

**WORKING DRAFT**  
**(For Conference Use Only)**

**HANDBOOK**  
**on**  
**PUBLIC EMPLOYEE**  
**LABOR RELATIONS IN CALIFORNIA .**

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## TABLE OF CONTENTS

<b>I. Statutory Background</b>	<b>1-10 (Yellow)</b>
<b>A. General Provisions</b>	<b>1</b>
✓ 1. Brown Act	1
✓ 2. Winton Act	4
✓ 3. Firefighters	5
4. Transit District Employees	5
<b>B. Statutory Separation of Private and Public Employees</b>	<b>7</b>
<b>C. Promulgation of Rules and Regulations</b>	<b>8</b>
<b>II. Rights to Organize, Join or Represent</b>	<b>11-17 (Blue)</b>
✓ <b>A. Right to Organize and Join Labor Organizations</b>	<b>11</b>
✓ <b>B. <del>Right to Representation</del></b>	<b>15</b>
<b>III. Recognition and Rights of Recognized Organizations</b>	<b>18-34 (Pink)</b>
<b>A. Recognition of Employee Organizations</b>	<b>18</b>
1. State Employees	18
2. Local Employees (Brown Act)	19
Marin County	19
Ventura County	23
Placer County	25
City of Modesto	25
3. Transit Acts	26
4. Firefighters	28
5. School Employees	28
<b>B. Rights of Recognized Employee Organizations</b>	<b>28</b>
1. State Employees	28
2. Marin County Employees	30
3. Ventura County	31
4. City of Modesto	34
5. Firefighters	34
6. School Employees	34

IV. Collective Bargaining	35-69 (Green)
A. Scope of Representation and Bargaining	35
B. Statutory Requirements Related to Bargaining and Their Interpretation	36
- Firefighters	36
- Public School Employees	37
- Brown Act Employees	48
C. Local Interpretations and Application of "Meet and Confer"	53
- Marin County Resolution	54
- Ventura County Management- Employee Cooperation Policy	56
- Fresno County Personnel Relations Policy	60
- Placer County Personnel Relations Policy	61
- City of Modesto	64
- Other Cities	66
D. Transit Districts	68
V. The Strike Issue in Public Employment	70-76 (Yellow)
- Is There the Right to Strike?	70
- Alternative Methods of Dispute Settlement	75
VI. Grievance Procedures	77-105 (Blue)
A. Transit Districts	79
B. Brown Act Employees	83
- State Employees	83
- San Mateo County	86
- Ventura County	91
- City of Modesto	99
- Recommended Procedure of League of California Cities	101
- City of Richmond	104
Selected Bibliography	106

*firefighters  
organization  
catalog*

## I. STATUTORY BACKGROUND

### A. General Provisions

There are three major statutes regulating California public employee labor relations: The Brown Act, Government Code Sections 3500-3509; The Winston Act covering public school employees, non-certificated employees as well as teachers, Education Code Sections 13080-13088; and Labor Code Sections 1960-1963 covering firefighters. ~~California transit districts have their own labor relations statutes.~~

#### 1. The Brown Act - Government Code Sections 3500-3509.

This statute covers all non-federal public agency employees except firefighters, teachers and other school employees. ~~Employees of the University of California are covered by the Brown act according to the California Attorney General.~~ (Opps. Atty. Gen. March 27, 1964.) Law enforcement employees, however, may be restricted in their rights to form, join, or participate in employee organizations where it is in the "public interest" to do so (Section 3508). Section 3508 also restricts full-time "peace officers" to organizations composed solely of such peace officers. The section follows:

#### Section. 3508. [Law Enforcement Employees -- Limitations].

The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so; however, the governing body may not prohibit the right of its employees who are full-time "peace officers," as that term is defined in Section 817 of the Penal Code,



to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section. ~~This section is not applicable to any employee subject to the provisions of Chapter 4 (commencing with Section 1960) of Part 7, Division 2 of the Labor Code.~~  
~~[Section 3508 reads as amended by Ch. 285, L. 1965.]~~

The stated purpose of the Brown Act is to promote the improvement of personnel management and employer-employee relations within California public agencies, by providing a uniform basis for recognizing public employee rights to join and be represented by organizations of their own choice. This is set out in Section 3500, below. The section also provides that the Act is not to supersede the provisions of existing state law and the charters, ordinances and rules of local public agencies concerning merit or civil service systems, or other methods of administering employee relations, rather it is intended to strengthen them. ~~The section follows:~~

Section 3500. [Purpose].

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

Section 3501 of the Brown Act defines certain terms used in the statute. In defining "public agency", this section includes within the definition every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. "Employee organization" and "public employee" are also defined:

Section 3501. [Definitions]. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that public agency.

(b) Except as otherwise provided in this subdivision, "public agency" means the State of California, every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, "public agency" does not mean a school district or a county board of education or a county superintendent of school district having a merit system as provided in Chapter 3 (commencing with Section 13580) of Division 10 of the Education Code. [Section 3501 reads as amended by Ch. 2041, L. 1965.]

(c) "Public employee" means any person employed by any public agency excepting those persons elected by popular vote or appointed to office by the Governor of this state.

It appears that California's chartered counties accept the application of the Brown Act to them and have construed the State Act along with their own charters and ordinances. The reasons for this are explained in an opinion by the attorney for the City and County of San Francisco, Thomas M. O'Connor, as follows

In an action brought by an individual fireman and a fireman's organization to determine the rights and obligations of firemen, their organization, and a city in view of Labor Code sections 1960 et seq., conferring on firemen the right to self-organization

and preventing cities from prohibiting firemen from joining labor organizations, it was held that labor relations are of the same statewide concern as workmen's compensation, liability of municipalities for tort, perfecting and filing of claims, and the requirement to subscribe to loyalty oaths, all of which have been held to be governed by general law in contravention of local regulation by chartered cities (Professional Fire Fighters, Inc. v. City of Los Angeles (1964) 60 Cal. (2) 276, 295).

where to be found — footnote

Thus . . . the 1961 legislation (Brown Act) must be construed with the charter and ordinances of San Francisco. The Legislature has not attempted to interfere with the operation of local ordinances, charter provisions or other regulations, as pointed out above. Therefore, it is clear that the fixing of salaries of municipal employees remains a matter of local or municipal concern, and not a matter of statewide interest (In re Dodge (1902) 135 Cal. 513; Adams v. Wolff (1948) 84 Cal. App. (2) 435; and City Attorney Opinion No. 1533 of April 18, 1961).

In general, the Brown Act is being, interpreted by cities, counties and other local agencies as giving them the authority to establish their own system of labor relations. Thus, they are in a position to go beyond the Brown Act in providing for collective bargaining. However, the law is not clear regarding the legality of any local provisions that actually conflict with provisions of the Brown Act.

## 2. The Winton Act - Education Code Sections 13080-13088.

This Act covers teachers and other public school employees, such as custodians. Section 13080 sets out the purpose of the act in terms similar to the Brown Act (~~Act~~), and also provides that existing employee-employer relations systems are to be strengthened rather than superseded. Section 13081 defines terms used in the act:

### Section 13080 [Purpose].

It is the purpose of this article to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a

uniform basis for recognizing the right of public school employees to join organizations of their own choice and be represented by such organizations in their professional and employment relationships with public school employers and to afford certificated employees a voice in the formulation of educational policy. Nothing contained herein shall be deemed to supersede other provisions of this code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations. This article is intended, instead, to strengthen tenure, merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public school employers by which they are employed.

Section 13081 [Definitions]. As used in this article:

(a) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer.

(b) "Public school employer" means a school district, a county board of education, a county superintendent of schools, or a personnel commission of a school district which has a merit system as provided in Chapter 3 of this division.

(c) "Public school employee" means any person employed by any public school employer excepting those persons elected by popular vote or appointed by the Governor of this state.

3. Firefighter rights are separately provided for in Labor Code sections 1960-1963. Section 1961 defines the employees covered by the Labor Code provisions for firefighters:

As used in this chapter, the term "employees" means the employees of the fire departments and fire services of the State, cities and counties, districts, and other political subdivisions of the State.

#### 4. Transit District Employees

California transit districts have their own statutes which include provisions regulating labor relations:



1. Alameda - Contra Costa Counties "Transit District Law",  
~~Public Utilities Code~~ (hereinafter cited as PUC) Sections  
~~24501-24502~~. See Labor Provisions: Sections 25051-25057.
2. "San Francisco Bay Area Rapid Transit District Act",  
PUC 28500-29757. Labor Provisions: 28850-28850.
3. "Southern California Rapid Transit District Law",  
PUC 30000-31520. Labor Provisions: 30750-30756.
4. "Stockton Metropolitan Transit District Act of 1963",  
PUC 50000-50507. Labor Provisions: 50120-50126.
5. "Marin County Transit District Act of 1964",  
PUC 70000-80019. Labor Provisions: 70120-70129.
6. "Los Angeles Metropolitan Transit Authority",  
PUC Appendix 1 Sections 1.1-13.1. Labor Provisions: 3.6.
7. "Fresno Metropolitan Transit District Act of 1961",  
PUC App. 2 Secs. 1. 1-11.3. Labor Provisions: 4.1-4.2.
8. "West Bay Rapid Transit Authority Act",  
PUC App. 3 Secs. 1.1-14.3. Labor Provisions: 13.90-13.97.
9. "Orange County Transit District Act of 1965",  
PUC 40000-40617. Labor Provisions: 40120-40129.
10. "Santa Barbara Metropolitan Transit District Act of 1965",  
PUC 95000-97100. Labor Provisions: 95650-95656.
11. "San Diego County Transit District Act of 1965",  
PUC 90000-93017. Labor Provisions: 90300

Without exception, these transit district laws provide for full collective bargaining rights patterned after private industry. As such, they stand in sharp contrast with the more limited provisions of the Brown Act, the Winton Act, and Labor Code provisions governing firefighters.

B. Statutory Separation of Private and Public Employees

Excluding the transit district laws, all three of the major statutes governing public employees provide that their enactment shall not be interpreted as making the provisions of Section 923 of the Labor Code applicable to public employees. (Government Code Sec. 3509; Labor Code Section 1963; Education Code Section 13088.) Section 923 is the basic Labor Code provision governing labor-management relations in the State for private employment. It declares that "the public policy of this State" for employees in the private sector is as follows:

"Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities of the purpose of collective bargaining or other mutual aid or protection."

In contrast to the non-application of the above section to public employees governed by the transit district acts are not so limited in their activities. The transit acts are silent regarding L. C. Section 923 and contain broad language of their own. For example, the Los Angeles Metropolitan Transit act provides in P.U.C. Section that:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in

other concerted activities for the purpose of collective bargaining or other ~~mutual aid or~~ protection. ...\*

That these proprietary employees are treated more like employees in the private sector than as public employees governed by the three statutes will become clearer as specific issues are examined below.

### C. The Promulgation of Rules and Regulations

As indicated above, both the Brown and Winton Acts provide that they do not supersede existing state law and charters, ordinances and rules establishing and regulating merit and civil service systems or providing other methods of administering employer-employee relations.

These Acts also provide for the adoption of rules and regulations on certain subjects as follows:

Government Code Section 3507:

A public agency may adopt reasonable rules and regulations for the administration of employer-employee relations under this chapter (commencing with Section 3500).

Such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the public agency (b) verifying the official status of employee organization officers and representatives (c) access of employee organization officers and representatives to work locations (d) use of official bulletin boards and other means of communication by employee organizations (e) furnishing nonconfidential information pertaining to employment relations to employee organizations (f) such other matters as are necessary to carry out the purposes of this chapter.

For employees in the state civil service rules and regulations in accordance with this section may be adopted by the State Personnel Board.

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\*Note that all the relevant sections from all of the transit acts will not be reproduced; rather, typical examples are selected.

Education Code Section 13087:

A public school employer shall adopt reasonable rules and regulations for the administration of employer-employee relations under this article.

Such rules and regulations shall include provision for verifying the number of certificated employees of the public school employer who are members in good standing of an employee organization on the date of such verification, and where a negotiating council is required by Section 13085, for the size of the negotiating council. The public school employer may require an employee organization to submit any supplementary information or data considered by the public school employer to be necessary to the verification of the number of members in an employee organization and such information or data shall be submitted by the organization within 10 days after request, provided that membership lists, if requested, shall not be used as a means of violating Section 13086, for the size of the negotiating council. The public school employer may require an employee organization to submit any supplementary information or data considered by the public school employer to be necessary to the verification of the number of members in an employee organization and such information or data shall be submitted by the organization within 10 days after request, provided that membership lists, if requested, shall not be used as a means of violating Section 13086. In addition, such rules may include provision for (a) verifying the official status of employee organization officers and representatives, (b) access of employee organization officers and representatives to work locations, (c) use of official bulletin boards and other means of communication by employee organizations, (d) furnishing complete and accurate nonconfidential information pertaining to employment relations to employee organizations and (e) such other matters as are necessary to carry out the purposes of this article.

The State Personnel Board has formulated rules for state employees concerning employer-employee relations pursuant to Section 3507 of the Government Code above. These rules apply where a state agency does not adopt its own rules. In general, where state agencies have issued their own rules, they have followed closely those issued by the Personnel Board. These rules,



which appear in the California Administrative Code, have the following purpose:

543. Employer-employee Relations. The purpose of these rules concerning employer-employee relations shall be:

(a) To assure a uniform and equitable basis for employer-employee relations within state agencies.

(b) To maintain open channels of communication that permit the exchange of information and ideas in a co-operative and informal manner.

(c) To further the understanding of the rights and obligations of state agencies and employee organizations concerning employer-employee relations.

(d) To bring together the points of view of management and the employee in order to insure increased efficiency in the state service, combined with the improved well-being of those employed.

Nothing in these rules supersedes the provisions of the Civil Service Act and the rules which establish and regulate the state civil service system.\*

(Several cities and several counties have also formulated rules and regulations for their respective employees. Sample provisions from these regulations are discussed in their appropriate places below.)

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\*Note: Authority cited: Section 18701, Government Code. Reference: Sect. 3507, Government Code.

History 1. New Section filed 5-1-62; effective thirtieth day thereafter (Register 62, No. 9).

## II. RIGHTS TO ORGANIZE, JOIN AND REPRESENT

### A. The Right to Organize and Join Labor Organizations

All three of our major public employee acts provide for the right of employees to form, join and participate in organizations of their own choosing.

The firefighters statute provides in Labor Code Section 1960 that:

Neither the state nor any county, political subdivision, incorporated city, town, nor any other municipal corporation shall prohibit, deny or obstruct the right of firefighters to join any bona fide labor organizations of their own choice.

Section 1962 provides that:

Employees shall have the right to self-organization, to form, join, or assist labor organization, to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, and to discuss the same with such an organization, but shall not have the right to strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

(The Attorney General has ruled that firefighter rights to organize and join labor organizations are more than a matter of local concern and that therefore sections 1960-1963 prevail over conflicting laws of chartered as well as unchartered cities and counties, (~~Opps. Atty. Gen. May 20, 1960~~) and this has been followed by the courts.) <sup>1</sup> Fire Fighters, Local 1319 v. City of Palo Alto, 29 Cal. Rptr. 219 (1963). The preceeding case also found that the discharge of a fireman by the county fire chief was unlawful when his only offense was the solicitation of fellow employees to join the union, during on-duty hours.

The Brown and Winton Acts also provide for the right to refuse to join or participate in labor organizations and to represent oneself individually. Education Code Section 13082 is the same as Government Code Section 3502 which follows:

Section 3502. [Right to Organize].

Except as otherwise provided by the Legislature, public employees 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 employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

Therefore, the Attorney General has ruled that school district employee organizations may use the school mail service facilities to communicate with nonmembers as well as with members of the organization. To restrict such activity to those who are already members would be an unreasonable restriction of the employees rights to self organization. <sup>(2)</sup> (~~Opps. Atty. Gen.~~)

~~June 15, 1965~~)

Government Code Section 3506, protects the exercise of employee rights as follows (See also Education Code Section 13086).

Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against public employees because of their exercise of their rights under Section 3502.

Transit employees have more extensive rights as indicated by the excerpt from the L.A. Metropolitan Transit Act cited in the prior section.

