

TITLE:
EMPLOYER-EMPLOYEE RELATIONS
ADOPTED BY BOARD OF HARBOR COMMISSIONERS:
EFFECTIVE DATE:
This Administrative Policy is effective upon approval by the Board of Harbor Commissioners.
SUPERSESION:
This policy supersedes Oxnard Harbor District Policy No. 12400
PURPOSE:
<p>These policies and procedures for employer-employee relations are adopted pursuant to California Government Code Section 3507, et seq. and apply to employees of the District represented by recognized employee organizations (“represented employees”). They have been developed with the intent of promoting effective communication between the District and its represented employees by providing a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment. Furthermore, these policies and procedures are intended to promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of District employees to decide whether to join employee organizations of their own choice and to be represented by such organizations in their employment relationship with the District. If any provisions in these policies and procedures conflict with State or Federal law, whether now existing or adopted in the future, the State or Federal law shall prevail.</p>
POLICY:
<p>508.2. EMPLOYEE RIGHTS</p> <p>Employees of the District shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the District also shall have the right to refuse to join or participate in activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the District. The District and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against employees because of their exercise of these rights.</p> <p>508.3. DISTRICT RIGHTS</p> <p>The District retains the exclusive right to determine the methods, means, and personnel by which District operations are to be conducted, to determine the mission of each of its departments and units, as well as to set standards of performance. It also retains the right to classify positions, add or delete positions or classes, establish standards for</p>

employment, promotion, and transfer of employees, direct its employees, take disciplinary action for proper cause, schedule work and relieve its employees from duty because of lack of work or other legitimate reasons. The exercise of District rights does not preclude employees or recognized employee organizations from consulting with District representatives or raising grievances on decisions which affect wages, hours, and other terms and conditions of employment.

Any question regarding the interpretation of this Section or Section 508.2 which cannot be resolved between employee and management representatives shall, upon request by either party involved, be referred by the Executive Director for hearing and final determination to the Board of Harbor Commissioners.

508.4. ESTABLISHMENT OF EMPLOYEE UNITS

In the establishment of employee units, management and confidential employees shall not be included in the same unit with non-management or non-confidential employees. Supervisory employees and non-supervisory employees may be included in the same unit. In the determination of appropriate employee units, the following factors must be considered:

- (a) Which unit will assure employees the fullest freedom in the exercise of rights granted under these policies and procedures and by law.
- (b) The community of interest of the employees by taking into consideration similarity of duties, skills, wages and working conditions of employees.
- (c) Minimizing fragmentation of units by achieving the largest feasible group of employees having a community of interest.
- (d) The history of employee relations (hours, wages, and terms and conditions of employment) in the unit and in similar public employment.
- (e) The effect on the efficient administration of District operations and employee relations.
- (f) The effect on the classification structure.

Considering the aforementioned criteria, including those employees falling within the management, supervisory or confidential employee status, the following units are established:

- (a) CEO & Port Director
- (b) Chief Administrative & Finance Officer, Chief Operations Officer, Chief Commercial & Public Affairs Officer
- (c) Director of Finance, Director of Operations & Security, Director of Environment & Sustainability, Director of Community Relations & Workforce Development, Human Resources Manager

- (d) Administrative Assistant, Receptionist
- (e) Clerk of the Board of Harbor Commissioners/Office Manager.
- (f) Facilities Lead worker and Facilities personnel
- (g) Harbormasters

508.5. CERTIFICATION OF RECOGNIZED EMPLOYEE ORGANIZATIONS

(a) Application for Recognition

Any employee organization seeking to obtain certification by the District as a recognized employee organization shall file its application for certification with the Executive Director of the District. When an existing recognized employee organization represents a unit, no application for recognition of another recognized employee organization will be considered without a petition for decertification of the existing recognized employee organization being presented at the same time. The application for certification shall contain the following information:

1. The organization's name and mailing address.
2. A current roster of the organization's officers and representatives authorized to meet and confer within the scope of representation or to consult in good faith.
3. A certified copy of the organization's constitution, charter, or articles of incorporation and of its bylaws.
4. A statement that the organization has as one of its primary purposes representing employees in their employee relations with the District.
5. A statement that the organization has no restrictions on membership based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or any other consideration made unlawful by Federal, State or local laws.
6. A designation of persons and their addresses to whom notices sent by regular United States postal service will be deemed sufficient notice for any purpose under these policies and procedures.
7. Proof of employee approval equal to at least thirty percent (30%) of the employees within the proposed unit as shown by payroll dues, deductions, membership cards, signed authorization cards or petitions or statements of intent signed by the employees.
8. A description of the unit or units for which representation is requested.
9. A statement that the employee organization recognizes the procedures set forth under California Government Code Section 3502.5 et seq.

(b) Time for Filing Applications

Applications for certification, modification of units or decertification must be filed not later than one hundred and fifty (150) days prior to the ensuing fiscal year.

(c) Acknowledgment, Verification and Selection

Upon receipt of an application, the CEO & Port Director, after consultation with the District's legal counsel, shall determine whether:

1. There has been compliance with the requirements pertaining to an application as set forth in these policies and procedures and,
2. The proposed unit of representation is an appropriate unit as set forth in these policies and procedures.

