules.~~
- ~~(B) — Upon the filing of a notice of appeal, the appropriate district court of appeal shall thereupon have jurisdiction of the proceeding and may grant temporary or permanent relief or restraining order as it deems just and proper, and may enforce, modify, affirm, or set aside, in whole or in part, the order of the Commission. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.~~
- ~~(C) — The Court may award to the prevailing party all or part of the costs of litigation and reasonable Attorney's fees and expert witness fees, whenever the Court determines that an award is appropriate. However, no costs or fees shall be assessed against the Commission in any appeal from an order issued by the Commission in an adjudicatory proceeding between adversary parties conducted pursuant to this Section.~~
- ~~(D) — The commencement of proceedings under this Section shall not, unless specifically ordered by the district court of appeal, operate as a stay of the Commission's order.~~
- ~~(E) — Appeals filed under this Section shall be heard expeditiously by the district court of appeal to which presented and shall take precedence over all other civil matters except prior matters of the same character.~~

~~Sec. 35.047. -- STRIKES PROHIBITED.~~

- ~~(A) — *[Strikes Prohibited.]* No public employee or employee organization may participate in a strike against a public employer by instigating or supporting, in any manner, a strike. Any violation of this Section shall subject the violator to the penalties provided for herein and under State law.~~

~~State Law reference~~ — ~~Public employees prohibited from striking, State Constitution, Art. I, § 6.~~

- ~~(B) — *Violation of Strike Prohibition; Penalties.*~~

- ~~(1) — Circuit courts having jurisdiction of the parties are vested with the authority to hear and determine all actions alleging violations of subsection (A) of this Section. Suits to enjoin violations of subsection (A) of this Section will have priority over all matters on the Court's docket except other emergency matters.~~
- ~~(2) — If a public employee, a group of employees, an employee organization, or any officer, agent or representative of any employee organization, engages in a strike in violation of division (A) of this Section, either the Public Employees Relations Commission or any public employer whose employees are involved or whose employees may be affected by the strike, may file suit to enjoin the strike in the Circuit Court having proper jurisdiction and proper venue of those actions under the Florida Rules of Civil Procedure and the State Statutes. The circuit court shall conduct a hearing with notice to the Commission and to all interested parties, at the earliest practicable time. If the plaintiff makes a prima facie showing that a violation of division (A) of this Section is in progress or that there is a clear, real, and present danger that a strike is about to commence, the circuit court shall issue a temporary injunction enjoining the strike. Upon final hearing, the circuit court shall either make the injunction permanent or dissolve it.~~
- ~~(3) — If an injunction issued pursuant to this Section to enjoin a strike is not promptly complied with, on the application of the plaintiff, the Circuit Court shall immediately initiate contempt proceedings against those who appear to be in violation. An employee organization found to be in contempt of Court for violating an injunction against a strike shall be fined an amount deemed appropriate by the Court. In determining the appropriate fine, the Court shall objectively consider the extent of lost services and the particular nature and position of the employee group in violation. In no event shall the fine exceed five thousand dollars (\$5,000.00). Each officer, agent, or representative of an employee organization found to be in contempt of court for violating an injunction against a strike shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each calendar day that the violation is in progress.~~
- ~~(4) — An employee organization shall be liable for any damages which might be suffered by a public employer as a result of a violation of the provisions of division (A) of this Section by the employee organization or its representatives, officers, and agents. The circuit court having jurisdiction over those actions is empowered to enforce judgments against employee organizations, as defined in this subchapter, by attachment or garnishment of union initiation fees or dues which are to be deducted or checked off by public employers. No action shall be maintained pursuant to division (B)(4) of this Section until all proceedings which were pending before the Commission at the time of the strike or which were initiated within thirty (30) days of the strike have been finally adjudicated or otherwise disposed of. In determining the amount of damages, if any, to be awarded to the public employer, the trier of fact shall take into consideration any action or inaction by the public employer or its agents that provoked~~

~~or tended to provoke the strike by the public employees. The trier of fact shall also take into consideration any damages that might have been recovered by the public employer under division (B)(6)(a)(4) of this Section.~~