The rights to join and organize and to abstain from so doing and to represent oneself are reiterated in the resolutions passed by several cities and counties. One of the most far - reaching of these is Resolution No. 9556

of the Board of Supervisors of the County of Marin Establishing Policy and Procedure for the Administration of Employer - Employee Relations, part of which follows (other sections of this resolution will appear in their appropriate places below):

BOARD OF SUPERVISORS OF THE COUNTY OF MARIN, CALIFORNIA

RESOLUTION NO. 9556

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN  
ESTABLISHING POLICY AND PROCEDURE FOR THE ADMINISTRATION OF  
EMPLOYER-EMPLOYEE RELATIONS

" WHEREAS, the Board of Supervisors desires to establish a framework of policy and procedure which will provide a uniform and equitable basis for consideration of legitimate employee objectives advanced by employee organizations, in a manner which is consistent with the highest standards of public service, with the intent and purpose of promoting and furthering harmonious labor-management relations upon a sound constructive foundation, having as its cornerstone full acceptance and recognition of the obligations and rights of both management and employees;

" NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors hereby adopts the following policy and procedure for the administration of employee-employer relationships.

I. POLICY

A. EMPLOYEE'S RIGHTS

1. Enumeration

" Each employee of the County of Marin shall enjoy, among others, the following rights:

(a) The right to organize and join any organization of his choice.

" (b) The right to refuse to join or participate in the activities of employee organizations.

"(c) The right to represent himself individually in his employee relations with the County.

## 2. Non-Interference

" (a) Employees shall not suffer discrimination, receive preferential treatment or be denied equitable treatment because of membership or non-membership in any employee organization.

" (b) Employees shall have complete freedom from domination and censorship in the exercise of the rights above specified. The Board of Supervisors and/or managerial employees shall refrain from any action which might prevent or discourage subordinate employees from seeking organization. Neither the Board of Supervisors nor managerial employees shall encourage subordinates to join any organization in preference to any other. "

\* \* \*

A provision similar to the Marin ordinance above appears in the City of Modesto Personnel Rules as follows:

## RULE 17 - EMPLOYER AND EMPLOYEE RELATIONS AND EMPLOYEE REPRESENTATIVES

### 17.1 Right to Join or Abstain

Employees of the City of Modesto, except as may be otherwise provided, shall have the right to form, join, and participate in the activities of employee or labor organizations of their own choosing as provided in Sections 3500 to 3509 of the Government Code of the State of California. Employees of the City of Modesto shall also have the right to refuse to join or participate in the activities of any employee or labor organizations and shall have the right to represent themselves individually in their employment relations with the city.

Employees shall not be discriminated against, granted preferential treatment, or have equitable treatment withheld because of either membership or nonmembership in employee organizations.

\* \* \*

B. The Right to Representation

Both the Brown and the Winton Acts provide that employee organizations shall have the right to represent their members, but that an employee may appear in his own behalf. Exclusive representation for an employee organization representing a majority of employees is not provided for in these state laws, but rather the statutes set forth the right of employee organizations to represent their members. Government Code Section 3503 of the Brown Act (The Winton Act's counterpart section in the Education Code is Section 13083) reads as follows:

Section 3503. [Right to Representation]

Employee organizations shall have the right to represent their members in their employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public agency.

In the application of the right to representation at the local level, it is nevertheless possible for local government units to provide for different levels of representation, including majority representation status, without conflicting with the section of the Brown Act quoted above. Thus, the Marin County resolution provides in Section 4(a) of Part II(A), covering certification, that:

A decision establishing and defining a representation unit shall be accompanied by a certification that an employee organization represents a majority of all employees in the unit if such is the case, and such organization shall be deemed to be certified.

At the same time, Section 4(b) of Part II(A) of the Marin resolution preserves the right set forth in Government Code Section 3503 of an employee organization to represent its own members:

An organization not certified may nevertheless represent its members to the extent required by Government Code Sections 3500-3509 as currently in effect and as amended in the future.

The right of an organization to represent its own members under the Brown Act, however, only conveys the right to "meet and confer" and does not require collective bargain as such. The Marin resolution, while preserving the limited right to "meet and confer" for all employee organizations for their own members, restricts the provision for collective bargaining to organizations certified as representing a majority of the employees of a unit.

Section C(1) of Part II of the Marin resolution reads as follows:

(1) Agreements--

Any collective bargaining agreement reached by County representatives and representatives of an organization certified as representing a majority of the employees in a representation unit shall be reduced to writing and shall bind the County of Marin and the signatory organization, if ratified by the Board of Supervisors.

Majority representation status is also recognized under the Ventura County Management-Employee Cooperation Policy, as discussed below under Part IV, "Recognition and Rights of Recognized Organizations". Majority status is required for Class I and Class II recognition in Ventura.

Under the Winton Act, it appears that any kind of majority representation status is precluded by a provision in the Education Code discussed below (Part IV on "Collective Bargaining") which requires the establishment of negotiating councils when there is more than one employee organization representing certificated employees. The public school employer is required to "meet and confer" with the representatives of the employee organizations through the negotiating council. In the case of non-certificated school employees, however, there is no provision requiring the creation of negotiating councils where there are competing employee organizations. It should be possible, therefore, for school districts to provide for different levels of representation rights for non-certificated employees such as custodians. One organization might be granted special representation rights because it could substantiate majority membership in a particular unit so long as the rights of other organizations to represent their members on a "meet and confer" basis were maintained.



### III. RECOGNITION AND RIGHTS OF RECOGNIZED ORGANIZATIONS

#### A. Recognition of Employee Organizations

##### 1. State Employees

The State Personnel Board has adopted rules and regulations for verifying the status of employee organizations under the Brown Act. It is clear that the procedures for gaining recognition, as set forth in the following extract from the Personnel Board's rules, do not contemplate any form of exclusive recognition that prevails in the private sector and do not make any provision for determination of representation units:

Title 2 -- State Personnel Board (Register 65, No. 18-10-2-65)

545. Identification of Employee Organizations. The provisions of these rules for verifying the status of employee organizations and representatives are intended to identify organizations representing employees on employment relations matters and to facilitate communications with interested organizations when matters pertinent to their group arise.

Each employee organization desiring to represent its members in their relations with state agencies shall file at least annually with the agency or agencies concerned and with the State Personnel Board in the manner prescribed by the executive officer statements containing the following information and other pertinent information as prescribed:

- (a) Name and address of the organization.
- (b) Names and mailing addresses of the organization's principal officers and representatives.
- (c) A description of the organization's representation in terms of appropriate occupational groups, institutions, and other major sub-divisions.
- (d) A statement that the organization (1) recognizes that the provisions of Section 923 of the Labor Code

are not applicable to employees of the State of California, and (2) affirmatively supports the constitutional form of government in the United States, and of the State of California, and (3) permits membership without regard to race, color, creed, national origin, or age.

The list of names and mailing addresses of the organization's principal officers and representatives shall be kept current. Agency management may require verification of the status of employee organization representatives not included in the list of principal officers and representatives and may require additional current information concerning the extent of the representation of any employee organization, where reasonably necessary.

Regardless of the provisions of these rules, the appointing power may discuss matters relating to employment relations with any group or individual.

## 2. Local Government Employees

Various procedures have been adopted at the local level for the recognition of employee organizations covered by the state Brown Act. The following are examples of the approaches taken by four counties and one city.

Marin - The Marin County resolution establishes a procedure for the certification of employee organizations seeking recognition which also provides for determination of the unit of representation. The excerpts which follow cover the definition of representation units, the certification procedure, the effect of certification, and the method of modifying established units and decertification:

### (Marin County Certification Procedure)

#### ...B. REPRESENTATION UNITS

1. Definition. For the purpose of this resolution, a representation unit is the largest feasible grouping of county employees, which has a community of interest.

## 2. Managerial employees.

(a) For the purpose of this resolution a managerial employee is any employee with authority to hire, fire, or effectively so recommend, or an employee with a confidential relationship to the Board of Supervisors, County Administrator, or Personnel Director.

(b) Managerial employees may not be included in a representation unit encompassing other types of employees.

## II. PROCEDURE

### A. CERTIFICATION

#### 1. Employee organization definition.

For the purpose of this resolution, the term "employee organization" shall mean any organization, professional society, or union which seeks to represent certain employees or groups of employees in their employment relationship with the County.

#### 2. Statement of representation

An employee organization may file a statement of representation with the Personnel Director. Said statement shall contain:

(a) Name of organization.

(b) Names and addresses of principal officers and/or representatives of the organization.

(c) Description of the general composition of the representation unit proposed, together with any information which may be of aid in determining community of interest and identifying any actual or potential conflict with County job classifications or organizational structure.

(d) Declaration as to whether the organization seeks to

represent a majority of all employees in the proposed unit, or only its members within the unit.

### 3. Certification Procedure

(a) The organization shall be prepared to submit to an inspection by a disinterested party, of either, authorization cards signed by employees, or a certified list of the members of organization; or to provide such other means of authentication as is mutually agreeable.

(b) The Personnel Director shall investigate the statement, confer with affected department heads and organizations and prepare findings as to the feasibility of the proposed unit and authentication of the representative status of the organization.

(c) The Personnel Commission within 30 days of receipt of the statement shall hold a public hearing at which the claiming organization, other organizations and County management may present arguments and may submit written briefs.

(d) The Commission may:

(i) require holding a secret ballot election within proposed or finally established unit to determine majority wishes or resolve conflicting representation claims.

(ii) establish the unit as proposed or with modifications.

(iii) establish one or more units which vary from the proposed unit, either to resolve conflicting claims or to better reflect community of interest, or for reasons of administrative feasibility.

(iv) dismiss the request on grounds of insufficient showing of representation, inconsistency with policy established in Part 1-B of this resolution, or for any reason consistent with the objectives set forth in the preamble to this resolution.

(e) The Commission shall render its decision within five days of the close of the public hearing, or of such period as may be provided for the filings of briefs. In the event of a dismissal, the requesting organization may file an appeal with the Board of Supervisors within ten days. The Board shall consider the matter on the record, and its decision shall be final.

#### 4. Effect of Decision

(a) A decision establishing and defining a representation unit shall be accompanied by a certification that an employee organization represents a majority of all employees in the unit if such is the case, and such organization shall be deemed to be certified.

(b) An organization not certified may nevertheless represent its members to the extent required by Government Code Sections 3500-3509 as currently in effect and as amended in the future.

(c) A decision establishing a unit, certifying a majority representative, or dismissing a claim is valid and effective for a period of one year, and may be renewed without hearing for additional one-year periods, except as provided in Section 5 below.

#### 5. Modification of Established Unit and Decertification

a. A petition for modification of a unit and/or decertification may be filed with the Personnel Director after the initial one-year period, but no more than ninety or less than sixty days prior to the expiration or renewal date of a collective bargaining agreement between the certified organization and the County.

b. Such petition may be filed by .

(i) the certified organization as a disavowal of interest;

(ii) ~~another organization~~ provided the petition is accompanied by authorization cards signed by at least thirty per cent of all employees in the currently certified unit;

(iii) any group of employees consisting of at least ten per cent of all employees in the unit;

(iv) The County Administrator for reasons related to substantial changes in County functions, organizational structure or job classifications.

c. Procedure shall be as set forth above for certification.

\* \* \*

The Ventura County Management-Employee Cooperation provides for three levels of recognition for employee organizations, with different rights depending on the level of recognition. Recognition may be withdrawn in certain listed circumstances. The relevant sections concerning recognition levels read as follows (the rights bestowed are listed under (B) of this part):

#### DEFINITION OF AN EMPLOYEE ORGANIZATION

An "employee organization" means any lawful association, labor organization, federation, council, or brotherhood having as a primary purpose the improvement of general working conditions among County employees. Such organizations shall neither advocate the unlawful overthrow of the constitutional government of the United States nor discriminate with respect to conditions of membership because of race, creed, color, or sex.

#### RECOGNITION OF EMPLOYEE ORGANIZATIONS

The Personnel Director shall recommend recognition of an employee organization to the Board of Supervisors at a level appropriate to the organization's membership in accordance with the following criteria:

Class I -- Any employee organization may be granted Class I recognition by the Board of Supervisors based upon proof of majority membership of all County employees.

Class II -- Any employee organization may be granted Class II recognition in accordance with the criteria established by Board Order if it possesses a majority membership of employees classified within a County recognized family job series or as

enumerated in Attachment 3 and as may be amended from time to time as the classification and salary plans change.

Class III -- Any employee organization may be granted Class III recognition.

All employee organizations seeking either to obtain or retain recognition at any level shall at least annually furnish the Personnel Director with:

1. The name and mailing address of the organization;
2. A current roster of its officers and those representatives authorized to speak in behalf of the organization;
3. A copy of its current constitution and by-laws;
4. A current statement of its objectives;
5. The number of County employees who are members of the organization and have designated the organization to represent them;
6. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by certified U.S. Mail will be deemed sufficient notice on the organization for any purpose;
7. A statement that the organization has no restriction on membership based on race, creed, color, or sex; and,
8. A written acknowledgement of this policy and other rules governing County management-employee relations, and an agreement to abide by the provisions of these policies, rules and regulations.

Employee organizations seeking either to obtain or retain recognition at either the Class I or II level shall also at least annually furnish the Personnel Director with proof of the number of members in each family job series who have designated the organization to represent them.

All of the information referred to above may be required by certification to the Personnel Director through a neutral source.

#### WITHDRAWAL OF RECOGNITION

If any of the following conditions are found to exist after a duly noticed hearing, the Board of Supervisors may withdraw its recognition of an employee organization:

- A. That any statement submitted to or made before the Board deemed material to its deliberations is intentionally false;
- B. That the organization has failed to abide by the rules and regulations established, herein or hereafter, by the Board for its conduct with or on behalf of the employees; and,
- C. That the organization no longer is designated by any employee, or the required number of members, as the employee's representative with the Board.

\* \* \*

Placer County - An interesting provision in the Placer County Personnel Relations Policy provides for the revocation of recognition "for acts found contrary to the best interests of the citizens and taxpayers of the County of Placer."

City of Modesto - The personnel rules of this city have a typical verification of status provision requiring recognition by the employee organization that Labor Code Section 923 is inapplicable to public employees. The organization must also disavow its right to strike. The provision follows:

... 17.3 Verification of Status of Organization

Each employee or labor organization desiring to represent its members in their relations with the city shall file annually with the City Manager's office an application for certification, containing the following and such other pertinent information as may be prescribed:

- (a) Name and address of the organization and a copy of the charter and by-laws of the organization.
- (b) Names and mailing addresses of the organization's principal officers and representatives who are authorized to speak on behalf of the organization's members.
- (c) Names of city employees, listed by department or division, who are members of and being represented by the organization.
- (d) A statement that the organization: (1) recognizes that



the provisions of Section 923 of the Labor Code are not applicable to employees of this city; and (2) affirmatively supports the constitutional form of government in the United States, and of the State of California; and (3) permits membership without regard to race, color, creed, national origin, sex, or age; and (4) believes that no person, employee or organization has the right to impede or halt a performance of the functions of government by any means whatsoever; specifically, including stoppages, slow-downs, strikes or picketing.

Such application shall be executed under penalty of perjury by a duly authorized officer of the organization. Upon verification of the information contained in such application, the City Manager shall certify the organization as representing the employees listed. The organization shall notify the City Manager of any changes in the information required by subparagraphs (a), (b), or (c) above.

\* \* \*

Regardless of the provisions of these rules, management may discuss employment matters with any group or individual.

3. The transit acts provide for exclusive representation in appropriate bargaining units. Questions of representation and appropriate bargaining units are settled according to private industry standards. The Alameda-Contra Costa Transit District Act, P.U.C. Section 25052 is typical:

§ 25052. Determination whether labor organization represents majority of employees; hearing and election; time limitation on challenge of certification. If there is a question whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service shall promptly hold a public hearing and may, by decision, establish the boundaries of any collective bargaining unit and provide for an election to determine the question of representation. Provided, however, any certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation

within such collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later. (Added Stats.1955, c. 1036, p. 1961, § 2.)

The Marin County Transit District Act, P.U.C. Section 70122, is a variation of the same approach to representation and bargaining units:

§ 70122. Questions of representation and appropriate bargaining units. If there is any question whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service shall promptly hold a public hearing after due notice to all interested parties and shall thereupon determine the unit appropriate for the purposes of collective bargaining. In making such determination and in establishing rules and regulations governing petitions, the conduct of hearings and elections, the State Conciliation Service shall be guided by relevant federal law and administrative practice, developed under the Labor-Management Relations Act, 1947, as presently amended.

The State Conciliation Service shall provide for an election to determine the question of representation and shall certify the results to the parties. Any certification of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within such collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later; provided, that no collective bargaining agreement shall be construed to be a bar to representation proceedings for a period of more than two years. (Added Stats.1964, 1st Ex.Sess., c. 92, p. \_\_\_, § 1.)