If an affirmative determination is made by the CEO & Port Director on the foregoing two matters, they shall so inform the applying employee organization and shall give written notice of such request for recognition to the employees in the unit but shall take no action on the request for thirty (30) calendar days. If the CEO & Port Director makes a negative determination, they shall advise the employee organization immediately of the reason therefore. Upon such a negative determination, the employee organization may appeal the CEO & Port Director's decision in writing requesting that the matter be set for hearing before the Board of Harbor Commissioners. Upon filing of such an appeal, the matter shall be heard before the Board of Harbor Commissioners at its next regular meeting. The decision by the Board of Harbor Commissioners as to the compliance with the requirements for an application and the appropriateness of the proposed unit shall be final.

(d) Filing a Challenging Petition

Within thirty (30) days of the date written notice is given to affected employees that a valid application for certification for an appropriate unit has been filed, any other employee organization may file a competing request to be formally recognized as an employee organization of the employees in the same unit or units by filing an application for certification with the District as required herein.

(e) Election

Upon expiration of the period for filing a challenging petition as set forth above, the CEO & Port Director shall arrange with the State Mediation and Conciliation Service of the Department of Industrial Relations of the State of California for the conduct of a secret ballot election by employees within each unit for which an application for certification has been received to determine for each employee whether:

1. The employee desires to be represented by an employee organization that has filed an application; and

2. If so, the identity of the employee organization selected by the employee.

The election shall be held not later than thirty (30) days following the closing of the period for filing a challenging petition. After the closing of the period for filing a challenging petition and before the election, each employee organization having properly filed its application, the District, and any employee so requesting the same in writing, shall have the opportunity to meet with the employees within the appropriate unit to discuss the pros and cons of such representation. All such meetings shall be held in the Administration Building of the District at a time arranged between the CEO & Port Director and the applying employee organization or employee requesting such a meeting.

Employees entitled to vote in such election shall be those persons employed in regular and part-time positions within the designated appropriate unit who are employed by the District on the date of the election. A part-time position refers to a position in which an employee is employed on a regular basis and whose normal working hours are less than eight (8) hours a day.

An employee organization shall be formally recognized as the exclusive employee organization for the employees within the unit if it receives fifty-one percent (51%) or more of the votes of the persons entitled to vote at the election. For example, and by way of illustration only, if the unit contains six employees entitled to vote, the affirmative vote of four (4) employees will be required whether or not all six persons entitled to vote actually cast votes in the election. An applicant receiving less than fifty-one percent (51%) of the votes of the persons entitled to vote will not be certified as a recognized employee organization. The foregoing rules apply whether the election involves one, two or more applicants for representation of the same unit. Whether or not an employee votes to be represented by an employee organization, the employee shall have the right to represent himself or herself as provided in Government Code Section 3502.

The cost of conducting an election shall be borne in equal shares by the District and by each applicant whose name appears on the ballot.

(f) Notice

Any employee organization, or other interested person, may file with the CEO & Port Director a written request for notification of the filing of any application for certification as an employee organization. The CEO & Port Director shall, within seven (7) days of the filing of such application, notify each person who has requested notice as provided herein of the filing of the application including the name of the applicant and the unit or units for which the application was filed. Such notice shall be sent by regular mail, addressed to the person requesting notice at the address given for such purpose. The notice required by this section shall be in addition to the notice required to be given to the affected employees.

(g) Revocation of Exclusive Representation

Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than twelve (12) months following the date of such recognition. The procedure to be followed for revocation of exclusive recognition of an employee organization shall be the same as that set forth in the policies and procedures for decertification.

508.6. SCOPE OF REPRESENTATION

When an employee organization has been recognized as representing a unit or units, the scope of representation shall include all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment; except, however, that the scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order.

The District and recognized employee organizations may, by mutual agreement, meet and confer on matters which are not required or prohibited by this section or by law.

Representatives of recognized employee organizations who are District employees shall receive reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the District on matters within the scope of representation.

Management employees and confidential employees may not act as representatives of any employee organization that represents non-management and non-confidential employees on matters within the scope of representation.

508.7. NEGOTIATION PROCEDURES

(a) Conference

The representative(s) of the District and of the recognized employee organization shall meet in good faith regarding wages, hours and other terms and conditions of employment and each shall consider fully such presentations as are made by the other prior to arriving at a determination of policy or course of action. In this regard the representatives of the District and of the recognized employee organization shall have the mutual obligation to meet and confer personally and promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions and proposals and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the District of its final budget for the ensuing year.

(b) Memorandum of Agreement

If agreement is reached by the representatives of the District and the representatives of the recognized employee organization, they shall jointly prepare a written memorandum of such understanding and shall present it to the Board with recommendations. Until approved by the Board, such memorandum of understanding shall not be binding on the District.

(c) Impasse Procedures

1. Initiation. If the meet and confer process has reached an impasse, either party may make a written request for an impasse meeting together with a statement of its position on all disputed issues, if possible. An impasse meeting shall then be scheduled promptly by the CEO & Port Director to be attended by representatives of the District and the recognized employee organization. The purpose of such impasse meeting shall be the following:

(i) To identify and specify in writing the issue or issues that remain in dispute.