- ~~(5) If the Commission, after a hearing on notice conducted according to rules promulgated by the Commission, determines an employee has violated subsection (A) of this Section, it may order the termination of his employment by the public employer. Notwithstanding any other provision of law, a person knowingly violating the provision of subsection (A) of this Section may, subsequent to the violation, be appointed or reappointed, employed or reemployed, as a public employee, but only upon the following conditions:~~
- ~~(a) That person shall be on probation for a period of six (6) months following his appointment or reappointment, employment or reemployment, during which period he shall serve without tenure. During this period, the person may be discharged only upon a showing of just cause.~~
 - ~~(b) His compensation may in no event exceed that received by him immediately prior to the time of the violation.~~
 - ~~(c) The compensation of the person may not be increased until after the expiration of one year from appointment or reappointment, employment or reemployment.~~
- ~~(6) (a) If the Commission determines an employee organization has violated subsection (A) of this Section it may:~~
- ~~(1) Issue cease-and-desist orders as necessary to insure compliance with its order.~~
 - ~~(2) Suspend or revoke the certification of the employee organization as the bargaining agent of that employee unit.~~
 - ~~(3) Revoke the right of dues deduction and collection previously granted to the employee organization pursuant to Section 35.035.~~
 - ~~(4) Fine the organization up to twenty thousand dollars (\$20,000.00) for each calendar day of the violation or determine the approximate cost to the public due to each calendar day of the strike and fine the organization an amount equal to the cost, notwithstanding the fact that the fine may exceed twenty thousand dollars (\$20,000.00) for each calendar day. The fines so collected shall immediately accrue to the public employer and shall be used by it to replace those services denied the public as a result of the strike. In determining the amount of damages, if any, to be awarded to the public employer, the Commission shall take into consideration any action or inaction by the public employer or its agents that provoked or tended to provoke the strike by the public employees.~~

- (b) ~~— An organization determined to be in violation of the provisions of subsection (A) of this Section shall not be certified until one year from the date of final payment of any fine against it.~~

~~Cross reference — Penalty, § 10.99.~~

~~Sec. 35.048. -- CERTAIN ACTS PROHIBITED; VIOLATION PROVISION.~~

- (A) ~~— Employee organizations, their members, agents, representatives, or any person acting on their behalf are prohibited from:~~
- (1) ~~— Soliciting public employees during working hours of any employee who is involved in the solicitation.~~
 - (2) ~~— Distributing literature during working hours in areas where the actual work of public employees is performed, such as offices, warehouses, schools, police stations, fire stations, and any similar public installations. This Section shall not be construed to prohibit the distribution of literature during the employee's lunch hour or in those areas not specifically devoted to the performance of the employee's official duties.~~
 - (3) ~~— Instigating or advocating support, in any positive manner, for an employee organization's activities from high school or grade school students during classroom time.~~
- (B) ~~— No employee organization shall directly or indirectly pay any fines or penalties assessed against individuals pursuant to the provisions of this subchapter.~~
- (C) ~~— The circuit courts of this State shall have jurisdiction to enforce the provisions of this Section by injunction and contempt proceedings, if necessary. A public employee who is convicted of a violation of any provision of this Section may be discharged or otherwise disciplined by his public employer, notwithstanding further provisions of law, and notwithstanding the provisions of any collective bargaining agreement.~~

~~Sec. 35.049. -- MERIT OR CIVIL SERVICE SYSTEM; APPLICATION.~~

~~The provisions of this subchapter shall not be construed to repeal, amend, or modify the provisions of any law or ordinance establishing a merit or civil service system for public employees or the rules and regulations adopted pursuant thereto; or to prohibit or hinder the establishment of other personnel systems unless the provisions of those merit or civil service system laws, ordinances, or rules and regulations adopted pursuant thereto are in conflict with the provisions of this subchapter, in which event those laws, ordinances, or rules and regulations shall not apply, except as provided in subsection 35.034(D).~~

~~Sec. 35.050. -- EXISTING AGREEMENTS.~~

~~All public employee agreements now in existence shall remain in effect until their expiration.~~