4. Firefighters (no information)
5. School employees under Winton Act (no information)

B. Rights of Recognized Employee Organizations

1. State Employees

The State Personnel Board has adopted rules providing for use of working time for employee organization representatives to confer with management: access to work locations; use of bulletin boards; furnishing of nonconfidential information pertaining to employment relations, etc. These rules are issued pursuant to Government Code of the Brown Act, Sec.3507 (quoted above under Chapter 1 in section on the "Promulgations of Rules and Regulations."):

TITLE 2--State Personnel Board (Register 62, No. 9--5-12-62)

544. Employer-employee Relations Standards and Procedures.

Subject to the following provisions, each appointing power may adopt a statement of employer-employee relations for his agency. If an appointing power does not develop and adopt an employer-employee relations statement, his department or agency shall be governed by the standard statement which shall be prescribed by the executive officers. The statements established by the executive officers or by an appointing power shall be consistent with the principles and standards set forth below.

- (a) Employee organizations complying with these rules, and their representatives,

shall be accorded fair and equitable treatment by agency management.

(b) A state employee who is an official representative of an employee organization may use a reasonable amount of state time, as determined by his appointing power, for conferring with management on employment relations matters.

(c) During assigned working hours employees shall not conduct or participate in employee organization business affairs including but not limited to dues collection, meetings, and membership campaigns.

(d) Reasonable access to work locations shall be provided to officers and representatives of employee organizations. Access shall be restricted so as not to interfere with state business or established safety or security requirements. Officers and representatives of employee organizations shall not enter a work location without the consent of an agency representative.

(e) Communications media such as bulletin boards, where they exist and where they may be utilized for the purpose of communicating with organization members, may be made available to employee organizations. Agency management may require its prior approval before material is posted on bulletin boards or otherwise distributed to the work location.

(f) Nonconfidential information pertaining to employer-employee relations will be made available to official representatives of employee organizations.

(g) Any disagreement or complaint, except disciplinary matters, arising out of the application or interpretation of the statement of employer-employee relations shall be processed through the established grievance procedure where applicable.

Prior to initial adoption or a revision (except a grammatical or other minor change) of a statement of employer-employee relations by an appointing power, the proposed statement shall be published in a board calendar as a matter of general information.

The statement of employer-employee relations shall be issued by the appointing power in writing and appropriate steps shall be taken to inform

employees and employee organizations of the statement and any subsequent substantive changes in it and to give them opportunity to comment prior to adoption.

The executive officer shall prescribe any further procedures necessary to implement these standards and shall review proposed employer-employee relations statements to determine that they are not inconsistent with such standards. Such statements shall not become effective until approved by the executive officer. Any employee organization or party in interest may appeal to the State Personnel Board for review of the action of the executive officer.

For the purpose of these rules, "appointing power" means any department, board, commission, or other agency of state government designated as appropriate by the executive officer.

2. The Marin County Resolution is typical of County Resolutions as it provides for the checkoff of union dues, reasonable use of bulletin boards, and rooms, right to contact employees, to be informed in advance of management changes of affecting employee interests, etc.

#### I. C. RIGHTS OF CERTIFIED EMPLOYEE ORGANIZATIONS

An employee organization certified as the representative of a majority of all employees in a representation unit in accordance with the procedure hereinafter set forth shall be afforded appropriate rights and privileges, including, but not limited to, the following:

1. The right to have regular membership costs and dues of its members, who so request, collected by payroll deductions pursuant to procedures prescribed by the Auditor-Controller.

2. The reasonable use of space on bulletin boards in county departments.

3. The right to contact county employees during their duty period, provided that the department head is notified of such activities and such contact does not interfere with public service or safety requirements.

4. The right to use County conference rooms and meeting facilities

on the same basis as other organizations.

5. The right to distribute information to county employees and, when practicable, to use county information channels for such distribution.

6. The right to be informed by management, in advance, before proposed policy, benefit, or working condition changes directly affecting employee interests are made.

\* \* \*

3. In Ventura County, as pointed out above, the rights of recognized organizations are different, based on the type of recognition. The pertinent provisions follow:

#### RIGHTS OF RECOGNIZED ORGANIZATIONS

Class I organizations -- Shall have the right to:

- A. Receive from the Board of Supervisors advance notice when it proposes to consider matters of importance which directly affect County employees.
- B. Meet and confer with the Board of Supervisors, its designated representatives and departmental management in all matters relating to employment conditions, benefits and management-employee relations, including but not limited to, wages, hours, and other terms and conditions or employment prior to a determination of a policy of course of action. This right shall not interfere with the County's right to manage its operations in the most economical efficient manner and in the best interests of all citizens of the County.

A Class I organization shall give reasonable notice when requesting to meet and confer on such matters. Meetings shall be conducted in such manner as to insure that they will not disrupt the public business.

- C. Appeal to the appropriate County representative any matter within the scope of his responsibility and, if agreement is not reached, further

appeal through appropriate channels to the Board of Supervisors.

- D. Communicate factually with County employees.
- E. Deduct from members' paychecks the regular dues of the organization under procedures prescribed by the Auditor-Controller.
- F. Use the meeting rooms and bulletin boards, or other County facilities authorized by the appropriate County authority, in accordance with County or departmental procedures governing such use, and have reasonable access to other members of the same organization for transmittal of information, but not for organizational activities, nor for activities including dues collections, nor meeting on County time, nor membership drives, nor election campaigns and only as long as the work of County employees and service to the public are unimpaired.
- G. Participate in County orientation programs when invited to do so by appropriate County authorities, but no organization, recognized or not, shall otherwise engage in organizational activities or distribute pamphlets or brochures or similar literature in connection therewith, on any County property.

Class II organizations -- Shall have the right to:

- A. Meet and confer, with the Board of Supervisors, its designated representatives and departmental management, and be consulted, in all matters in which the employee organization submits a written request to the Board of Supervisors, department or County representative concerned as long as such

matters relate to employment conditions, benefits and management-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment.

- B. Appeal to the appropriate County representative any matter within the scope of his responsibility and, if agreement is not reached, further appeal through appropriate channels to the Board of Supervisors.
- C. Communicate factually with its members.
- D. Deduct from members' paychecks the regular dues of the organization under procedures prescribed by the Auditor-Controller.
- E. Use of meeting rooms and bulletin boards, or other facilities authorized by the appropriate County authority, in accordance with County or departmental procedures governing such use, and have reasonable access to other members of the same organization for transmittal of information, but not for organizational activities, nor for activities including dues collections, nor meeting on County time, nor membership drives, nor election campaigns and only as long as the work of County employees and service to the public are unimpaired.
- F. Participate in County orientation programs when invited to do so by appropriate County authorities, but no organization recognized or not, shall otherwise engage in organizational activities or distribute pamphlets or brochures or similar literature in connection therewith, on any County property.

Class III organizations -- Shall have the right to:

Appeal to the appropriate County representative any matter within the scope of his responsibility and, if agreement is not reached, further appeal through appropriate channels to the Board of Supervisors.



### THE RIGHTS OF AN INDIVIDUAL

Nothing in this policy shall abridge the right of individual employees on their own behalf to present matters and receive the same consideration that is provided for employee organizations.

\* \* \*

4. The City of Modesto Personnel Rules do not provide for dues checkoff and the posting of certain materials may be disapproved. Further, policies and procedures deemed necessary for the good of the city may be made either with or without prior notification to employee organizations. The rules at point follow:

#### 17.6 Access of Organizations to Work Locations

Employee or labor organizations which have as the primary purpose the representation of their members in their relations with the city shall conduct the recruiting of members, communicate with members and collect dues at times other than during working or duty hours and at locations other than on city working premises. Certified employee organizations may be granted the use of city facilities for meetings composed principally of this city's employees provided such meetings are outside regularly scheduled working hours and provided space is available. Employee or labor organizations may post organizational material or bulletins in spaces designated by the City Manager. The City Manager reserves the right to disapprove the posting of any material.

#### 17.7 Rules No Abrogation of Rights

By the adoption of the provisions of these rules the city shall not be deemed to abrogate its right to establish policy and procedure and make whatever changes it considers necessary for the good of the city, either with or without prior notification to employees, their organization or their representatives.

5. Firefighters (no information)
6. School employees (no information)

#### IV. COLLECTIVE BARGAINING

##### A. Scope of Representation and Bargaining

The scope of representation under the very limited statutes governing labor relations in public employment in California is however essentially the same as the subject areas covered by bona fide collective bargaining in private industry. Thus, both Government Code Section 3504 of the Brown Act and its counterpart Education Code Section 13084 of the Winton Act provide that:

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.

The scope of representation for teachers and other certificated personnel covered by the Winton Act (as distinguished from non-certificated personnel covered by the Winton Act) goes beyond the above general section. Section 13085 of the Winton Act, as quoted below under "Statutory Requirements Related to Bargaining and Their Interpretation", extends the scope of representation for teachers to include "all matters relating to the definition of educational objectives, the determination of the content of courses and curricula, and the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under law." This broader language is in keeping with "professional" goals of teacher unions and organizations. Similarly, although the language of the Brown Act as such does not extend the scope of representation to matters that relate in some way to the so-called public service "mission" of the government unit, professional unions like the social

workers are pressing their employers to include within the scope of representation on "conditions of employment", matters directly affecting the welfare of public assistance recipients. In a general sense many public employee organizations appear to be interested in this broader aspect of representation of their members.

Section 1962 of the Labor Code, like Section 3504 and 13084 of the Brown and Winton Acts, gives firefighters the right to present "recommendations regarding wages, salaries, hours, and working conditions", but nowhere in any of basic laws is there any reference to negotiations or collective bargaining as such. Only the labor provisions of the transit district acts, which provide for an equally broad scope of representation, require bargaining in "good faith". Section 28850 of the San Francisco Bay Area Rapid Transit District Act is typical of the "good faith" collective bargaining requirement found in the transit acts:

Whenever a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the board, upon determining as provided in Section 38851 that said labor organization represents the employees in the appropriate unit, and the accredited representative shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions and grievance procedures. ...

Language requiring "good faith" bargaining or approaching the concept of "negotiations" was rejected by the legislature when the Brown Act, the Winton Act and the firefighter's statute were under consideration. Subsequent efforts to amend the laws along these lines have failed.

The subsections that follow explore the nature of the labor-management relationships fostered by the existing laws and some of the issues related to the emerging pattern of labor relations in the public service.

B. Statutory Requirements Related to Bargaining and Their Interpretation.

"Meet and confer", "consider", and "discuss" are the words found in the Winton and Brown Acts and the firefighter's statute in place of the more familiar language of industrial relations which requires the parties to "bargain in good Faith" or "negotiate in good faith". While the legislature has chosen to avoid the latter thus far, the meaning of the former is still very much unsettled. In fact, "meet and confer" is part of the language used in the national Labor-Management Relations Act to describe collective bargaining.

*of Calif.*  
Firefighters -- The Labor Code provision ~~noted above~~, Section 1962, which gives firefighters the right to present recommendations regarding wages, salaries, hours, and working conditions, also gives them the right "to discuss the same" with the governing body of the fire service through the organization of their choice. The right to "discuss" employment matters *coupled with* is ~~further circumscribed by~~ an outright prohibition of strikes and other forms of direct action by firefighters. In this connection, the firefighter's union is attempting to enhance its bargaining posture under the

*insert into  
firemen's category*

law requiring bargaining in good faith or some form of mediation or arbitration as an alternative to the strike that will encourage bargaining. It should be noted, however, that the present law does not <sup>hinder</sup> ~~prohibit~~ bargaining or prohibit a fire district or city or county from entering into a collective bargaining agreement with the union, according to an opinion by the California Legislature quoted below in this subsection under Brown Act employees.

Public School Employees -- Education Code Section 13085 of the Winton Act, which is set forth below, simply requires that public school employers "meet and confer", not necessarily bargain in good faith, with employee organizations on matters defined as falling within the scope of representation. An important departure from prevailing industrial relations practice, as noted previously, is contained in this Section of the Winton Act as it applies to teachers (certificated employees). Whenever there is more than one employee organization representing the teachers of a school system, the Winton Act requires the school employer or governing board to "meet and confer" with representatives of the employee organizations through a "negotiating council". Representation is proportional to the membership of the competing organizations.

#### Section 13085.

A public school employer or the governing board thereof, or such administrative officer as it may designate, shall meet and confer with representatives of employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to all matters relating to the definition of educational objectives, the determination of

the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law. The designation of an administrative officer as provided herein shall not preclude an employee organization from meeting with, appearing before, or making proposals to the public school employer at a public meeting if the employer organization requests such a public meeting.

Notwithstanding the provisions of Sections 13082 and 13082, in the event there is more than one employee organization representing certificated employees, the public school employer or governing board thereof shall meet and confer with the representatives of such employee organizations through a negotiating council with regard to the matters specified in this section, provided that nothing herein shall prohibit any employee from appearing in his own behalf in his employment relations with the public school employer. The negotiating council shall have not more than nine nor less than five members and shall be composed of representatives of those employee organizations who are entitled to representation on the negotiating council. An employee organization representing certificated employees shall be entitled to appoint such number of members of the negotiating council as bears as nearly as practicable the same ratio to the total number of members of the negotiating council as the number of members of the employee organization bears to the total number of certificated employees of the public school employer who are members of employee organizations representing certificated employees. Each employee organization shall adopt procedures for selecting its proportionate share of members of the negotiating council, provided that such members shall be selected no later than October 31 of each school year. Within 10 days after October 31, the members of the negotiating council shall meet and select a chairman, and thereafter such negotiating council shall be legally constituted to meet and confer as provided for by the provisions of this article. Employee organizations shall exercise the rights given by Section 13083 through the negotiating council provided for in this section.

During the brief strike of the San Francisco Federation of Teachers in April, 1968, the above requirement of a "negotiating council" was a complicating factor in efforts to resolve the dispute between the teachers

union and the school board. A court injunction was obtained by the competing Classroom Teacher's organization which prohibited the school employer from negotiating directly with the AFT local outside the structure of the negotiating council required by the Winton Act.

The negotiating council concept could be related to the idea of coordinating bargaining as it is being practiced in the private sector when unions from separate bargaining units involving the same employer attempt to coordinate their bargaining efforts. However, there is a difference of major importance to the parties involved. The Winton Act imposes coordinated negotiations on the employee organizations without first providing for the determination of the bargaining unit or making provision for exclusive representation within the unit. The coordination is required of competing organizations, based on the rejection of exclusive bargaining rights by legislature when the Winton Act was enacted. (An approach to coordinated bargaining more in line with the practice in private industry is provided for in the Marin County resolution discussed below in this subsection.)

The "negotiating council" requirement is more appropriately described as a proportional representation system that is unusual in the American practice of industrial relations. The system is under attack by the AFT in Berkeley where the Berkeley school board decided to hold an election among its certified teachers to determine the proportional representation strength of the competing organizations on the negotiating council and the Berkeley Teachers Association (Affiliated with the California Teachers Association which obtained enactment of the Winton Act over the opposition of the AFT) secured an injunction permanently

prohibiting such an election. The innuction was affirmed by the Court of Appeals in Berkeley Teachers Assn. vs. Berkeley Federation of Teachers (254 A.C.A. 708--1967), and the case is on appeal to the California Supreme Court.

Excerpts from the opinion of Judge Taylor of the Court of Appeals follow. The case is particularly concerned with the establishment of negotiating council, and in this context discusses the history of the Winton Act. The conclusion states that the California Legislature did not intend to extend to public employment collective bargaining procedures and devices applicable to private employment:

Excerpts from Judge Taylors opinion in  
Berkeley Teachers Assn. vs. Berkeley Federation of Teachers,  
 254 ACA 708--1967

The facts are not in dispute. Both the Association and the Federation are voluntary unincorporated associations of the District's certificated employees. Each organization meets the statutory definition of an employee organization (Ed. Code, 13081, subd. (a));<sup>1</sup> the District meets the statutory definition of a public school employer (Ed. Code Section 13081, subd. (b)).<sup>2</sup> Pursuant to the Winton Act, the Board on October 19, 1965, adopted its Resolution No. 2860, establishing a negotiating council of nine members "allotted

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1. "(a) 'Employee organization' means any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer."

2. "(b) 'Public school employer' means a school district, a county board of education, a county superintendent of schools, or a personnel commission of a school district which has a merit system as provided in Chapter 3 of this division."



proportionately according to an election of the certificated staff, to represent organizations of certificated staff members in negotiations . . ." On October 22, 1965, the Association filed its complaint alleging that the election procedure violated the Winton Act and the Federation intervened. The preliminary injunction was issued on December 31, 1965, and the permanent injunction on April 29, 1966.