(ii) To review the position of the parties in a final effort to resolve such disputed issue or issues; and

(iii) If the dispute is not resolved, to discuss arrangements for the utilization of the impasse procedures set forth below.

2. Mediation. An impasse shall be resolved by mediation. Unless otherwise mutually agreed between the parties in writing, mediation shall be conducted through the State Mediation and Conciliation Service of the Department of Industrial Relations for the State of California. All mediation proceedings shall be private. The mediator shall make no public recommendations nor take any public position at any time concerning the issues. If the mediator is unable to resolve the dispute to the mutual satisfaction of the parties within fifteen (15) days following the first meeting of the mediator with the parties, the mediator shall make a written finding of fact pertaining to the issues in dispute using the criteria set forth below for findings of facts. If, within fifteen (15) days following the finding of facts by the mediator, the representatives of the District and union are unable to resolve the issues and dispute, the issues and dispute shall be presented to the Board for hearing.

3. Hearing Before the Board. If the impasse has not been resolved through mediation or fact-finding, the issues resulting in the impasse shall be submitted to the Board for hearing and determination. The hearing before the Board shall be held not more than thirty (30) days following the issuance of finding of facts by the mediator. Following the hearing on the impasse, the Board shall take such action regarding the impasse as in its discretion it deems appropriate in the public interest.

4. Costs. The costs for services and all attendant expenses of a mediator incurred in mediation and fact-finding shall be borne equally by the District and the recognized employee organization.

(d) Notice of Proposed Action

Except in cases of emergency as provided in Government Code Section 3504.5, the District shall give reasonable written notice to each employee organization affected by any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the Board and shall give such recognized employee organization the opportunity to meet with the District or its representatives concerning the same.

In cases of emergency when the Board determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the Board shall give the recognized employee organization the opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution or regulation.

(e) Information

The District shall provide representatives of each recognized employee organization reasonable access to District work locations and employee records that are not confidential in connection with activities pertaining directly to the employer-employee relationship and not for such internal employee organization business as soliciting membership, campaigning for office or organizational meetings and elections. The providing of such information as directly pertaining to an employee with the unit that is exempt from disclosure under the Public Records Act (Government Code Section 6251, et seq.) shall not be provided except with the written authorization of the employee.

508.8. FACT-FINDING

Where fact-finding is required, or requested by the parties, subject to stipulations of the parties, the person designated for that purpose shall determine and apply the following measures and criteria in arriving at their findings and recommendations:

(a) As relevant to the issues in dispute, there shall be a comparison of the total compensation, hours and conditions of employment of the employees involved in the fact-finding proceedings with the total compensation, hours and conditions of employment of other employees performing similar job duties in public and private employment in the same and comparable communities. "Total compensation" shall mean all wage compensation including, but not limited to premium, incentive, minimum, standby, out of class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits; medical and hospitalization benefits; and insurance, pension and welfare benefits.

(b) The person designated to conduct the fact-finding proceedings shall adjust the results of the above comparisons based on the following factors:

1. Equitable employment benefit relationships between job classifications and positions within the District.

2. The pattern of change that has occurred in the total compensation of employees in the unit at impasse as compared to the pattern of change as shown in the Consumer Price Index of the United States Department of Labor, Bureau of Labor Statistics all items (1982-1984 equals 100) for urban wage earners and clerical workers for the Los Angeles-Riverside-Orange County area.

3. The benefits of job stability and continuity of employment.

4. The compensation necessary to recruit and retain qualified personnel.

(c) The person designated to conduct fact-finding proceedings shall be accorded the full cooperation of the parties in ascertaining details of contentions raised or data presented by the parties. They may utilize, as a basis for their Finding of Fact only the following information:

1. Information provided in writing by either party, provided that attached to such information is a proof of service of such information upon the other party by personal service or in the form of U.S. Postal Service certified/return receipt requested mail. The party to whom service is required to be made may waive proof of service in writing as to any or all written material provided to a person designated to conduct fact-finding proceedings by the other party;

2. Information provided orally by either party only at a joint meeting of both parties and the person designated to conduct fact-finding proceedings, and/or

3. Information developed as a result of his/her independent examination and research, which shall not include any information developed in unilateral discussions or communications between the person designated to conduct fact-finding proceedings and either party.

(d) The person designated to conduct fact-finding proceedings shall then make recommendations based on the comparisons as adjusted above subject to the financial resources of the District to implement them, taking into account:

1. Demands to District financial resources including projected demands on such resources as determined by the Board of Harbor Commissioners including, but not limited to, those projected demands as determined in the District's annual budget and the priorities established for the use of District funds by the Board.

2. Assurance of sufficient and sound budgetary reserves for debt service; pending, potential and actual capital outlay projects; and other financial needs of the District.

3. Statutory limitations on tax and other revenues and expenditures.

The person designated to conduct fact-finding proceedings shall attach to his/her findings of fact a written statement of the information considered to be pertinent or persuasive in

rendering a finding as to any fact and shall specify the source of such information (e.g. "Information provided by the employer," or "Information provided by recognized employee organization," etc.) The person designated to conduct fact-finding proceedings shall proceed toward determination of the facts relating to the issues as rapidly as circumstances and full investigation permit and shall issue his/her findings of fact as required in Section 12407, Subsection (c) Impasse Procedures, Item (2) Mediation. The findings of fact shall be advisory only and shall not be binding on either party. Issuance of findings of fact, as provided herein, terminates the fact-finding process.