~~Sec. 35.051. -- COLLECTIVE BARGAINING NEGOTIATIONS ACCORDING TO STATE LAW.~~

- ~~(A) All discussions between the chief executive officer of the public employer, or his representative, and the legislative body of the public employer relative to collective bargaining shall be exempt from F.S. Section 286.011.~~
- ~~(B) The collective bargaining negotiations between a chief executive officer, or his representative, and a bargaining agent shall be in compliance with F.S. Section 286.011.~~
- ~~(C) All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be exempt from F.S. Chapter 119.~~
- ~~(D) The deliberations of the Commission in any proceeding before it are exempt from the provisions of F.S. Chapter 286. However, any hearing held or oral argument heard by the Commission pursuant to this Code of Ordinances shall be open to the public. All draft orders developed in preparation for, or preliminary to, the issuance of a final written order are exempt from the provisions of F.S. Chapter 119.~~

Sec. 35.052. ~~REVIEW OF COMMISSION RULES.~~

- ~~(A) (1) The legislative body of the public employer in accordance with F.S. Sections 447.603(4) and 120.545, shall examine each rule proposed pursuant to this subchapter by the Public Employees Relations Commission except for emergency rules adopted pursuant to F.S. Section 120.54(9), together with its accompanying material, and may examine any existing rule, for the purpose of determining whether:

 - ~~(a) The rule is within the statutory authority upon which it is based;~~
 - ~~(b) The statutory authority for the rule has been repealed;~~
 - ~~(c) The rule reiterates or paraphrases statutory material;~~
 - ~~(d) The rule is in proper form; and~~
 - ~~(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule.~~~~
 - ~~(2) If the legislative body objects to a proposed or existing rule, it shall, within five (5) days of the objection, certify that fact to the Commission and include with the certification a statement detailing its objections with particularity.~~
- ~~(B) Within thirty (30) days of receipt of the objection the Commission shall:

 - ~~(1) If the rule is a proposed rule:

 - ~~(a) Modify the rule to meet the objection of the legislative body;~~
 - ~~(b) Withdraw the rule in its entirety; or~~
 - ~~(c) Refuse to modify or withdraw the rule.~~~~
 - ~~(2) If the rule is an existing rule:

 - ~~(a) Notify the legislative body that it has elected to amend the rule to meet the legislative body's objection and initiate the amendment procedure;~~~~~~

- (b) ~~Notify the legislative body that it has elected to repeal the rule and initiate the repeal procedure; or~~
- (c) ~~Notify the legislative body that it refuses to amend or repeal the rule.~~
- (C) ~~If the Commission elects to modify a proposed rule to meet the objection of the legislative body, it shall make only those modifications as are necessary to meet the objection and shall resubmit the rule to the legislative body. The Commission shall give notice of its election to modify a proposed rule to meet the objection of the legislative body by publication in the first available issue of a newspaper of general circulation in the affected area, but shall not be required to conduct a public hearing. If the Commission elects to amend an existing rule to meet the objection of the legislative body, it shall notify the legislative body in writing and shall initiate the amendment procedure by giving notice in the next available issue of a newspaper of general circulation in the affected area. The legislative body shall give priority to rules so modified or amended when setting its agenda.~~
- (D) ~~If the Commission elects to withdraw a proposed rule as a result of an objection by the legislative body, it shall notify the legislative body, in writing, of its election and shall give notice of the withdrawal in the next available issue of a newspaper of general circulation in the affected area. The rule shall be withdrawn without a public hearing, effective upon publication of the notice in the newspaper. If the Commission elects to repeal an existing rule as a result of an objection by the legislative body, it shall notify the legislative body, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice in the next available issue of a newspaper of general circulation in the affected area.~~
- (E) ~~If the Commission elects to amend or repeal an existing rule as a result of an objection by the legislative body, it shall complete the process within ninety (90) days after giving notice in the newspaper.~~
- (F) ~~Failure of the Commission to respond to an objection of the legislative body to a proposed rule within the time prescribed in division (B) shall constitute withdrawal of the rule in its entirety.~~
- (G) ~~Failure of the Commission to respond to an objection of the legislative body to an existing rule within the time prescribed in division (B) shall constitute a refusal to repeal the rule.~~
- (H) ~~If the legislative body objects to a proposed or existing rule and the Commission refuses to modify, amend, withdraw, or repeal the rule, the legislative body shall file with the State Public Employees Relations Commission a notice of the objection, detailing with particularity its objection to the rule.~~
- (I) ~~All rules, including all amendments, additions, or deletions of rules adopted by the Commission, shall have full force and effect upon their approval by the State Public Employees Relations Commission.~~