A brief history and description of the Winton Act is necessary for an understanding of the issues presented.<sup>1</sup> In 1961 the Legislature enacted sections 3500-3509 of the Government Code to provide a uniform basis for recognizing the rights of all public governmental employees to join and be represented in their employer-employee organizations or not to join any such organizations and to represent themselves individually. Section 3500 indicates that the representation of public employees in the field of employer-employee relations was no longer the exclusive concern of any public agency of the state, but was instead a matter of general public concern requiring uniform treatment. School districts and their employees and employee organizations were expressly included. In 1965 the Legislature adopted the Winton Act which removed school districts from the scope and operation of the 1961 statute (Gov. Code, Section 3501) and made the new provisions of sections 13080-13087 of the Education Code applicable only to school districts.

Both of the courts below apparently concluded that the allotment proportionately of the nine members of the negotiating council by means of an election, participated in by all of the District's certificated employees and in which they are called upon to choose between employee organizations, was not in accord with the intent and purpose of the Winton Act, and was contrary to the express provisions of section 13085 (quoted above) that the members of the negotiating council be selected by the employee organizations representing certificated employees.

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1. We are indebted to the excellent memorandum on this subject prepared by Los Angeles County Counsel, H. W. Kennedy.

[1a] The Federation argues that the election procedure is a proper and reasonable method, authorized by section 13087, and necessitated by the fact that the Legislature has not defined the words "members" and "members in good standing" as used in that section with reference to the number of certificated employees of the District who are members in good standing of an employee organization which is to represent them with regard to all matters specified in section 13085.<sup>1</sup> We cannot agree.

The Board's resolution provides that all of the District's certificated employees, irrespective of whether or not they are members of an employee organization,<sup>2</sup> may participate in an election for the purpose of determining which organization each employee wishes to represent him on the negotiating council. However, as indicated above, section 13985 does not provide for a negotiating council to represent all certificated employees of the District, but a negotiating council composed of representatives of those employee organizations entitled to be represented on the negotiating council. Then, section 13085 provides that the members of the negotiating council are to be appointed, according to the proportionate allotment, by the organizations representing certificated employees. The formula for determining membership on the negotiating council does not take into account the total number of certificated employees who are employed by the District. It sets the proportion as nearly as practicable at the ratio which the certificated employee membership of each of the respective organizations bears to the total certificated employee membership of all such organizations.

[2] Furthermore, while section 13087 contemplates that a public school employer may establish procedures for determining which of its certificated employees are members of one or more employee organizations, an election is not such a procedure. The procedure contemplated is merely one of

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1. We note that in making this argument, the Federation omitted from its brief the portion of section 13085 relating to the appointment of the negotiating council.

2. The complaint alleged that more than 70 percent of the District's certificated employees were members of the Association; and that 10 percent of the District's certificated employees were not members of any organization representing them.

The procedure contemplated is merely one of ascertainment and verification. The term "election" implies an ability to choose between two or more alternatives. Certificated employees who are members of an employee organization have no choice remaining open to them. Their membership in good standing in an employee organization must be accepted as a designation by them of that organization as authorized to represent them on a negotiating council. The formula of section 13085 for determining the entitlement of an employee organization to appoint members to a negotiating council requires only that those employees who are members of an employee organization may be counted. Under the Winton Act, an election is an inappropriate procedure to ascertain or verify membership in an employee organization.

[3] It is true that the Winton Act does not precisely define the word "member" as applied to an "employee organization" representing certificated employees. A reading of the statute as a whole, however, clearly indicates that "member" is used in its normally accepted sense and is to be given its ordinary and usual meaning of a certificated employee. The statute does not allow for the interpretation of "members" (advocated by the Federation) which would permit organizational membership to be determined on the basis of preference or choice of all certificated employees whether or not the voting employees are "members in good standing" of the organization. The statute requires organizations (employee organizations representing certificated employees of the District) which have "members in good standing." Section 13087 recognizes that the employee organization is in the best position to advise the District as to the number of certificated employees who are members in good standing on the verification date.

Thus, organizational membership and the number of employees who are members are both considered by the Legislature as facts within the knowledge of the particular employee organization representing certificated employees.<sup>1</sup> By section 13083, the Legislature gave each employee organization the right to represent its members. To further protect the organizations, they were also given the power to adopt reasonable restrictions as to joining and dismissal of individual members. Employee organizations would be deprived of the benefits of section 13083, if membership were determined by the suggested election. In addition, the formula for a

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1. The federal courts similarly stress as the essential elements of membership in an organized group "the desire of an individual to belong to the organization and a recognition by the organization that it considers him as a member" (*Killian v. United States*, 368 U.S. 231, 249-250 [7 L.Ed.2d 256, 269, 82 S.Ct. 302]; quoting from *Jencks v. United States*, 353 U.S. 657, 679 [1 L. Ed. 2d 1103, 1118, 77 S. Ct. 1007].)

certificated employee organization's entitlement to appoint members on the negotiating council would be entirely frustrated if employees who are members of a certificated employee organization were determined by the suggested election rather than by "membership in good standing."

[4] Membership in voluntary unincorporated associations is a personal right based on contract, and can only be divested in the manner provided by the contract (5 Cal. Jur. 2d, pp. 463-465). [5] Once acquired, membership in a labor organization is a property right that the courts will protect. In DeMille v. American Federation of Radio Artists, 31 Cal. 2d 139, the court said at page 149 [187 P. 2d 769]: "The member and the association are distinct. The union represents the common or group interests of its members, as distinguished from their personal or private interest. 'Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity. This difference is as well defined as that existing between individual members of the union.' (United States v. White, 322 U.S. 694, at page 701 [88 L.Ed. 1542, 1547, 64 S. Ct. 1248, 152 A.L.R. 1202].)" Recently, our Supreme Court has given recognition to the rights of duly authorized members of unincorporated associations to represent the membership of such an association in a representative court action such as the one here involved (Professional Fire Fighters, Inc. v. City of Palo Alto, 60 Cal. 2d 295 [32 Cal. Rptr. 842, 384 P.2d 170]).

We cannot agree with the Federation's contention that the verification of membership provisions of section 13087 create an ambiguity because the dual membership of many certificated employees<sup>1</sup> makes such verification meaningless. We think that the proportional formula for the appointment of members to the negotiating council adequately takes care of any plural membership problems. Precisely because the dual membership problem was anticipated, section 13085 provides that the number of members on the negotiating council that an organization may appoint shall bear "as nearly practicable" the same ratio to the total number of members of the council as the number of members of the organization bears to the total number of certificated employees who are members of employee organizations. If, for example, an employee's membership is counted in both or all of the organizations of which

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1. Although no figures are provided, all parties assume the existence of a substantial number of overlapping memberships as certificated employees may be members of several organizations and join them for different purposes.

he is a member for the purpose of determining the make-up of the council, the plural memberships will simply cancel each other out.

[6] Furthermore, any action by a public school employer requiring a certificated employee who belongs to more than one organization to designate which single organization may count him as a member for purposes of representation on the negotiating council, would amount to an unwarranted interference by an employer with the relationship between the employee organization and its members. Such relationship is a contractual one that imposes duties as well as confers privileges on the member (DeMille v. American Federation of Radio Artists, 31 Cal. 2d 139, 146 [187 P.2d 769]). One of the duties of a member of an organization is loyalty to the basic purposes of the organization (Davis v. International Alliance etc. Emp., 60 Cal.App.2d 713, 715, [141 P.2d 486/.) [7] Thus, where an employee joins an organization that has as one of its primary purposes representing employees in their relationships with a public school employer (Ed. Code, Section 13081, subd. (a)), an obligation to permit the organization to count him as a member for the purposes of such representation, including participation in a negotiating council, can properly be implied from the membership relationship or imposed by the by-laws (Smith v. Kern County Medical Assn., 19 Cal 2d 263, 265 [120 P. 2d 874/; Neto v. Conselho Amor DaSociedade, 18 Cal. App. 234 [122 P. 973/). Any interference with this contractual obligation by the public school employer would constitute at the most an actionable tort (Imperial Ice Co. v. Rossier, 18 Cal. 2d 33, 35 [112 P.2d 631/). or at least an idle act, since the employee could refuse to make a choice between organizations. Even if such choice were made, each organization could rely on its contractual right to count the employee as a member.

The Federation also argues that the Board may lawfully provide for an election among its teachers to determine their choice of organizations to represent them on the negotiating council as the Winton Act was designed to adopt for public school employees collective bargaining devices long accepted in the field of private employment. As indicated above, section 13088, like its 1961 predecessor (Gov. Code, Section 3509), expressly provides that section 923 of the Labor Code does not apply to public school employees. [8] Even in the absence of such a provision, it is well settled that by enacting section 923 of the Labor Code, the Legislature did not intend to extend to public employment to collective bargaining procedures and devices applicable to private employment (Nutter v. City of Santa Monica, 74 Cal.App. 2d

292, 296-301 [168 P.2d 741]; Los Angeles Met. Transit Authority v. Brotherhood of R.R. Trainmen, 54 Cal.2d 684 [8 Cal.Rptr. 1, 355 P.2d 905]).<sup>1</sup>

The legislative history of the Winton Act indicates that on May 6, 1965, the Assembly flatly rejected two amendments substituting the collective bargaining procedures applied in private employment.<sup>2</sup> Thus, the conclusion is inescapable

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1. As stated in State v. Brotherhood of R.R. Trainmen, 37 Cal.2d 412, 417 [232 P.2d 857]: "A concise statement of the characteristics distinguishing public from private employment in this regard appears in a letter from President Roosevelt to the National Federation of Federal Employees, dated August 16, 1937: 'All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.' (Quoted in City of Springfield v. Clous, 356 Mo. 1239 [206 S.W.2d 539, 542-543]; C.I.O. v. City of Dallas (Tex.Civ.App.) 198 S.W.2d 143, 144-145.)"

2. "1. Assemblyman Ryan proposed amendments to delete the provisions for a representational negotiating council as now contained in the second paragraph of Section 13085, and to insert in lieu thereof provisions for the election by secret ballot of the members of the negotiating council, which 'members elected to the negotiating council shall be certificated employees who are employed as classroom teachers and who are under contract to the public school employer for the ensuing school year.' The amendments were refused adoption: AYES-28; NOES-41. (Assembly Journal for May 6, 1965, pp. 3045-3046, 3047-3048)

"2. Assemblyman Stanton proposed an amendment, to make the collective bargaining provisions of Labor Code Section 923 'applicable to public school employees', by deleting the word 'not' in Section 13088, so that section would read: 'The enactment of this article shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public school employees.' This amendment was refused adoption, without a roll-call vote. (Assembly Journal for May 6, 1965, p. 3048)"

The author of the statute, in a declaration admitted into evidence, stated: "The issue of voluntary employee association

that the Legislature intended to bar representational elections from the field of public school employment and expressly rejected the collective bargaining approach of having a single employee organization represent all certificated employees.<sup>1</sup>

[1b] In view of the above, we conclude that the election envisioned by the Board's resolution was contrary to and in conflict with the clear provisions of the Winton Act. As the governing body of a school district has no authority to enact a rule or regulation that alters the terms of a legislative enactment (Renken v. Compton City School Dist., 207 Cal.App.2d 106, 114 [24 Cal. Rptr. 347]), the court below properly granted the relief requested by the Association.

Affirmed.

Shoemaker, P.J., and Agee, J., concurred.

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representation versus a governing board-called secret ballot of all school district employees irrespective of their affiliations was thoroughly degated by members of the Legislature, both in committee and on the floor of the Assembly. Whenever action was taken on the issue, the election was rejected on the ground that AF 1474 was designed to protect, promote and regulate voluntary public school employee associations and to provide means whereby their associations might select spokesmen to represent their members before the governing board of the school district. Both the members of the Legislature and witnesses who testified before committees of the Legislature agreed that a board-called election to bypass these existing associations was in conflict with these objectives."

1. This rejection has been recognized as a novel innovation in the field of public employment (Section of Labor Relations, Committee on Law of Government Employee Relations, A.B.A. 1966 Proceedings, p. 151).

Brown Act Employees-- Section 3505 of the Government Code is the specific section in the Brown Act that imposes the duty on public agencies to "meet and confer" with employee representatives concerning employment conditions. It reads as follows:

Section 3505--The governing body of a public agency agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer with representatives of employee organizations upon request, and shall consider as fully as it deems reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

Like the Winton Act and the firefighter's law, there is no provision for "good faith" bargaining. Prior to making decisions on matters falling within the scope of representation, a public agency is only required to "consider as fully as it deems reasonable" the views of the employee organization. There is no provision for the bilateral determination of employment conditions or the execution of written agreements. Thus, the incidents of negotiating in good faith, such as prohibiting unilateral changes in terms and conditions of employment or requiring the public employer to provide information essential to negotiations when requested by the employee organization, may not apply to public employees under the Brown Act. The precise meaning of "meet and confer" must be decided by the courts if the Legislature does not clarify its meaning. The Brown Act does not provide a central agency for administration and enforcement outside of the authority of the State Personnel Board to issue regulations covering state employees.



At the same time, however, it appears that public entities may nevertheless have the authority to voluntarily negotiate and enter into collective bargaining agreements concerning employment matters not covered by law and falling within the public entity's "vested discretion" to negotiate. This view is contained in an opinion rendered by the State Legislative Counsel's office when the state AFL-CIO was proposing legislation that would have specifically given public entities the power to voluntarily negotiate and enter into collective bargaining agreements. The opinion, which is reproduced below, touches on many of the important issues involved, and summarizes some of the experience in other states and the federal government as of the date of its issuance. Although issued in July, 1964 after the passage of the Brown Act and the Firefighter's law, but before the enactment of the Winton Act, the discussion of the issues in the opinion is still relevant. (The reference to AB 793 is to the bill proposed by the state AFL-CIO which was not passed):

(California Office of Legislative Counsel  
Opinion 5694, dated 7/16/64)

Honorable Charles W. Meyers  
State Building  
San Francisco 2, California

Public Employee Representation - #5694

Dear Mr. Meyers:

You have asked several questions set forth below:

QUESTION NO. 1

What is "collective bargaining" and a "collective bargaining agreement"?

### OPINION AND ANALYSIS NO. 1

Webster's Third New International Dictionary, unabridged, (1961), defines "collective bargaining" as the "negotiation for the settlement of the terms of a collective agreement between an employer or group of employers on one side and a union or number of unions on the other. Broadly: any union-management negotiation." Webster's further defines "collective agreement" as "an agreement between an employer and a union [usually] reached through collective bargaining and establishing wage rates, hours of labor, and working conditions." The foregoing definitions are in accord with the courts' interpretation of these terms (United Construction Workers v. Haslip Baking Co. (C.A. 4, 1955), 223 Fed. 2d 872, 877; Nat'l Lab. Rel. Bd. v. Boss Mfg. Co. (C.A. 7, 1941), 118 Fed. 2d 187, 189; Levy v. Superior Ct. (1940), 15 Cal. 2d 692, 697).

### QUESTION NO. 2

To what extent, generally speaking, can the various types of public entities enumerated in A.B. 793 of the 1963 Regular Session engage in collective bargaining at the present time?

### OPINION NO. 2

We think that the California courts would follow the view that any such public entity may voluntarily negotiate and enter into collective bargaining agreements with its employees concerning employment matters not regulated by law and as to which the entity has been vested discretion to negotiate.

### ANALYSIS NO. 2

Assembly Bill No. 793 of the 1963 Regular Session would have added a Section 923.6 to the Labor Code to provide:

"923.6. Notwithstanding the provisions of any statute, rule, regulation, decision or pronouncement to the contrary, the State, every state agency, every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation, and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not shall have the power to make and enter into contracts and collective bargaining agreements

with their employees, the collective bargaining representatives of their employees and labor organizations

Initially it must be noted that, generally speaking, it is the settled rule in California that in the absence of a statute, public entities such as those enumerated in the bill may not be compelled to engage in collective bargaining (see, for example, Nutter v. City of Santa Monica, 74 Cal. App. 2d 292), and the courts have stated that public employees do not have the same rights to strike and to bargain collectively as their counterparts in private industry (see, for example, Newmarker v. Regents of Univ. of Calif. (1958), 160 Cal.App. 2d 640, 646). We do not think, however, that these holdings are determinative of the question whether these public entities may voluntarily engage in collective bargaining.