508.9. MODIFICATION OF UNITS PROCEDURES

If a unit of representation has been established, that unit shall not be contested for at least one year from the date of determination. Modification may be requested by the District, by a recognized employee organization, or by an employee within the unit for which modification is sought. An application for modification may be submitted to the CEO & Port Director. It shall be signed by the applicant and shall contain a complete statement of all relevant facts in support of the proposed modified unit in terms of the policies and standards for determining a unit as set forth in Section 508.4. Upon receipt of a request for modification of a unit, the CEO & Port Director shall give notice to all employees within the unit and recognized employee organizations representing employees within the unit of the filing of the application and of the date and time at which the application will be submitted to the Board for determination which shall be the next regularly scheduled Board meeting. The Board shall hold a hearing and make its determination as to whether modification should be granted or denied. The Board's decision on modification shall be final. If by reason of modification, a new employee unit is created, employee organizations may thereafter file applications for recognition for such a new unit.

508.10. DECERTIFICATION PROCEDURES

(a) The status of an employee organization as a recognized employee organization may be contested by employees of the unit for which certification has been given after at least one year has elapsed following certification or modification.

(b) A petition for decertification of a recognized employee organization for an employee unit may be submitted by employees in the recognized unit. Such decertification petition shall be submitted to the CEO & Port Director and shall be signed by at least thirty percent (30%) of the employees in the appropriate employee unit that has requested decertification. If the employees are requesting decertification to be followed by certification of a new employee organization not previously recognized, the petition for decertification must also be accompanied by an application for certification by the new employee organization.

(c) A petition for decertification must be filed not later than one hundred and fifty (150) days prior to the ensuing fiscal year.

(d) The petition for decertification shall contain the following information and documentation declared by the signatories thereto under penalty of perjury to be true and correct:

1. The name, address and telephone number of all of the petitioners.
2. The name, address and telephone number of any person designated as a representative to receive notices or requests for further information on behalf of the petitioners.
3. The name of the established appropriate unit and of the incumbent recognized employee organization sought to be decertified as the representative of that unit.
4. A statement that the persons signing the petition for decertification no longer want to be represented by the incumbent recognized employee organization.
5. The signatures of employees within the unit for which decertification is sought representing not less than thirty percent (30%) of the total employees in such unit.

(e) The CEO & Port Director, after consultation with the District's legal counsel, shall initially determine whether the petition for decertification has been filed in compliance with the provisions within this section. If the CEO & Port Director's determination is in the negative, they shall so advise the petitioning employees or the representative in writing together with a statement for the reasons why it is unsatisfactory. The petitioning employees may appeal such determination by the CEO & Port Director to the Board by filing a notice of appeal with the CEO & Port Director. Such appeal shall be heard by the Board at its next regular meeting. The decision of the Board on compliance with the requirements for an application shall be final. If the determination of the CEO & Port Director is in the affirmative, or if his negative determination is reversed on appeal, he shall give written notice of such decertification petition to the incumbent recognized employee organization and to unit employees.

(f) Within thirty (30) days of the written notice of the decertification petition to the incumbent recognized employee organization and to the unit employees, the CEO & Port Director shall arrange for an election to be conducted by the State Mediation and Conciliation Service of the Department of Industrial Relations of the State of California. The election shall be held in the same manner as provided for holding elections prior to certification as set forth in Section 508.5 (e). In addition, the incumbent recognized employee organization, the District, and any employee shall have the right to meet with all employees within the unit for which decertification is sought prior to the election in the same manner as provided in Section 508.5 (e) and the CEO & Port Director shall arrange for such meeting upon request.

The affirmative vote in favor of decertification by fifty-one percent (51%) of the employees in the unit (the employees entitled to vote) shall be required for the existing recognized employee organization to be decertified.

508.11. VIOLATIONS, GRIEVANCES AND DISCIPLINARY PROCEEDING

These procedures shall govern the handling of charges of violation of (a) Oxnard Harbor District policies and procedures, (b) the requirements of Government Code section 3500, et seq., and/or (c) any breach or grievance arising from a Memorandum of Understanding between a recognized employee organization and the District (except as otherwise provided in a Memorandum of Understanding), as well as all disciplinary proceedings taken against a represented District employee by the District.

(a) VIOLATIONS (Non-Disciplinary Proceedings)

1. Initiation

Charges of a violation may be initiated by the District through its Chief Administrative & Finance Officer, by an employee or by any recognized employee organization, by filing the charges in writing with the Chief Administrative & Finance Officer. The Statement of Charges shall set forth the rules, regulations, law or provisions in a Memorandum of Understanding to which the violation relates and a statement of facts supporting the alleged violation.

2. Notice, Hearing, Decision

Upon receipt of a charge of violation, the CEO & Port Director shall notify, as appropriate, all persons affected by the charge of violation including the District, the recognized employee organization and any employee involved in the violation or bringing the charges. The notice shall specify a date and time at which the CEO & Port Director or their duly authorized representative shall conduct a hearing concerning the alleged violation. The hearing need not be a formal evidentiary hearing. Following the hearing, the CEO & Port Director or his/her duly authorized representative shall, in writing, make his/her decision regarding the charged violation and their recommendations, if any, in connection therewith. The CEO & Port Director, or their representative, shall send notice of the decision to the person initiating the violation proceedings and to all persons appearing at the hearing or requesting notice of such decision from the CEO & Port Director.