~~Sec. 35.053. - PREEXISTING STATE PUBLIC EMPLOYEES RELATIONS COMMISSION CERTIFICATIONS.~~

~~If an employee organization Registers with the City Public Employees Relations Commission pursuant to Section 35.036(A) of this subchapter, then the City Public Employees Relations Commission shall accept any certification issued by the State Public Employees Relations Commission as to the employee organization, as if certification had been issued by the City Public Employees Relations Commission pursuant to Section 35.036(B) of this subchapter.~~

~~Sec. 35.054. -- TRANSFER OF PENDING CASES.~~

~~The City Public Employees Relations Commission shall accept all cases involving the City or any subdivision or any agency thereof pending before the State Public Employees Relations Commission on the effective date of this subchapter and will give those cases the highest priority to expedite their disposition.~~

~~Sec. 35.0545. -- VIOLATIONS NOT GROUNDS FOR RECALL.~~

~~Any violation of this Chapter shall not subject any person to municipal recall and shall not be considered as grounds for municipal recall.~~

~~(Ord. No. 3-89, passed 1/24/89)~~

~~Sec. 35.055. -- AMENDMENTS.~~

~~No amendment of this subchapter or of Ordinance No. 66-80, adopted 11/25/80, shall become effective unless and until that amendment is submitted to and approved by the State Public Employees Relations Commission.~~

~~(Code 1980, § 20-28; Am. Ord. No. 4-78, passed 2/27/78; Am. Ord. No. 70-79, passed 10/8/79; Am. Ord. No. 77-79, passed 12/10/79; Am. Ord. No. 66-80, passed 11/25/80)~~

~~Sec. 35.056. -- DESIGNATION OF PERSONNEL AS CRITICAL TO SECURITY.~~

~~(A) All departments designated herein as critical to security shall require that any person applying for, appointed to, contracted by or continuing employment in, any such department or in any such facility which is decided to be critical to security shall be fingerprinted in accordance with Section 166.0442, Fla. Stat. The fingerprints shall be submitted to the Department of Law Enforcement for a State criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal history record checks conducted pursuant to the ordinance may be used by the City to determine an applicant's eligibility for employment or appointment and may determine the employee's eligibility for continued employment. Refusal to submit to fingerprinting and background checks may result in discipline up to and including termination of already existing employees or a decision not to hire new applicants.~~

~~(1) Employees and applicants as well as all unescorted contractors and vendors and repair and delivery personnel who enter into the following divisions and departments, hereby~~

~~designated as critical to security, shall be subjected to fingerprinting and background checks:~~

~~(a) — Police.~~

~~(b) — Management Information Systems.~~

~~(c) — Fire-Rescue.~~

~~(i) — Exemptions. Firefighters, Firefighter candidates, and Paramedics shall be governed by applicable fingerprint requirements as established by Chapters 401 and 633 of the Florida Statutes and/or other administrative rules attendant thereto; and with respect to new applicants, they may be subjected to administrative background investigations in addition to County, State and national criminal history checks which are now or may be established in the future by the Fire-Rescue Department.~~

~~(Ord. No. 12-03, § 1, passed 5/20/03; Ord. No. 1-03, § 1, passed 2/4/03; Ord. No. 34-02, § 1, passed 6/20/02)~~

~~Sees. 35.057 — 35.064. RESERVED.~~

Section 3. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. Specific authority is hereby given to codify this Ordinance.

Section 6. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2018.

ATTEST

M A Y O R

City Clerk

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency.

R. Max Lohman, City Attorney