Furthermore, although Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code grants the public certain rights with respect to membership in employee organizations and representation in employer-employee relations matters by employee organizations, the chapter does not give public employees any right to collective bargaining, nor does any other provision of law expressly authorize collective bargaining by public entities generally.

We have not found any California Supreme Court case squarely on the question of whether or not a public entity may, in the absence of an express authorization, voluntarily engage in collective bargaining upon a matter within its discretion and not otherwise regulated by law. In this regard we do not think that State v. Brotherhood of Railroad Trainmen (1951), 37 Cal. 2d 412; cert. den. by U.S. Sup. Ct., 96 L. Ed. 658) is determinative of this question. In that case the California Supreme Court declared invalid a collective bargaining agreement between the Board of State Harbor Commissioners and the Brotherhood of Railroad Trainmen concerning rates of pay and working conditions of employees of the State Belt Railroad when the agreement contained provisions in conflict with the State Civil Service Act and regulations of the State Personnel Board promulgated pursuant thereto. The case stands generally for the proposition that public employees have no right to bargain collectively with their employers concerning terms and conditions of employment which are fixed by law (see 37 Cal. 2d, at p. 417; California v. Taylor (1957), 353 U.S. 553, 559-60, 1 L. Ed. 2d 1034, 1039). We do not think the case settled the matter here in question, as there the collective bargaining concerned matters regulated by statute and not within the discretion of the state agency involved.

Courts in other jurisdictions have split on the question.

The Supreme Court of Connecticut has held that school districts in that state may engage in collective bargaining in the absence of prohibitory statutes and regulations and where broad powers are vested by law in the districts in reference to school management and educational matters (see Norwalk Teachers' Association v. Board of Education (Conn. 1951), 83 A. 2d 482; see also City of Pawtucket v. Pawtucket Teachers' Alliance (R.I., 1958), 141 A. 2d 624, 629). Similarly, the New York City Transit Authority (Civil Service Forum v. New York City Transit Auth. (N.Y., 1957), 163 N.Y.S. 2d 476, 481-486, affirmed 150 N.E. 2d 705); in Washington the court has upheld collective bargaining by a port authority (Christie v. Port of Olympia (Wash., 1947), 179 P. 2d 294, 302-03); and an Arizona court has also permitted collective bargaining by a district (Local 266, etc. v. Salt River Project Agr. Imp. & P. Dist. (Ariz., 1954), 275 P. 2d 393).

We also note that the California Attorney General has concluded that local hospital districts may bargain collectively with their employees, since those employees are not subject to civil service or other provisions of law regarding the terms and conditions of their employment (see 24 Ops. Cal. Atty. Gen. 53; 36 Ops. Cal. Atty. Gen. 111).

Furthermore, some of the bureaus of the United States Department of the Interior have for some years been engaging in a limited form of collective bargaining with labor organizations representing some of the department's employees (see, Collective Bargaining in the U. S. Department of the Interior, p. 19, Public Administration Review, Winter 1962, Vol. XXII, No. 1).

On the other hand, however, some courts in other states have concluded that public entities may not voluntarily engage in collective bargaining.

These courts have typically stated that public entities can not negotiate and enter into collective bargaining agreements concerning matters within the discretion of the agency because this would constitute an unlawful delegation of sovereign power or administrative discretion (see, for example, City of Springfield v. Clouse (Mo., 1947), 206 S.W. 2d 539, 545; Mugford v. Mayor and City Council of Baltimore (Md., 1946), 44 A. 2d 745, 747).

However, more recent opinions by courts in other jurisdictions have not followed these cases (Norwalk Teachers' Ass'n. v. Bd. of Education, *supra*, p. 486; Local 266 etc. v. Salt River Project Agr. Sup. & P. Dist., *supra*, p. 397); and the California Supreme Court, in considering whether or not the Legislature had intended to grant employees of the Los Angeles Metropolitan Transit Authority the right to strike, stated, with respect to the contention that this would constitute an improper grant of governmental authority (Los Angeles Met. Transit Auth. v. Brotherhood etc., (1960), 54 Cal. 2d 684, 693), that:

"Permitting employees to strike does not delegate to them authority to fix their own wages to the exclusion of the employer's discretion. In collective bargaining negotiations, whether or not the employees strike, the employer is free to reject demands if he determines that they are unacceptable."

In the light of the California Supreme Court's treatment of the delegation of governmental authority issue in the Los Angeles Metropolitan Transit Authority case, we think that the California courts would follow the view that a public entity may voluntarily negotiate and enter into collective bargaining agreements with its employees concerning employment matters not regulated by law and as to which the entity has been vested discretion to negotiate (see the Norwalk, Pawtucket, New York City Transit, Christie and Salt River Project, etc., cases, *supra*).

We think this conclusion would be generally applicable to all the various varieties of public entities enumerated by A.B. 793.

#### C. Local Interpretations and Application of "Meet and Confer".

Although the precise meaning of "meet and confer" is still very much in the realm of indecision, and therefore, speculation, several local governmental entities are beginning to give it some substance in the development of their own labor relations policies. This subsection attempts to look at some of these developments as they relate to the application and interpretation of "meet and confer".

Marin County Resolution -- Among the counties that have taken specific policy action (excluding transit districts), Marin County has moved farthest in the direction of prevailing practice in private industry. The Marin Resolution requires that county representatives meet and confer in "good faith" and that they "endeavor to reach agreement". In the case of certified organizations having majority status, it also provides for written collective bargaining agreements which are binding on the County "if ratified by the Board of Supervisors". The Resolution also designates the persons who shall represent the County in negotiations and provides for a form of coordinated bargaining. The provision for coordination of bargaining appears to be dependent on the initiative of the County Administrator, but it is nevertheless possible under the Marin policy for majority unions in different units with collective bargaining rights to coordinate their efforts. (This approach to coordination is substantially different than the proportional representation system required for teachers under the Winton Act--see subsection above.)

It is interesting to note also that the Marin resolution makes no reference to the right to strike and instead focuses on alternative methods of dispute settlement. Provision is made for mediation and binding arbitration of unresolved issues by mutual consent of the Board of Supervisors and the employee organization. However, like the provision for collective bargaining agreements, the arbitration is applicable only to a certified employee organization having majority status, not to any certified organization. The relevant sections of the Marin resolution follow:

## II. B. CONFERENCES

### 1. General

Each organization may meet and confer with county representatives to the extent reasonably necessary to represent its members regarding salaries, hours, working conditions, and other similar matters relating to the welfare of employees. When requested, County representatives shall meet and confer, in good faith, with employee organization representatives, and endeavor to reach agreement.

### 2. Frequency and Duration

The frequency and duration of such conferences may be limited by the County Administrator upon the basis of the number of employees represented by the organization and the nature of the matters to be discussed.

### 3. Coordination

The County Administrator may request that two or more employee organizations meet with county representatives, at the same time, to discuss similar or related issues.

### 4. Representation

In all conferences pertaining to salaries, working hours, and general conditions of employment the County may be represented by the County Administrator, County Counsel, and the head(s) of the department(s) in which members of the organization are employed, and the employees shall be represented by representatives of the certified employee organizations involved.

## C. COLLECTIVE BARGAINING

### 1. Agreements

Any collective bargaining agreement reached by County representatives and representatives of an organization certified as representing a majority of the employees in a representation unit shall be reduced to writing and shall bind the County of Marin and the signatory organization, if ratified by the Board of Supervisors.

## 2. Arbitration and Mediation

If agreement is not reached in negotiations between County representatives and representatives of an organization certified as representing a majority of the employees in a representation unit, mediation or arbitration of the issues remaining in contention may be sought by mutual consent of the Board of Supervisors and the organization (the latter according to the procedures of the American Arbitration Association). Results of the arbitration shall be binding on all parties.

### D. GRIEVANCES

A grievance procedure shall be established by the Personnel Commission, and adopted by the Board of Supervisors which shall provide a uniform procedure available to all county employees to seek adjustment of grievances arising out of their employment relations.

### E. OTHER LAWS

Nothing contained herein shall be deemed to modify or abrogate existing rights and responsibilities of the County and/or its employees to the extent they are governed by State law or county ordinances.

### F. JURISDICTION

Other than as specifically indicated above with respect to certification and representation units, the County of Marin will not assume responsibility for determining jurisdictional boundaries among and between the various organizations purporting to represent county employees. Jurisdictional disputes shall be resolved between the organizations involved without disruption of, or interference with, County operations.

\* \* \*

Ventura County Management-Employee Cooperation Policy -- The Ventura County policy, which is geared to the three levels of recognition described in Chapter III above, also provides for meeting and conferring "in good faith" and requires the duly designated representatives of the county to "attempt to reach agreement" with the employee organization representatives upon matters under consideration.



As spelled out in the excerpts from the Ventura policy quoted below, "to meet and confer with each other in good faith" is defined to include certain rights given to county management and employee organization representatives, based on the level of recognition.

The Ventura policy distinguishes between agreements reached on matters requiring approval of the Board of Supervisors and those not requiring Board approval. In both cases, a "written memorandum: of the agreement is prepared, but when approval is necessary it is submitted to the Board for consideration and final decision, which must be in writing. An unusual feature in the Ventura policy provides for the use of the County's Grievance Committee to hear the positions of the parties when they are not able to reach agreement on matters not requiring Board approval. Either party may request a hearing by the Grievance Committee under the third step of the Grievance Procedure. The Grievance Procedure (set forth under Chapter V below) makes provision for a Grievance Committee composed of a member nominated by the employees' representative(s), a member appointed by the Department Heads Council, and a citizen member appointed by mutual agreement. It appears that disputes on matters not requiring Board approval that go to hearing of the Grievance Committee are ultimately resolved under the Grievance Procedure, which gives the power of final decision to Civil Service Commission--Board of Review and Appeals.

Where agreement is reached on matters requiring approval of the Board of Supervisors, the written memorandum of agreement may be referred by the Board at its discretion to the Grievance Committee or

to a special three member Ad Hoc Committee appointed by the Board for hearing. Provision is made for the hearing committee to make recommendations to the Board, but the ultimate decision remains with the Board. It appears that the Ventura policy does not establish any special procedure for reaching agreement in cases where the disagreement is on matters which would require Board approval. The relevant portions of the Ventura policy follow:

(Excerpts from Ventura County - Employee Cooperation  
Policy relating to conferring in good faith and  
reaching agreements )

MEETING AND CONFERRING IN GOOD FAITH

Working together with trust and confidence is essential to the success of this policy. The Board of Supervisors, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by the Board of Supervisors, shall meet and confer with employee organization representatives in good faith and shall attempt to reach agreement upon matters under consideration. To meet and confer with each other in good faith shall include the right of the County management and employee organization representatives:

- A. To be informed on all matters within the scope of the representation as appropriate according to the level of recognition conferred.
- B. To be given reasonable written notice of any action proposed to be taken by any of the parties in accordance with the level of recognition conferred. Failure to comply with the provisions of A and B shall not negate any action of the Board of Supervisors.
- C. Written notification shall be given to the address of record of the parties concerned as set forth in notification procedures as adopted by the Board of Supervisors.

When the parties, i.e., the employee organization and management, reach agreement and the agreement is not subject

to action by the Board of Supervisors, they shall prepare a written memorandum of such agreement.

#### REACHING AGREEMENTS AND FINAL DECISIONS

When action of the Board is not required:

If the employee organization and the department head responsible do not reach an agreement, each party shall within ten days submit to the other party and the Grievance Committee a statement of its position and the reasons therefore. Within five days of the receipt of this information, either party may request a hearing as prescribed in Step No. 3 of the Grievance Procedure.

When action of the Board is required:

When the parties reach agreement and the agreement is subject to action by the Board of Supervisors, they shall prepare a written memorandum of such agreement and submit it to the Board of Supervisors for its consideration.

Depending upon the nature and importance of the issue, the Board of Supervisors may at its discretion refer the matter either to the Grievance Committee for a hearing in the manner prescribed in Step No. 3 of the Grievance Procedure, or to a special three member Ad Hoc Committee designated by the Board.

The written recommendations of the Grievance Committee and/or the Ad Hoc Committee shall be transmitted to the Board for its consideration within a reasonable time.

Final decisions of the Board shall be in writing and shall be furnished to the individual or organization.

Any individual has the right to be heard through all steps of the Grievance Procedure in accordance with the provisions of the Civil Service Ordinance.

THE GRIEVANCE COMMITTEE TO HEAR MANAGEMENT-EMPLOYEE  
COOPERATION MATTERS

The Grievance Committee established by the Board in November, 1963, shall also serve as a Management-Employee Relations Committee to which the Board of Supervisors may refer for recommendation any management-employee relations matter which is before it for decision.

\* \* \*

Fresno County Personnel Relations Policy -- Fresno, a chartered county, has adopted a policy which provides that "conferences" between representatives of the County and employee organizations "will be conducted in good faith with an attempt to reconcile any differences of opinion which may exist." Without providing for written agreements, the policy simply requires the "substance" of agreements to be carried out in reasonable time in accordance with a system of referral of agreements to the County authority having the power of final decision. The Fresno policy, however, is more restrictive than either the Marin or Ventura policies. It states specifically that the "industrial form of collective bargaining" does not apply to the County or its employees, and that the County reserves the right "to act unilaterally rather than bilaterally." The Section 7 on "conferences" reads as follows:

(Fresno County Personnel Relations Policy  
regarding Conferences)

7. CONFERENCES.

All conferences held between the Board of Supervisors or other County boards, commissions, or officers, and the representatives of an employee organization or individual employee or groups thereof, as the case may be, will be conducted in good faith with an attempt to reconcile any differences of opinion which may exist.

If an agreement is reached at such conference, and the County board, commission or officer is empowered to act thereon, the substance of the agreement shall be placed in effect within a reasonable time thereafter. When agreement is reached and the County board, commission or officer does not have authority to make the final decision thereon, such County board, commission or officer shall refer the matter to the appropriate County board, commission or officer with authority to finally act thereon, with the recommendation that the agreement arrived at be adopted and inform such board, commission or officer that it has the approval of the employee organization. When an agreement is not reached in conference as aforesaid and the County board, commission or officer does not have final authority to act thereon and the matter is referred to another board, commission or officer with authority to finally act thereon, the latter shall afford the employee organization an opportunity to appear and be heard on behalf of its members prior to taking final action thereon. Nothing herein contained shall imply that the industrial form of collective bargaining applies to Fresno County government and its employees. The County's right to act unilaterally rather than bilaterally with respect to its employees is asserted. The purpose hereof shall be deemed to recognize the rights of employees individually or through a recognize the rights of employees individually or through a recognized employee association, the right to confer and present their views on employer-employee matters before final decision is made

\* \* \*

Placer County Personnel Relations Policy--The Placer County policy, as indicated by relevant excerpts that follow, also implicitly rejects the essence of the industrial form of bargaining since no provision is made for reaching written agreements, and the county is only required to consider the views of employee organizations to the extent the county representative "deems reasonable." It is interesting to note that while the Placer policy defines the scope of representation to include "all conferrable matters relating to employment conditions and employer-employee relations, including, but not limited to, wages,

hours, and other terms and conditions of employment," the procedures for hearings and conferences available to an employee organization appear to be restricted to wages, hours and fringe benefits. Matters relating to working conditions that do not involve wages, hours, and fringe benefits are handled as individual employee grievances under a procedure that starts with the supervisor and goes through the Department head, the Personnel Director and the Civil Service Commission, where the power of decision lies.

(Placer County Personnel Relations Policy,  
relating to Meeting and Conferring)

COUNTY MANAGEMENT REPRESENTATIVES

There is hereby created a Personnel Relations Committee consisting of two (2) members of the Board of Supervisors, County Executive, County Counsel, and Personnel Director and such other staff as may be selected by such committee. This committee will meet and function in behalf of the Board of Supervisors upon the direction of the Chairman of the Board of Supervisors.

The County Executive Officer is hereby designated as agent for the Board of Supervisors for employer-employee matters for which he is responsible and which are county-wide in scope. He may designate as he deems necessary any management representatives.

Each Department Head may formulate reasonable rules and regulations to implement the principles of this statement of policy. Such rules and regulations are subject to approval by the Board of Supervisors.

PROCEDURE FOR HEARINGS

An employee having a grievance relating to other than wages, hours, or fringe benefits, shall first present such grievance to his immediate supervisor. If they cannot resolve the problem, the employee shall then put such grievance in writing and the supervisor shall endorse his action thereon and forward the grievance and endorsement to the Department Head. The Department Head shall promptly attempt to resolve the problem,

but if he cannot, he shall endorse his action thereon and promptly forward it to the Personnel Director who shall review and act upon it in like manner. The decision of the Personnel Director may be appealed to the Civil Service Commission which shall have the power to make a final administrative decision thereon.