3. Appeal.

Within ten (10) calendar days after mailing or service of the CEO & Port Director's decision, any party affected by the decision may appeal the decision to the Board of Harbor Commissioners ("Board") by giving a written notice of appeal to the CEO & Port Director. Upon receipt of such notice of appeal, the CEO & Port Director shall set the matter for determination before the Board at a regularly scheduled meeting and give notice of the hearing. The hearing shall commence not less than fourteen (14) calendar days nor more

than thirty (30) calendar days after the filing of the notice of appeal unless otherwise mutually agreed to by the parties and the Board.

The Board may, in its sole discretion, refer the matter to the State Mediation and Conciliation Service of the Department of Industrial Relations for hearing and determination. Subject to any judicial remedy available to the parties, the decision of the Board, or of State Mediation and Conciliation Service of the Department of Industrial Relations if the matter is referred to it, shall be final and binding on the parties. If the matter is referred to the State Mediation and Conciliation Service of the Department of Industrial Relations, the District shall pay the fees, costs and attendant expenses charged by the State Mediation and Conciliation Service for hearing the appeal and rendering a decision thereon. The time limit for commencing the hearing before the State Mediation and Conciliation Service shall be pursuant to its rules.

4. Rules on Appeal

(i) Burden of Proof. The burden of proof in any hearing provided for by this Section 508.11 shall be upon the party initiating the statement of charges.

(ii) Evidence. Hearsay evidence as defined by the Evidence Code of California is admissible evidence but shall not be sufficient alone to support a finding unless it would be admissible over objection in civil actions. Hearsay may be used as secondary or corroborating evidence to support circumstantial or direct evidence.

(iii) Relevancy. Only evidence which tends to substantiate or refute the charges and evidence which responsible persons are accustomed to relying upon in the ordinary course of serious affairs is admissible, regardless of the existence of any common law or statutory law or rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant evidence shall not be admissible. Determinations as to relevancy and the weight to be given evidence introduced shall be in the sole discretion of the hearing body.

(iv) Open v. Closed Hearings. Where the matter involves the performance of an employee, the employee shall have the right to determine whether the matter shall be heard in an open or closed session pursuant to the Ralph M. Brown Act and the District shall give notice in writing to the employee of this right not less than twenty-four (24) hours before the scheduled date of the hearing. Upon request of any party, any anticipated witness shall be excluded from the hearing until called as a witness, unless the witness is a party to the proceeding, or representative of a party to the proceeding, including a Union representative.

(v) Rules of Discovery. All papers, writings, documents, notes, photographs, records, computer records, recordings (video and audio) and other physical evidence which form the basis of a statement of charges and which will be introduced in evidence at any hearing held pursuant to Section 508.11 shall be made available within five (5) calendar days of the filing of such statement to view or copy as may be appropriate by the opposing party or parties. Failure to disclose those materials and documents shall, in the discretion of the hearing body, constitute cause to exclude such evidence at the hearing. When, in the discretion of the Board, a witness who is an employee of the District is

essential in order for the hearing body to render a decision on a matter involving a fundamental vested right of an employee who is a party to such hearing, the District shall allow such party time off work, with pay, to so testify.

(vi) Hearings: Decisions. Hearings, once commenced, may, in the sole discretion of the hearing body, be continued from time to time until concluded. Once concluded, a decision shall be rendered in writing within thirty (30) calendar days.

(b) DISCIPLINARY PROCEEDINGS

1. Minor Discipline. Minor discipline of employees may be imposed by the CEO & Port Director or the Chief Administrative & Finance Officer. "Minor discipline" means counseling, a written reprimand or suspension without pay not to exceed five (5) working days.

Except where minor discipline is imposed by the CEO & Port Director, the disciplined employee may appeal any minor discipline imposed to the CEO & Port Director. The appeal shall be in writing and shall be made within seven (7) calendar days after receipt by the employee of written notice of the discipline imposed. If the employee does not appeal within that time frame, the right to appeal has been waived. Where the CEO & Port Director imposes minor discipline, there shall be no appeal. Where minor discipline has been imposed and an appeal has been taken to the CEO & Port Director, the decision of the CEO & Port Director shall be final, and no further right of appeal shall exist.

When minor discipline is imposed, a written Statement of Discipline describing the discipline that has been imposed and the reasons therefore, shall be given to the disciplined employee and a copy placed in his or her personnel file. This Statement of Discipline shall include an acknowledgment by the disciplined employee of receipt of the Statement of Discipline. If the employee refuses to acknowledge receipt of the Statement of Discipline, a notation to that effect shall be made on the Statement of Discipline placed in the employee's personnel file. Upon receipt of the Statement of Discipline, the employee may, if the employee chooses to do so, make a written response to the Statement of Discipline which shall be delivered to the person imposing the discipline and the CEO & Port Director, and a copy of same shall be placed in the employee's personnel file.

2. Major Discipline. The term "Major Discipline" means termination, discharge, dismissal or other removal from employment, demotion, a change in employment, a reduction in pay, dismissal for medical reasons, suspension without pay for more than five (5) days, or other discipline (other than that defined as Minor) that seriously affects an employee's employment with the District or the compensation he or she receives therefor.

Major Discipline may only be imposed by the CEO & Port Director or by the Chief Administrative & Finance Officer in the absence of the CEO & Port Director based on charges initiated by the District, by any recognized employee organization, or by an employee. Charges shall be filed in writing with the Chief Administrative & Finance Officer.

3. Procedure for Major Discipline. The following procedure shall apply to the imposition of major discipline. Requests for the consideration of major discipline and the charges that may give rise therefore, shall be made in writing to the Chief Administrative & Finance Officer -Administration. If, in the opinion of the Chief Administrative & Finance

Officer, immediate disciplinary action is required, the Chief Administrative & Finance Officer may impose minor discipline or may suspend the employee to be disciplined with pay for any period of time until a hearing is held on the discipline to be imposed. When the Chief Administrative & Finance Officer has received charges warranting potential major disciplinary action, the Chief Administrative & Finance Officer shall give to the employee, in writing, the following:

- (i) Notice of the proposed disciplinary action.
- (ii) The reasons for the proposed disciplinary action.
- (iii) A copy of the charges and materials upon which the proposed disciplinary action is based, and
- (iv) Notice of the right to respond either orally or in writing to the CEO & Port Director, or his/her designee, regarding the proposed disciplinary action, orally or in writing, before it takes effect. The notice shall include the name of the person to whom the response is to be made, if other than the CEO & Port Director, and the last date upon which a response may be made.

The employee shall have at least seven (7) days from the date the notice of proposed disciplinary action is delivered to respond to the charges, either orally or in writing. Upon a showing of good cause, as determined by the CEO & Port Director or his/her designee, the time for response may be extended beyond seven (7) days. In responding, either orally or in writing, the employee may designate a representative to assist in the presentation of the response.

In the event that the employee chooses to respond orally, the employee must, within the period given to respond, make an appointment, and meet with the CEO & Port Director or his/her designee. During this meeting, the employee and/or the employee's representative may present any reasons why the employee feels that the proposed action is not proper. The CEO & Port Director or his/her designee shall listen to the employee's presentation, but shall not present any evidence on behalf of the District, nor shall either party present witnesses for examination at this time.

In the event that the employee chooses to respond in writing, the employee's written response must be received in the office of the CEO & Port Director no later than 5:00 p.m. on the last date given to respond.

The CEO & Port Director or their designee shall take the employee's timely response into consideration and shall make a determination as to whether or not the proposed action, a different action, or no action shall be taken, and shall notify the employee of his/her decision and the right to appeal.

Failure by the employee, or the employee's representative, to respond to the notice of proposed disciplinary action within the period allowed shall result in the disciplinary action taking effect as proposed.

4. Appeals of Major Discipline. The employee may appeal to the Board of Harbor Commissioners the decision of the CEO & Port Director imposing major discipline.

(i) Time to Appeal. A notice of the appeal shall be made in writing, signed by the employee, served on the CEO & Port Director within fifteen (15) calendar days of the date of service of the CEO & Port Director's decision. Service of the Notice of Appeal may be made by personal service or by mail, postage prepaid, addressed to the District at 333 Ponoma Street, Port Hueneme, California 93041, Post Office Box 608, Port Hueneme, California 93044-0608. Failure to do so shall constitute waiver of the right to appeal and failure to exhaust administrative remedies.

(ii) Procedures on Appeal. Upon receipt of a timely notice of appeal, the District shall arrange the matter for an evidentiary hearing before an Independent Hearing Officer and provide the employee with a copy of the rules governing the evidentiary hearing and inform him/her of the right to be represented by an attorney or other representatives of his/her choosing at the evidentiary hearing and the right to have the hearing before the Independent Hearing Officer open to the public.

The cost of providing an Independent Hearing Officer will be borne by the District subject, however, to reimbursement by the employee organization and/or employee who is the subject of the discipline in the following circumstances:

(aa) If the represented employee obtains a recommendation of the Independent Hearing Officer for a level of discipline less severe than that originally imposed, the District shall recover one-half the cost of the Independent Hearing Officer, whether or not such discipline is actually imposed, and

(bb) If the represented employee obtains a recommendation of the Independent Hearing Officer for a level of discipline as severe as that originally sought by the District, the District shall recover the entire cost of the Independent Hearing Officer, whether or not such discipline is actually imposed.

(iii) Rules Governing an Evidentiary Hearing. The following rules shall govern an evidentiary hearing on major disciplinary matters held before an Independent Hearing Officer as required by these regulations.

(aa) Burden of Proof. The burden of proof shall be on the District.

(bb) Order of Presentation. The District and the employee shall have the right to make an opening statement to the Independent Hearing Officer before the presentation of evidence. Each opening statement shall be confined to an outline of the evidence to be presented before the Independent Hearing Officer. Each of the parties shall be allowed to present documentary evidence and the testimony of witnesses supporting the charges or in defense of the charges and each of the parties shall have the right to cross-examine witnesses brought by the other party.