Ref: Placer County Code Section 14.2250 (b)

An employee or recognized employee's organization desiring to discuss a matter relating to wages, hours or fringe benefits, shall submit a written request to the Personnel Director to meet at a reasonable time and place to discuss such matter. Such request shall be accompanied by a statement of the employee or employee's organization views on the subject and a proposed solution to the problem.

The Personnel Director shall, at such reasonable time and place, meet and confer with such person or organization and shall consider as fully as he deems reasonable such presentations as are made by the employee or organization on behalf of its members prior to arriving at a determination of policy or course of action. Prior to arriving at such determination, the Personnel Director may solicit the views of other qualified persons to assist him in understanding and evaluating the problem and possible policies and courses of action.

In the event that the person or organization desires further review of the determination of the Personnel Director, they may, in succession, appeal to the Civil Service Commission, County Executive, and Board of Supervisors, each of whom, in turn, shall consider as fully as they deem reasonable such presentations as are made by the employee or organization on behalf of its members prior to arriving at a determination of policy or course of action. They may also solicit such other views of other qualified persons to assist them in determining policies and courses of action.

The unclassified service shall exclude the Personnel Director and Civil Service Commission for the purpose of conferring on their grievance or any matter relating to their wages, hours, or fringe benefits. Grievances in the unclassified service shall be acted upon by the County Executive and Board of supervisors. Any other provisions herein shall apply to the unclassified service.

ORGANIZATION RIGHT TO REPRESENT MEMBERS

Recognized employee organizations shall have the right to represent their members in their employment relations with the County of Placer in accordance with the procedures set forth herein.

Ref: G. C. 3503

SCOPE OF REPRESENTATION

Recognized employee organizations shall have the right to represent their members in all conferrable matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment.

Nothing in this policy shall be construed to interfere with the County's right to manage its operations in the most economical and efficient manner in the best interests of all of the citizens and taxpayers of the County of Placer. Such employer rights are non-conferrable and shall include, but not be limited to, determining services to be rendered, the establishment or discontinuance of schedules or positions, the means of rendering services, fees for services the production required of each department, the determination of job content, the judgment as to the ability of an individual to handle a particular job, the assignment of qualified employees to a particular job.

Ref: G. C. 3504

\* \* \*

City of Modesto -- The following excerpts from the policy rules of the City of Modesto, indicate how one city has interpreted the "meet and confer" requirement of the Brown Act, and also the Labor Code requirements concerning firefighters. Modesto's policy simply provides for consideration and discussion of the presentations of employees and of duly certified representatives of labor organizations "as fully" as the City Manager "deems reasonable." The City Manager is specifically names as the representative of the



City for purposes of both the Brown Act and the Firefighter provisions of the Labor Code, but the reference to the grievance procedure in Rule 17.9 would seem to imply that the presentations of employee organizations, as well as individuals, must be channeled first through the grievance procedure. (Modesto's grievance procedure appears in Chapter VI, below.)

(Excerpts from City of Modesto Personnel  
Relations Policy)

17.4 Conferences

The city Manager or his duly designated representative shall meet and confer upon request with both individual employees and with duly certified representatives of employee or labor organizations for the purpose of considering and discussing as fully as he deems reasonable such presentations as are made. If deemed necessary, the City Manager will establish rules and procedures for the conduct of meetings between an employee or labor organization and the City. Written material or documents to be discussed at such meetings shall be supplied to the City Manager one week prior to any scheduled meeting.

17.5 Rules for Presenting Requests Re Benefits

Any recommendation by employees or employee or labor organizations regarding salaries and wages, hours of work, or other benefits shall be submitted in writing prior to April 15 of any fiscal year, in order that such requests may be considered at the time the budget is being prepared...

17.8 City Manager Designated as "Governing Body" and  
Representative of the City Under Labor Code  
and Government Code Provisions

- (a) Labor Code Provisions. For the purposes of Section 1962 of the Labor Code of the State of California, the City Manager is designated as the "governing body" to whom employees of the Fire Department or any other department or division of the City or employee organizations may present

grievances and recommendations regarding wages, salaries, hours and working conditions and with whom they shall discuss the same.

- (b) Government Code Provisions. For the purposes of Sections 3500 to 3509 of the Government Code of the State of California, the City Manager is further designated as the representative of the City who shall meet and confer with representatives of employee organizations upon request, and who shall consider as fully as he deems reasonable such presentations as are made by employee organizations on behalf of their members prior to arriving at any determination of policy or course of action authorized by the City Charter, the Modesto Municipal Code or these Rules.

#### 17.9 Grievance Procedure Under Labor and Government Codes

In presenting and discussing grievances or recommendations under Sections 1960 to 1963 of the Labor Code or in presentations made under Section 3500 to 3509 of the Government Code, all employees and representatives of employee organizations shall first follow the grievance procedure set forth in Rule 16.

\* \* \*

Other Cities -- Information about how cities have interpreted and applied the "meet and confer" requirements of state law is sketchy at best. While numerous cities may be considering the adoption of more formal labor relations policies and procedures, current policies and procedures appear to be largely unwritten.

The administrative representatives of the City of Sunnyvale and representatives of three labor organizations are reported to have signed in 1967 a procedural agreement which provided the guidelines for negotiating "in good faith" an agreement on wages, working conditions and other benefits that was reached in early 1968. The procedural memorandum left the final decision with the City Council,

which adopted the negotiated agreement between representatives of the parties in the form of a resolution. It is reported that the bargaining procedure used to reach this agreement will be applied in the future.

The City of Pittsburg reached an agreement with AFSCME Local 1675 several years ago following a short strike that saw the work experience trainees among welfare recipients walk out with the regular city employees. This agreement is reported to be in the form of memoranda of understanding exchanged by the union and the city.

Other reported developments include the formation of an Advisory Council by the City of San Diego composed of various employee organizations and the negotiation of a memorandum of understanding between the administrative staff of the city of Anaheim and the Building Service employees covering the working conditions of employees at a stadium owned, but not operated by the City of Anaheim.

In general the great majority of cities have developed their employee-employer relations on the basis of a model ordinance developed by the League of California City. They simply recognize the right to be heard as in the case of Modesto, while establishing rules on appointments, probationary periods and grievance procedures. The League of California Cities has not indicated any interest in extending the "meet and confer" provision of the Brown Act, and has encouraged cities to recognize only employee organizations that file a statement indicating that they will not engage in direct

action to affect their working conditions.

D. Transit Districts.

The transit district acts, as already indicated in other chapters, provide for bargaining in good faith in the pattern of private industry. The first transit district act passed by the legislature to provide for such bargaining was the Alameda-Contra Costa statute, which set the pattern for other transit districts that followed. Public utilities Code Section 25051 of the Alameda-Contra Costa statute not only requires good faith bargaining and the execution of written contracts, but also provides for binding arbitration of unresolved substantive issues by mutual agreement of the parties:

Section 25051. Whenever a majority of the employees employed by said transit in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, the board, upon determining as provided in Section 25052 that said labor organization represents the employees in the appropriate unit, and the accredited representative shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours or working conditions, which is not resolved by negotiations in good faith between the board and the representatives of the employees, upon the agreement of both, the board and the representatives of the employees may submit said dispute to the decision of the majority of an arbitration board, and the decision of a majority of such arbitration board shall be final. The arbitration board shall be composed of two representatives of the labor organization, and they shall endeavor to agree upon the selection of a fifth member. If they are unable to agree, the fifth member shall be designated by the Secretary of the Judicial Council and shall be a person experienced in labor arbitrations. The expenses of such impartial arbitrator shall be provided half by the transit board and half by the labor organization.

No contract or agreement shall be made with any labor

organization, association, ~~group~~ or individual where such organization, association, group or individual denies membership on the grounds of race, creed or color, provided such organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

The Southern California Rapid Transit District Act states specifically that "the obligation of the district to bargain in good faith..." shall not be limited or restricted by the provisions of the Government Code (the Brown Act), and also provides that the obligation to bargain on the part of the district shall "extend to all subjects of collective bargaining". Section 30750 (C) of the Public Utilities Code reads as follows:

Section 30750 (C). The obligation of the district to bargain in good faith with a duly designated or certified labor organization and to execute a written collective bargaining agreement with such labor organization covering the wages, hours and working conditions of the employees represented by such labor organization in an appropriate unit, and to comply with the terms thereof shall not be limited or restricted by the provisions of the Government Code or other laws or statutes and the obligation of the district to bargain collectively shall extend to all subjects of collective bargaining, including, without limitation retroactive pay increases. Notwithstanding the provisions of the Government Code or other laws or statutes, the district shall make deductions from wages and salaries of its employees upon receipt of authorization therefor for the payment of union dues, fees or assessments, for the payment of contributions pursuant to any health and welfare plan or pension plan or for any other purpose for which deductions may be authorized by employees where such deductions are pursuant to a collective bargaining agreement with a duly designated or certified labor organization.

Note also that the section provides for the check-off and for the payment of contributions into fringe benefit funds established by collective bargaining.

## V. THE STRIKE ISSUE IN PUBLIC EMPLOYMENT

It is frequently assumed that public employees in California do not have the right to strike, because of early court decisions which ruled that Labor Code Section 923--the section setting forth state policy on collective bargaining and protecting the right to engage in concerted activities--does not apply to public employees. ~~However~~ Indeed, strikes have occurred in public employment and injunctions have been easily obtained against them. Yet the strike issue today, along with other forms of direct action, is far from settled in the minds of public employees, if not in the minds of their employers and ~~perhaps~~ the minds of the courts. It is apparent throughout the country that public employees who are sufficiently motivated will strike regardless of laws prohibiting them. This has led many industrial relations experts to conclude that it would be far wiser public policy to concentrate on the development of an effective framework for bargaining in the public service to help resolve disputes than to continue to battle endlessly over the right to strike. Nevertheless, the strike continues to ~~loom large~~ *play its role*.

### Is there a Right to Strike ?

Only one of the state statutes, the Firefighters statute in the Labor Code, specifically deprives firefighters of the "right to strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties." ~~It also makes Section 923 of the Labor Code expressly inapplicable to firefighters, along with the direct prohibition on the strike.~~ Some county and

city ordinances have likewise restricted the right to strike. [ For example, Ventura County prohibits a "work stoppage or other disruptive activities which are considered inimical to the public service." The City of Modesto denies its employees the right to strike or to recognize picket lines while in the performance of their official duties, and further requires an employee organization ~~seeking recognition~~ seeking recognition to file a statement that it believes that it has no right to halt the performance of governmental functions by stoppages, slowdowns, strikes or picketing. The Modesto restriction appears to follow the recommendations being urged on cities by the League of California Cities in its model personnel ordinance. ]

Both the Winton Act and the Brown Act expressly provide that Section 923 of the Labor Code is inapplicable to school employees and state and local government employees covered by the two statutes, but the right to strike is still in controversy. As indicated <sup>before,</sup> above, strikes have continued to occur, frequently resulting in injunctions. In a recent case, the California Supreme Court expressly declined to rule on the legality of a strike by Sacramento social welfare workers. (See In re Berry (65 Cal Rptr. 273--1968) In this case an injunction was issued to prohibit informational picketing and demonstrations designed to communicate the content of grievances and to mobilize public support, as well as to prohibit a threatened strike by the welfare workers. Violations of the injunction resulted in contempt of court citations being issued to the demonstrators and strikers. The constitutionality of the injunction, in turn, was challenged by a writ of habeas corpus.

Possible  
footnote?

The California Supreme Court, while proceeding on the assumption that public employees may be lawfully enjoined from striking and from calling for specific activities in support of a strike, still found the injunction unconstitutionally "overbroad" because it infringed on first amendment rights of free speech in the area of informational picketing in which the state had no governmental interest.

A good summary of the arguments pro and con on the strike issue appears in the decision of Judge Jefferson of the California Superior Court, Los Angeles County, in Social Workers Union, Local 535 vs. County of Los Angeles (54 Labor Cases Par. 51, 625--1967). As indicated in the excerpts from this case which follow below, the strike issue is still undecided in California. The opinion also indicates that transit district employees have been treated like private employees and have not been denied the right to strike. (The case is currently on appeal.)

(Excerpts from Decision in Social Workers Union  
Local 535 vs. County of Los Angeles)

[Legality of Strike]

Respondents' position that the strike of the social workers was illegal is predicated upon the principle that public employees have no right to strike unless there is specific statutory authorization for a right to strike. (Newmarker v. Regents of the University of California, [35 LC 71,629] 160 Cal. App. 2d 640.) In Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen, 54 Cal. 2d 684, the court said at page 687:

"in the absence of legislative authorization public employees in general do not have the right to strike...."

In Los Angeles Metropolitan Transit Authority the court found specific authorization for employees of a public corporation to strike in legislation which provided that the employees should have the right



to engage "in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Although the legislation did not state specifically that the employees had a right to strike, the Legislature's use of the phrase "to engage in other concerted activities" was construed to constitute specific authorization to strike. The key words are, "concerted activities." Thus the court said; "Terms such as 'concerted activities' are commonly used by courts as well as legislative bodies to refer to strikes. This court, for example, on a number of occasions, has used by courts as well as legislative bodies to refer to strikes. This court, for example, on a number of occasions, has used the words 'concerted action' as an inclusive term referring to strikes, picketing, and boycotts." (Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen, 54 Cal. 2d 684, 689.)

The legislative language of giving employees the right to engage in "other concerted activities", referred to in Los Angeles Metropolitan Transit Authority, has been contained in Section 923 of the California Labor Code since 1937. Labor Code Section 923, however, does not apply to public employees. (Nutter v. City of Santa Monica, [11 LC 63,186] 74 Cal. App. 2d 292.) Where public employees do not have the benefit of such legislation as that considered in Los Angeles Metropolitan Transit Authority, they have been denied the right to strike. (Newmarker v. Regents of University of California, [35 LC 71,629] 160 Cal. App. 2d 640; City of Los Angeles v. Los Angeles etc. Council, [17 LC 65,395] 94 Cal. App. 2d 36.)

In 1961 the Legislature enacted Sections 3500-3509 of the Government Code dealing with the subject of Public Employees Organizations, which provide generally for a recognition of the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies. The language used in Section 3502 of the Government Code is that public employees shall have the right to "participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." Is this language sufficiently similar to the language "concerted activities" to constitute an authorization

of public employees to go on strike? Since the Los Angeles Metropolitan Transit Authority case was decided in 1960, it can be argued that the Legislature, with knowledge of the judicial construction of the phrase, "concerted activities", deliberately used other terminology in Section 3502 of the Government Code to avoid authorizing public employees to go on strike. Also, Section 3509 of the Government Code makes Section 923 of the Labor Code expressly inapplicable to public employees.

However, in 1959, the Legislature added Sections 1960-1963 to the Labor Code which set forth the right of employees of fire departments to join labor unions. In Section 1962 of the Labor Code the language is specific that employees of fire departments "shall not have the right to strike." It may be argued that by virtue of the specific prohibition against the right to strike enacted by the Legislature in 1959 with respect to fire fighters, and the failure to use specific language of prohibition in Section 3502 of the Government Code enacted in 1961, that the language of Section 3502 of the Government Code should be interpreted as language similar to that of "concerted activities" found in Section 923 of the Labor Code. Since Section 1963 of the Labor Code dealing with fire fighters provides that the enactment of the sections dealing with fire fighters shall not be construed as making Section 923 of the Labor Code applicable to public employees, no inference of specific intent of the Legislature not to authorize public employees to strike is to be inferred by the provisions of Section 3509 of the Government Code likewise stating that the enactment of the sections dealing with Public Employee Organizations shall not be construed as making Section 923 of the Labor Code applicable to public employees.

It appears to this court, therefore, that it cannot be stated, without considerable doubt, that Section 3502 of the Government Code does not authorize public employees and, hence, social workers employed by the County of Los Angeles, to go on strike. It is a question of legitimate dispute as to whether the language used in Section 3502 of the Government Code is such as to authorize public employees to strike. If it were crystal clear that public employees do not have the right to strike, then respondents' position is sound that the strike of the social workers was illegal and their agreement to terminate such a strike could not furnish consideration for any promises on the part of the County of Los Angeles

made to obtain an agreement to terminate the strike. On the other hand, if the social workers as public employees had a clear right to strike, then their agreement to terminate the strike and return to work would obviously provide valid consideration for promises by the County, such as a promise not to impose any reprisals upon the returning strikers. . . .