The District, through the Chief Administrative & Finance Officer or other duly authorized representative, shall present its evidence supporting the charges and the discipline requested. Thereafter the employee shall be entitled to present evidence in defense of the charges against him or her. The District may then present rebuttal evidence to the defense of the employee.

(cc) Hearsay Evidence. Hearsay evidence as defined by the Evidence Code of California is admissible evidence but shall not be sufficient alone to support a finding of the Independent Hearing Officer unless it would be admissible over objection in civil actions. Hearsay may be used as secondary or corroborating evidence to support circumstantial or direct evidence.

(dd) Relevancy. Only evidence which tends to substantiate or refute the charges and evidence which responsible persons are accustomed to relying upon in the ordinary course of serious affairs is admissible, regardless of the existence of any common law or statutory law or rule which might make improper the admission of such evidence over objection in a civil action. Irrelevant evidence shall not be admissible. Determinations as to the relevancy and the weight to be given to evidence introduced shall be in the sole discretion of the Independent Hearing Officer.

(ee) Open v. Closed Hearings. The employee to be disciplined has the right to request that the hearing be open to the public. The District shall notify the employee of this right in writing not less than twenty-four (24) hours before the scheduled hearing date. Unless the employee requests that the hearing be open to the public, the hearing shall be a closed hearing.

(ff) Discovery. All papers, writings, documents, notes, photographs, records, recordings (video and audio) and other physical evidence which forms the basis of the charges and which are proposed to be introduced into evidence at any evidentiary hearing by either the District or the employee, shall be given to the other party at least five (5) calendar days prior to the date set for the hearing. Further, the District and the employee shall each furnish to the other a list of proposed witnesses at least twenty-five (25) calendar days prior to the hearing.

If either party proposes to introduce documents or to call witnesses not previously furnished or listed, the party shall deliver copies of documents and advise the other party of witnesses not previously produced or listed, as soon as possible, and prior to the hearing. The Independent Hearing Officer may permit the introduction of documentary evidence or the testimony of witnesses in the sole discretion of the Independent Hearing Officer upon request of either party and upon an explanation of the reason why the requirements heretofore set forth have not been met.

When a witness who is an employee of the District is to be called by either party, the District shall allow such witness time off work, with pay, to so testify.

(gg) Reporting. All evidentiary hearings shall be reported by a certified court reporter at District's cost

(hh) Briefs. The Independent Hearing Officer in his or her sole discretion shall have the right to require the parties to file briefs at the conclusion of the presentation of the evidence.

(ii) Continuation of Hearings. Hearings, once commenced, may, in the sole discretion of the Independent Hearing Officer be continued from time to time until concluded.

(jj) Decision. The Independent Hearing Officer shall render to the District his or her recommendation in writing within thirty (30) calendar days after conclusion of the hearing, which recommendation shall be delivered to the Board of Harbor Commissioners at the first regularly scheduled Board meeting allowable based on notice requirements. The recommendation shall also be delivered to the employee.

(iv) Hearing Before the Board. After the Independent Hearing Officer's recommendation has been delivered to the Board of Harbor Commissioners and the employee, the employee may, within fifteen (15) days after service of the recommendations, request that the matter be set for oral argument before the Board of Harbor Commissioners. The matter will then be set for oral argument before the Board of Harbor Commissioners, at which time both the employee (or his/her representative) and the District may make oral arguments to the Board. Members of the Board may ask questions of either the employee or the District.

(v) Decision of the Board. Within thirty (30) calendar days after the hearing at which the parties have presented oral argument, the Board of Harbor Commissioners shall render its decision on the appeal in writing and serve a copy of the decision on both the employee and the District by personal service or in the form of U.S. Postal Service certified/return receipt requested mail. A copy of the decision shall also be placed in the employee's personnel file. The decision of the Board on appeal shall be final.

(vi) Role of District's Legal Counsel. The District's Legal Counsel shall provide advice to the Board of Harbor Commissioners during an appeal.

508.12. UNFAIR EMPLOYER-EMPLOYEE RELATIONS PRACTICES

In their dealings with each other, the District and employee organizations shall not engage in practices that attempt to nullify or subvert the established employer-employee relations practices or which violate state and federal laws.

(a) District. It shall be an unfair employer-employee relations practice for the District to:

1. Interfere with, restrain, discipline, coerce or otherwise discriminate against any employee in the exercise of the rights recognized or granted in these policies and procedures.

2. Subject an employee to punitive action or denied promotion, or threaten the employee with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

3. Dominate or interfere with the formation of any employee organization or contribute financial support to it, provided the rights recognized or granted to employee organizations in these policies and procedures shall not be construed as financial support.

4. Encourage or discourage membership in any employee organization by discriminating in regard to hiring, tenure, promotions or other conditions of employment.

5. Dominate or interfere with the administration, policies and programs of an employee organization or its members' participation therein.

6. Refuse to certify an employee organization qualified for such certification.

7. Refuse to hear, consult or meet and confer in good faith with a recognized employee organization on matters within the scope of representation.

8. Refuse or fail to cooperate with the Board or with any mediators or a person designated to conduct fact-finding proceedings as provided in these policies and procedures.

9. Lock out District employees if prohibited by a collective bargaining agreement.

(b) Employee Organizations. It shall be an unfair employer-employee relations practice for employee organizations or their representatives or members to:

1. Interfere with, restrain, discipline, coerce or otherwise discriminate against any employee in the exercise of the rights recognized or granted in these policies and procedures.

2. Attempt to induce department heads to coerce any employee in the exercise of his/her rights under these policies and procedures.

3. Coerce, attempt to coerce, threaten or discipline any member of an organization which results in hindering or impeding the performance of his/her duties.

4. Discriminate against any employee with regards to the terms or conditions of membership because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or any other consideration made unlawful by federal, state or local laws.

5. Engage in unauthorized use of District facilities and/or impede free access to District property and facilities by physical means or intimidation.

6. Refuse to meet and confer in good faith with District representatives on matters within the scope of representation.

7. Refuse or fail to cooperate with the Board or with any mediators or persons designated to conduct fact-finding proceedings as provided in these policies and procedures.

8. To engage in, cause, instigate, encourage, or condone a strike, sympathy strike, work stoppage, or work slowdown of any kind, any scheduled or unscheduled work stoppages, slow-downs or "sick-outs" if prohibited by a collective bargaining agreement.

10. Refuse or fail to make available annually to the District and to the employees who are members of the organization, within sixty (60) days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant.

508.13. CONSTRUCTION

The provisions of these policies and procedures are not intended to conflict with the provisions of Title 1, Division 4, Chapter 10 of the Government Code of the State of California commencing with Section 3500. The rights, powers and authority of the Board in all matters, including the right to maintain any legal action, shall not be modified or restricted by these policies and procedures.

Nothing in these policies and procedures shall be construed to deny to any person, employee, organization or District, the rights, powers and authority granted by Federal or State law, or by other ordinances of the District.

If any provision of these policies and procedures or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of the policies and procedures or the application of provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

RELATED POLICIES AND PROCEDURES:

None.

DEFINITIONS:

The following shall have the meaning indicated when used in connection with these policies and procedures.

1. "Board" means the Board of Harbor Commissioners of the Oxnard Harbor District.
2. "Certification" means official recognition by the District as the employee organization designated to represent an appropriate bargaining unit.
3. "Collective Negotiation" or "Negotiate Collectively" means to meet and confer in good faith as that term is defined on paragraph 15 of this section.
4. "Confidential Employee" means an employee who assists and acts in a confidential capacity to formulate, determine and/or effectuate management policies with regards to labor relations or whose duties normally require access to confidential information contributing significantly to the development of management positions, or who regularly substitute for employees having such duties. Employees falling within this category are: The Executive Director, Chief Administrative & Finance Officer - Administration, Deputy Executive Director - Maritime Services, Controller, Director of Operations and Maintenance, Director of Engineering, Director of Human Resources, Director of Marketing and Trade Zone Services, Executive Secretary to the Board of Harbor Commissioners, Senior Accountant and Staff Accountant.
5. "Consult (or Consultation) in Good Faith" means to communicate verbally or in writing for the purpose of presenting and/or obtaining views or advising of intended actions on matters within the scope of representation.
6. "Day" means the calendar day unless expressly stated otherwise.

7. "Decertification" means the procedure for removing an employee organization as the recognized bargaining representative of employees in an appropriate bargaining unit.
8. "District" means the Oxnard Harbor District.
9. "Employee Organization" means any organization which includes employees of the District and which has as one of its prime purposes representing such employees in their relations with the District.
10. "Fact-finding" means the investigation by one or more impartial persons to identify the major issues in a particular dispute, review the positions of the parties, make findings of facts on the issue in dispute, and when requested by both parties, make advisory recommendations for settlement by the parties involved in the dispute.
11. "Good Faith" means a serious attempt to resolve differences to reach a common ground by keeping an open mind with a sincere intention to reach agreement. It does not require either party to yield a position fairly maintained. However, a predetermined resolve not to budge from an initial position taken is not deemed to be in good faith.
12. "Impasse" means a deadlock in collective negotiations between a recognized employee organization and the District concerning matters within the scope of representation as set forth in Government Code Section 3504.
13. "Management Employee" means the CEO & Port Director, Chief Administrative & Finance Officer, Chief Commercial & Public Affairs Officer, or other employee designated by the Board as a management employee.
14. "Mediation" means the efforts of an impartial third person or persons, functioning as an intermediary, to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion and advice.
15. "Meet and Confer in Good Faith" means that the District or such representatives as it may designate, and representatives of recognized employee organizations, have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation as set forth in Government Code Sections 3504 and 3505.4.
16. "Modification" means the procedure for modifying or redefining a bargaining unit into a more appropriately constituted bargaining unit or units.
17. "Professional Employee" means an employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction including, but not limited to, attorneys, engineers, certified public accountants and other similarly accredited positions.
18. "Public Employee and Employee" means any person employed by the District in a budgeted position except Harbor Commissioners.

19. "Recognized Employee Organization" means an employee organization formally acknowledged by the District as an employee organization that represents employees of the District.

20. "Supervisory Employee" means any employee having authority, to exercise independent judgment in assigning work and evaluating performance and to effectively recommend on actions to hire, promote, transfer, lay-off, recall, discipline, suspend, discharge or adjust grievances of other employees, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.