### Alternative Methods of Dispute Settlement

The development of alternative methods of dispute settlement in public employment in California appears to be lagging behind efforts nationally to develop effective alternatives to strikes. This lag can be attributed in large part to the primitive state of public employee labor relations policies and procedures in California when compared with other industrial states like New York, Michigan, Wisconsin and others that have developed comprehensive policies and procedures.

None of the three basic laws at the state level in California provide any alternative methods for dispute settlement. Yet the Firefighters law outlaws the strike and both the Winton Act and the Brown Acts, at best, leave the right to strike in doubt.

*Conclusion material*

On the other hand, in the local application of the Brown Act, there are at least a few efforts to provide some alternatives to the strike and other direct action. The Marin resolution, while side stepping the strike issue by remaining silent on the subject, provides for both mediation and binding arbitration of substantive unresolved issues but only by mutual consent of the union and the Board of Supervisors. The Ventura County policy prohibits the strike and contains an unusual provision requiring certain unresolved issues to be heard

by the County Grievance Committee through the grievance procedures. The Board of Supervisors in Ventura may also use the Grievance Committee or a special ad hoc committee, but this applies only to negotiated agreements referred to the Board, not to unresolved issues. It should be noted also that the transit acts encourage mediation, and at least one--the Alameda-Contra Costa statute provides for binding arbitration by mutual consent of the parties as in the Marin resolution. (See subsection on "Local Interpretations and Applications of Meet and Confer" in Chapter IV.)

(Other states have experimented with a number of different techniques, including mediation, compulsory arbitration, fact-finding, political persuasion and pressure, etc. In this connection, an article on "The Strike and Its Alternatives in Public Employment" by Robert B. Moberly (listed in the Selected Bibliography to this Handbook) discusses many of the problems involved in the right to strike issue. Mr. Moberly reviews the legal status of the right to strike around the nation along with the theories advanced to deny the right to strike. He then explores nationally the experience with developing alternatives, and concludes with a discussion of fact-finding in Wisconsin under the Wisconsin comprehensive statute.)

## VI. GRIEVANCE PROCEDURES

Grievance handling in the private sector is commonly viewed as a continuation of the bargaining process involving the resolution of disputes arising out of the interpretation and application of the agreement between contract negotiations. It follows that the relationship of the union to the grievant and to the handling of the grievance is vital. The union's role goes beyond the provision of a "service function" of representing the individual who files a grievance and pursuing his grievance. The union also passes judgment on the grievance -- determining whether a grievance exists and whether it is a "good" or "bum" grievance. The grievance that is taken up becomes, in fact, a union grievance, and control over the grievance under the grievance procedure usually passes to the union, even though the individual under law always maintains the right to pursue his own grievance apart from his union. Furthermore, the union typically has the authority to "grieve on its own" whenever it sees a violation of the contract or other regulations falling within the scope of the grievance procedure, irrespective of whether the individual or individuals affected file a grievance. The scope of the grievance procedure may cover matters affecting the employment relationship which may enable the parties to use the grievance procedure for matters not specifically covered in the collective bargaining agreement, such as standards and requirements set by law or by administrative rules and regulations. The grievance procedure itself typically involves several steps culminating in final and binding arbitration.

In the absence of any widespread negotiation of collective bargaining agreements covering public employees in California, it is not surprising that grievance procedures adopted by government agencies depart significantly from the prevailing practice in the private sector. Outside of the transit districts, although employee organizations may make recommendations and otherwise "meet and confer" on the promulgation of grievance procedures by the various agencies, there appears to be few if any negotiated procedures in existence. Grievance procedures are commonly the procedures unilaterally established by the public agencies, even though there is no legal barrier to the bilateral negotiation of a grievance procedure in the absence of a negotiated agreement on wages, hours, and other conditions of employment. Typically, the existing grievance procedure is geared to the individual, with the role of the employee organization being restricted to a "service function" of representing the grievant who desires assistance. The employee organization appears to lack authority to initiate a grievance on its own when it sees a violation of working conditions that may jeopardize the conditions of all, while the individual retains full control over the grievance. At the same time, the employee organization appears to be unable to pursue a grievance if the grievant chooses to drop it, regardless of the importance of the grievance to the other members of the organization. Frequently, there may be more than one grievance procedure; one or more covering matters regulated by the civil service commission or other regulatory bodies, and another for matters over which the appointing power may have full or partial authority. In any event, the employee organization is usually confined to a representation role,

and there generally is no appeal to any outside authority from the decision of the public agency in the final step of the grievance procedure.

This contrast between the private and public sectors in handling grievances can be summarized as reflecting the difference on the one hand between viewing grievance handling as a continuation of the bargaining process, and on the other hand, as a system of appeal from higher authority by individuals who have available to them the services of their employee organizations. There is little evidence that the two approaches are being reconciled in the development of public employee labor relations in California.

A. Transit Districts

As indicated, the transit district statutes provide the obvious exception. The negotiation of contracts in the pattern of private industry has resulted in negotiated grievance procedures which follow the private industry model for handling grievances. The grievance procedure negotiated by the Alameda-Contra Costa Transit District and Division 192 of the Amalgamated Transit Union, which follows, is an example. It is embodied in the collective bargaining agreement, and the union as well as the employee is recognized as a grievant. The scope of the grievance procedure is set forth and a grievance is defined. Final and binding arbitration by an impartial arbitrator is provided for as the last step:

Grievance Procedure Negotiated by  
 ALAMEDA - CONTRA COSTA TRANSIT DISTRICT  
 AND  
 DIVISION 192 AMALGAMATED TRANSIT UNION

The following grievance procedure is a part of the collective bargaining agreement. The term "Association" refers to the Union and the "District" is the employer.

Section 3

"No employee will be disciplined, discharged, nor will adverse entries be made in his personnel record except for just and sufficient cause.

"The District agrees that it will notify the employee in writing within ten days from the date of knowledge of the occurrence forming the basis for the contemplated discipline or discharge of its intention to render discipline. No employee will be disciplined or discharged unless a copy of the precise charge against the employee is furnished him within ten days of the date of knowledge of the occurrence. A copy of the notice will be sent to the Association.

"Either the employee or the Association shall have the right to request a hearing on the charges within ten days of receipt of the charges. Failure to request a hearing within a period of ten days after receipt of the charges will be a forfeiture of the right to a hearing, provided, however, for good and sufficient cause the time limitation to answer the charge may be extended. An employee who has been suspended, disciplined or discharged shall be entitled to a fair and impartial hearing by the proper officials of the District and may be represented by accredited officers of the Association. A written decision on such a hearing shall be rendered as promptly as possible, but in no event later than five days after completion of the hearing, and copies furnished the Association and employee.

"At any hearing the employee and his representative will be allowed to question all witnesses. Hearsay evidence shall not be accepted as a basis for discipline or adverse entry in the employee's record.

"In the event the decision is not satisfactory to the employee or the Association the matter may be appealed to the General Manager of the District or a representative designated by him within 20 days after receipt of written decision; provided, however, for good and sufficient cause the time limitation may be extended. The General Manager or his representative will consider the appeal, if filed, and render a decision ten days from the date of appeal of the decision resulting from the hearing. If the decision is still unsatisfactory, the matter may be submitted to arbitration as provided in Section 14 of this Agreement.



"Employees not at fault and required to appear at hearings at any level will be paid either run or shift pay for the day.

"Adverse notations on an employee's record more than one year old as of the date of the infraction under investigation will not be taken into consideration or be admissible as evidence.

"Any adverse entry in an employee's personnel record will be subject to the provision of this Section and shall be regarded as discipline.

"An employee shall not be discharged because of accidents without an opportunity to transfer, if possible, to some other department.

"Any disciplinary action shall be reported by telephone to the Association within 48 hours, and confirmed by letter within three days."

### Section 13

"A grievance is defined as any controversy between the District and the Association arising out of or by virtue of this labor agreement. Grievance must be filed within 180 days from date of knowledge by Association or District.

"If a grievance is alleged by the District it shall be presented in writing to the Association.

"If a grievance is alleged by the Association, it shall first be presented in writing by the Association to the Superintendent of the division affected. If a satisfactory adjustment cannot be made, or if the grievance affects more than one division, the same shall be presented to that officer of the District who from time to time shall be designated by written notice to the Association as being the representative of the District for such purposes.

"After submission of a grievance as above set forth, the parties shall promptly meet and in any event within ten days from the receipt thereof, unless the time is extended by mutual written agreement, and endeavor to adjust the grievance.

"Employees not at fault required to attend investigations, grievance meetings or hearings will be reimbursed for time lost. Any employees ultimately found to be entitled to reinstatement shall be reimbursed for all time lost."

#### Section 14

"Any grievance which cannot be amicably adjusted in accordance with the provision of Sections 3 and 13 may be submitted to a board of arbitration upon compliance with the following conditions:

a. The parties desiring arbitration shall give notice thereof within 15 days after the completion of the grievance procedure set forth in Section 3 or Section 13.

b. Within ten days after receipt of such written notice, one arbitrator shall be selected by the District and one by the Association and in the event of the failure of either party to appoint its arbitrator within said ten-day period, the party so failing shall forfeit its case. The two arbitrators so selected shall then meet and attempt to settle or decide any issue or grievance submitted for arbitration during a period of five days of the date of their appointment. If they arrive at a settlement or decision during that time, and reduce it to writing, it shall be final and binding on all parties. If they are unable to arrive at a settlement or decision, a third arbitrator shall then be selected by the District and The Association. In the event that the District and Association cannot agree upon the third arbitrator within 15 days after the selection of the first two arbitrators, the parties hereby agree that the third arbitrator shall be selected from a list of five qualified arbitrators furnished by the State Conciliation Service from which Association will strike one, then the District one, then Association one, District one, and the remaining man is selected. In event of inability of the third arbitrator as above selected to serve, the parties shall request a new list from the State Conciliation Service and thereafter strike names therefrom as above provided.

c. The three arbitrators so chosen shall endeavor to meet daily for the purpose of adjusting said grievance and the decision of a majority of the three arbitrators submitted in writing to the District and the Association shall be final and binding upon all parties.

d. Each party shall bear the expense of its own arbitrator. The expense of the third arbitrator, reporter and other incidental expenses shall be borne equally by the parties hereto.

e. The collective bargaining agreement shall serve as a submission agreement but arbitration shall be limited to issues specifically set forth in the written grievance which may remain unsettled after the procedures set forth in Section 3 or 13 have been exhausted and nothing in this Agreement shall be construed to empower any board of arbitration to change, modify or amend any provision of the Agreement.

f. All arbitrators are requested to expedite their decision as the parties normally expect a decision to issue within 30 days after the conclusion of the hearing."

**B. Brown Act Employees**

In accordance with the ~~provisions~~ of Government Section 3507 of the Brown Act (See Chapter 1, subsection of "The Promulgation of Rules and Regulations), the state, certain counties and many cities have adopted grievance procedures which supplement the appeals procedures applicable to matters regulated by civil service under the concept of an independent civil service commission. These supplemental grievance procedures are not part of any broader negotiated agreements, and they generally cast the union in the role of a service organization, while at the same time encouraging the discussion and settlement of grievances at the lowest possible step.

State Employees--State Personnel Board regulations set standards for state agencies to follow in establishing grievance procedures covering matters "over which the appointing power has complete or partial jurisdiction for which redress is not provided elsewhere..." Under these standards, set forth below, state employees have the "right to assistance by a representative of his own choosing," but the procedure does not contemplate the common private employment practice of the union as the grievant. The final level of review remains with the appointing power, i. e., the public employer, the basis for appeal to the State Personnel Board being restricted to "the establishment and operation of the grievance procedure" and to "alleged reprisals for using the procedure" established by the appointing power. This reflects the prevailing public employer view that grievance arbitration is legal only if the arbitrator is rendering an interpretation, rather than deciding legislative and administrative policy. The latter is thought of as a possible illegal delegation of powers.

State Personnel Board - Article 24 - Employer-Employee Relations, Section 540.

**Grievance Procedure.** Subject to the following provisions, each appointing power shall establish a procedure through which employees may obtain consideration of grievances or problems in matters over which the appointing power has complete or partial jurisdiction and for which redress is not provided elsewhere in these rules. The purpose of the grievance procedure is to afford employees a written and systematic means of obtaining further consideration of grievances after every reasonable effort has failed to resolve them through informal discussions initiated with the immediate supervisor.

Until an appointing power has developed and adopted a grievance procedure, his department or agency shall follow the standard procedure which shall be prescribed by the executive officer.

The grievance procedures established by the executive officer or by any appointing power shall conform to the standards set forth below. The executive officer shall prescribe any procedures necessary to implement these standards and shall review proposed grievance procedures for adherence to them.

(a) Prior to initial adoption or a revision (except a grammatical or other minor change) of a grievance procedure by an appointing power, the proposed procedure shall be published in a board calendar as a matter of general information.

(b) The procedure for processing written grievances shall be specified by the appointing power in writing and appropriate steps shall be taken to inform employees of the procedure and any subsequent substantive changes in it and to give them opportunity to comment prior to adoption.

(c) The executive officer shall develop a standard form to be used by employees in filing a written grievance. Each appointing power may develop and adopt a form to be used by employees in filing written grievances or may use the standard form. The grievance procedure shall be explained on the form.

(d) A grievance procedure shall consist of as few levels of review as practicable. No procedure shall provide for more than four levels of review. One of the levels may consist of a reviewing committee or officer not in the normal line of supervision, and the final level shall be review by the appointing power.

(e) Each grievance procedure shall provide that before a grievance is filed in writing, the employee shall discuss his problem or complaint with his immediate supervisor, and if the problem is not settled through this discussion he may discuss it with the next higher supervisor.

(f) In order to insure that grievances are presented and considered promptly, each grievance procedure shall specify that:

(1) An employee who believes he has a grievance shall

have responsibility for discussing it informally with his supervisor without undue delay;

(2) Failure of an employee to file his grievance in writing within 10 days after receiving a decision following the discussion with his immediate supervisor or to appeal in writing from the decision of any level within 10 days after receipt of the written decision of that level shall constitute a dropping of the grievance;

(3) A decision shall be rendered an employee in writing within 15 days after receipt of his written grievance at any level, except that 20 days may be allowed at the appointing power level;

(4) The time limits in (2) and (3) may be extended to a date certain by mutual agreement.

(g) Each employee shall have the right to assistance by a representative of his own choosing in preparing and presenting his grievance. The employee, and his representative if in the same agency, shall be privileged to use a reasonable amount of work time, as determined by the appointing power, in preparing and presenting the employee's grievance.

(h) Employees and their representatives shall be assured freedom from reprisal for using the grievance procedure.

(i) Resolution of a grievance shall be conducted on an informal basis and shall not include the use of legal forms and procedures.

Appeals may be made to the State Personnel Board from decisions of the appointing power on the establishment and operation of the grievance procedure and on alleged reprisals for using the procedure.

For the purpose of this rule, "appointing authority" means any department, board, commission, or other agency of state government designated as appropriate by the executive officer.

Note: Authority cited: Sections 18701 and 18714, Government Code. History: 1. New section filed 4-27-61; designated effective 1-1-61 (Register 61, No. 9).

541. Grievances Appealed to the Board. The time limit for filing an appeal to the Personnel Board on a matter which is subject to appeal to that board, and over which the appointing power has partial jurisdiction, shall be suspended during any period in which it is under consideration as a written grievance under Rule 540.

Note: Authority cited: Sections 18701 and 18714, Government Code.

History: 1. New section filed 5-10-61; designated effective 9-1-61 (Register 61, No. 10).

San Mateo County -- The employee grievance procedure of San Mateo is generally representative of procedures available at the local level in major respects. The concept of the union as the initiator and processor of a grievance is not recognized. An aggrieved employee may be assisted by a representative of his own choosing at any step in the procedure, but the employee is required to be present personally and must participate in the discussions and proceedings. Final authority rests with the County Manager in the fifth step to make a decision. However, although no provision is made for final and binding arbitration, the County Manager is required to appoint a three member board to review, investigate and recommend a decision. This approaches a form of so-called "advisory arbitration" where the third member of the review committee is selected by mutual agreement of the other two members, who are named by the department head affected and by the aggrieved individual respectively. The County Manager is required to "consider" the findings of the review board, "but shall not be bound by the recommendations...." The San Mateo County procedure, together with the employee grievance form, are reproduced below:

**SAN MATEO COUNTY**  
**EMPLOYEE GRIEVANCE PROCEDURE**

**INTRODUCTION**

It is a mutual obligation of administrative, supervisory and non-supervisory employees of San Mateo County to provide courteous, efficient and continuous service to the public. Employee morale is an important factor in maintaining a high level of public service and it is recognized that administration has the responsibility to provide an orderly, fair and expeditious method for resolving problems which may arise from working relationships and conditions. All employees of the County are free to present complaints or grievances relating to employment or working conditions and shall be guaranteed freedom from discrimination, coercion, restraint or reprisal actions. Except where otherwise provided for by the provisions of the County Charter, Civil Service Commission Rules or law, any employee shall have the right to present a grievance in any matter arising out of his employment in accordance with the procedures outlined below. An aggrieved employee shall have the right to be accompanied and assisted by a representative of his own choosing during any step of the grievance procedure.

**GRIEVANCE PROCEDURE**

The following series of steps provides a progressive procedure designed to resolve grievances at the lowest supervisory level consistent with justice and administrative policy.

**Step I** - The employee shall discuss his complaint with the immediate supervisor. Within two working days thereafter, the immediate supervisor shall give his decision verbally to the employee.

**Step II** - If the employee and his immediate supervisor cannot reach a satisfactory agreement on the complaint within two working days of the initiation of the discussion, the employee may file a written grievance concerning the matter with his immediate supervisor. On a prescribed form furnished departments for this purpose, the employee shall clearly state the basis of the grievance, giving time, place, other persons involved, and any other pertinent information. The immediate supervisor shall, within three working days after receipt of a written grievance, supply an answer in writing to the aggrieved employee, explaining clearly his decision or proposed action and reasons therefor.

**Step III** - Should the aggrieved employee not be satisfied with the answer received from his immediate supervisor, he may within five working days after its receipt, file an appeal to the next higher supervisory level as designated by the Department Head. This supervisor shall have five working days from receipt of a written grievance to review the matter, investigate, and provide a written answer to the appeal, explaining clearly his decision or proposed action and reasons therefor. Step III may be eliminated in small departments having only two supervisory levels.

**Step IV** - If the grievance is not resolved at any of the preceding steps, the aggrieved employee shall have five working days after receipt of the last written reply to file an appeal with the Department Head. The Department Head may confer with the aggrieved employee and supervisor(s) in an attempt to bring about a harmonious solution. After fully investigating the matter, the Department Head shall, within five working days following receipt of the written appeal, reply, in writing, stating the action taken and outlining the reason therefor.

(over)

**Step V** - If the grievance has not been resolved at the fourth step, the aggrieved employee shall have five working days after receipt of the written reply from the Department Head to file an appeal with the County Manager. The County Manager shall within five working days after receipt of the written appeal appoint a three member board to review, investigate and recommend a decision. The aggrieved employee and the Department Head will each name an individual to the review board. The third member will be selected by mutual agreement of both parties. If the Department Head and the aggrieved employee cannot agree on the selection of the third member, the County Personnel Director shall name the individual. The County Manager shall consider the findings and recommendations of the review board, but shall not be bound by the recommendations of said board. The County Manager shall notify the aggrieved employee and Department Head of his decision within five working days after receipt of the recommendations of the review board. The County Manager's decision shall be final and conclusive for all parties.

**General:**

1. The Department Head shall allow the employee such time off with pay from regular duties as determined to be necessary and reasonable for the processing of a grievance.
2. When circumstances warrant, the time limits specified in each step of the grievance procedure may be extended with the written consent of both parties concerned.
3. Failure of the aggrieved employee to file an appeal within the specified time limit for any step of the procedure shall constitute an abandonment of the grievance.
4. Although an aggrieved employee may be assisted by a representative of his own choice he must be present personally and participate in the discussions and proceedings.
5. At any step in the grievance procedure, the aggrieved employee or his representative supervisor(s), or Department Head may consult with the Personnel Director who may act in an advisory capacity in the interpretation of personnel policy, procedures, rules, regulations or practices.



EMPLOYEE GRIEVANCE FORM  
COUNTY OF SAN MATEO

89.

Date \_\_\_\_\_

NAME \_\_\_\_\_ CLASSIFICATION \_\_\_\_\_

DEPARTMENT \_\_\_\_\_ UNIT OR DIVISION \_\_\_\_\_

Description of Grievance \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remedial Action Requested \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I discussed this matter with my supervisor (Date) \_\_\_\_\_ Signature \_\_\_\_\_

Grievance Review - Immediate  
Supervisor's Decision: \_\_\_\_\_ Date Received: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Employee Response if Above is Not Accepted: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Grievance Review - Second Level  
Decision: \_\_\_\_\_ Date Received: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Employee Response if Above is Not Accepted: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(over)

Grievance Review - Department Head  
Decision:

Date Received:

90.

Signature:

Title:

Date:

Employee Response if Above is Not Accepted:

Signature:

Date:

Review Board - Findings and Recommendations:

Grievance Review - County Manager  
Decision:

Date Received:

Signature:

Date:

#### Instructions

Three copies of the grievance form (White, Blue and Pink) must be completed and processed through the appropriate steps of the grievance procedure as outlined. When the grievance has been resolved, the white copy is retained by the person initiating the grievance, the blue copy is retained by the department involved, and the pink copy forwarded to the Civil Service Commission office.

If more space is needed in any step of the procedure, attach additional sheets of paper to each copy of the form with identifying reference in the appropriate space on the grievance form.

Ventura County -- The Grievance Procedure of Ventura County  
 (already alluded to in Chapter IV in the subsection on "Local Interpretations and Application of 'Meet and Confer'") is set forth below. It should be noted that the "general information" section states specifically that the "procedure is intended for personal use." The grievant, in fact, is not entitled to be represented by his employee organization or any other person of his choice until the second step. The employee organization, in turn, performs only a service function. Grievances associated with dismissals, demotions, and suspensions fall outside the defined scope of the grievance procedure and "are appealed" directly to the Civil Service Commission. (There is also a procedure for non-employee grievances whereby "any citizen" having a grievance involving personnel matters may receive redress.) In the third step of the grievance procedure, provision is made for a hearing by a Grievance Committee, which in scope and function, is similar to the review board provided for under the San Mateo procedure in the fifth step. (See above.) This Grievance Committee is composed of an employer representative nominated by the Department Heads Council and an employee member nominated by recognized employees' representative(s), together with a mutually selected citizen to act as chairman. Special provision is made for consideration of the decisions of the Grievance Committee and for appeal to the Civil Service Commission in the fourth step for "final and conclusive" decision. It should be noted that while the Ventura grievance procedure does not recognize the right of a grievant to be represented by his employee organization until the second step, the State Legislative Counsel has issued an opinion (Number 503 on

Public Employee Representation, issued on September 3, 1965 to Senator Nicholas Petris) that runs contrary to this restriction. The opinion, which relates to the East Bay Municipal Utility District, states that the District "may not lawfully refuse to permit an employee to be accompanied by a representative of the employee organization during proceedings in the first two steps of the district's employee grievance procedure. However, we know of no reason why it may not lawfully refuse to permit its employees, including those functioning as employee shop stewards, to accompany other employees during grievance proceedings occurring during working hours." Presumably, since the Brown Act applies to Ventura County as well as a utility district, the Ventura provision restricting representation to the second step may be in conflict with the Brown Act. The matter can be decided only by litigation. The Ventura County grievance procedure follows:

County of Ventura Grievance Procedure as revised 10/66.

#### GENERAL INFORMATION

If you, as an employee, or citizen, have a complaint concerning your work situation or some personnel transaction, the Board of Supervisors and the County's Administration have provided this procedure to be utilized in bringing your dissatisfaction to the attention of the proper authorities and securing the appropriate action.

It is presumed that your grievance is of a serious nature. If you are an employee it is expected you will use the procedure in good faith. If you are not a County employee, first discuss the matter with the Personnel Department, and then if you remain dissatisfied you may ask the Grievance Committee for a hearing.

This procedure is intended for your personal use and assures you of complete freedom from reprisals or other punitive action when bringing a complaint to the appropriate persons. Your cooperation in properly employing the Grievance Procedure will continue to assure us of dealing fairly with all persons and caring for our most important resources -- employee morale and productivity.

## COUNTY OF VENTURA - GRIEVANCE PROCEDURE

### PURPOSE

The County of Ventura fully recognizes the importance of a Grievance Procedure. It is realized that in any large organization it may be expected that conditions which may create employee dissatisfaction and resentment will arise. This procedure is intended to create an orderly method for processing grievances, and for obtaining fair and proper answers and decisions.

This procedure is not designed to effect the establishment of major policy changes, but it is possible that in the course of dealing with problems there may develop sufficient justification for such policy changes.

### DEFINITION OF GRIEVANCE

A grievance is defined as an employee's expressed feeling of dissatisfaction with aspects of his working conditions or with policies or practices that affect the performance of his job.

### POLICY

It shall be the responsibility of all departments to communicate to its employees all details concerning the purposes and establishment of the Grievance Procedure and to assure employees that it is their right to utilize the formal grievance procedure at any time without fear that such action will be detrimental to their position in the County service.

The initiation of a grievance in good faith by an employee shall not cast any reflection on his standing with his superiors or upon his loyalty as a County employee. Neither should initiation of a grievance be a reflection upon the employee's supervisor or the department involved.

### JURISDICTION OF GRIEVANCE COMMITTEE

Employee grievances arising out of personnel actions associated with classifications, employment applications, examinations, promotions, transfers, leaves of absence and other related matters are within the jurisdiction of the Grievance Committee. In addition, all problems that departments have the authority to correct through interpretations and decisions based upon rules, regulations, policies and procedures fall within the scope of this procedure.

Grievances associated with dismissals, demotions, and suspensions are appealed directly to the Civil Service Commission.

## THE GRIEVANCE PROCEDURE

### TIME LIMITATIONS

The time limitations in the Grievance Procedure are designed to quickly settle a grievance. It is realized, however, that on some occasions the parties concerned may be unable to meet the time limitations. In such instances, the limitations may be extended upon the agreement of all parties concerned.

### STEP NO. 1 - INFORMAL DISCUSSION WITH SUPERVISOR

When an employee becomes aware of dissatisfaction with his work or with his work situation, he should discuss the matter with his supervisor. The employee and the supervisor should discuss the grievance frankly and attempt to reach an agreeable solution.

### STEP NO. 2 - APPEAL TO THE DEPARTMENT HEAD

If the employee is dissatisfied with his supervisor's solution to the grievance, he may appeal to his department head. To accomplish this appeal, the employee completes in triplicate the Grievance Forms that are available in his department or at the Personnel Department. On this form the nature of the grievance should be stated. One copy of the form goes to the department head, one copy is for the aggrieved employee and the third copy shall be kept by the aggrieved employee to be used if an appeal to the Grievance Committee is necessary.

The department head will meet with the employee and thoroughly discuss the grievance within two working days after receipt of the completed Grievance Form or as soon thereafter as possible. In the event the department head is unable to meet with the employee due to illness, absence from the County or for some other special reason, he shall designate an assistant, in whose judgment he has confidence, to handle grievances.

It is anticipated that every effort will be made by the employee, the department head and the supervisor to settle the grievance. If the grievance is settled, the agreed-upon solution is indicated on all copies of the Grievance Form along with the date the settlement will become effective.

The department head and the employee shall sign all copies of the form. The department head keeps one copy and the employee keeps the remaining two copies.

At this step of the Grievance Procedure, the employee may be represented by a fellow employee, a representative of

an employee organization or any other person of his choice.

#### STEP NO. 3 - APPEAL TO THE GRIEVANCE COMMITTEE

If the grievance has not been satisfactorily resolved within the department, an appeal may be made to the Grievance Committee on either of the following two conditions:

1. If the solution proposed by the department head is unsatisfactory to the employee, he may appeal to the Grievance Committee.
2. If a mutually acceptable solution does not become effective on the agreed-upon date, the employee may appeal to the Grievance Committee.

The employee may initiate an appeal to the Grievance Committee by filing the third copy of the Grievance Form with the Grievance Committee through the Personnel Department.

The employee may initiate an appeal to the Grievance Committee by filing the third copy of the Grievance Form with the Grievance Committee through the Personnel Department.

The Committee receives the grievance and within three days the Chairman appoints the department head representative or his alternate and the employee representative or his alternate to informally inquire into the circumstances surrounding the grievance. These two members may not sit on the hearing Committee. The two members file a report within five days with the Grievance Committee. The Chairman of the Committee shall make the report available to all concerned parties. Every effort should be made to settle the grievance in the time between the filing of the grievance and the filing of the report. Unless notified that the grievance has been settled, the Grievance Committee will set a time and place for hearing the grievance.

The hearing shall be informal and shall be held during regular working hours. Both parties may be represented and both parties may call witnesses. The Committee shall consider the testimony of witnesses, the evidence presented, the report of its members and other pertinent information before rendering a decision.

#### DECISIONS OF THE GRIEVANCE COMMITTEE

The decision of the Grievance Committee shall be transmitted to the aggrieved party, members and alternate members of the Grievance Committee and the County Executive within five working days. The County Executive shall report the Committee's decision to the Board of Supervisors during executive session. Furthermore, the County Executive shall

report to the Grievance Committee, within a reasonable length of time, the action taken by his office on the Committee's decision.

The Grievance Committee may, at its discretion and after a reasonable length of time, inquire into the effectiveness of the County Executive's recommendation and report its findings to him.

#### STEP NO. 4 - APPEAL TO THE CIVIL SERVICE COMMISSION

If the employee takes no further action within five working days of receipt of the decision of the Grievance Committee, the matter shall be assumed to have been settled. If the aggrieved party is still not satisfied or fails to receive an answer within the time agreed upon, he may appeal to the Civil Service Commission -- Board of Review and Appeals. Such appeal to the Civil Service Commission -- Board of Review and Appeals must be filed in writing with the Commission not later than 15 working days after the final ruling on such matters under the Grievance Procedure, and must be set forth specifically the ground or grounds relied upon for such an appeal. The hearing will be conducted in the same general manner as disciplinary appeals. Action by the Commission shall be final and conclusive for all parties.

#### COMPOSITION OF GRIEVANCE COMMITTEE

The Grievance Committee shall be composed of a member nominated by recognized employees' representative(s), a member nominated by the Department Heads Council, and a citizen member appointed by mutual agreement of the employees' representative(s) and the Department Heads Council. The employees' representative(s) and the Department Heads Council shall each nominate three persons for membership on the Grievance Committee to provide enough nominees so that mutually acceptable committee members may be selected, and that the alternates will be available when needed. The citizen member of the Committee, and his alternates, shall possess qualifications of sufficient scope to enable him to serve as a chairman of the Grievance Committee.

#### SCHEDULE OF MEETING

The Committee shall establish a regular meeting schedule with at least one meeting per month and more if necessary. The Committee shall meet and hear the grievances processed since the last meeting.

#### NON-EMPLOYEE GRIEVANCES

Any citizen may appeal directly to the Civil Service Commission -- Board of Review and Appeals if he has a grievance



involving a personnel matter.

The procedure to be followed is as follows:

Secure three copies of the Grievance Forms from the Personnel Department; complete the forms providing all information required, and file the original and one copy with the Personnel Director.

The grievance will then be brought to the Commission's attention and the aggrieved citizen notified of the hearing, if one is deemed necessary by the Civil Service Commission -- Board of Review and Appeals.

If a hearing is scheduled, the aggrieved party must be personally present and may be accompanied by legal counsel or other interested party.

#### THINGS TO REMEMBER

1. Is the cause of your dissatisfaction really beyond your control and within the jurisdiction of the County of Ventura?
2. If so, have you informally discussed it with your immediate supervisor or the Personnel Department before using the Formal Grievance Procedure?
3. Note the time limitations governing each step of the Grievance Procedure.
4. Secure and use the appropriate Grievance form from either your department or the Personnel Department.
5. The Administration of the County of Ventura and the Board of Supervisors have established this procedure for your legitimate use.
6. Your freedom from reprisals or other punitive actions is assured by the Board of Supervisors, the Civil Service Commission -- Board of Review and Appeals, and the Personnel Department.

## HOW THE GRIEVANCE PROCEDURE WORKS

## Step No. 1

Informal Discussion  
With Your Supervisor

Talk over your grievance with your supervisor.

## Step No. 2

Discussion with Your  
Department Head

If you are not satisfied with your supervisor's decision, get a Grievance Form from the Personnel Department and file a written grievance with your department head. Discuss your grievance with your department head.

If you and your department head agree on a solution, write the solution on the Grievance Form and then both of you sign the Form.

## Step No. 3

Appeal to the  
Grievance Committee

If you and your department head cannot settle the grievance or if the grievance is not settled by an agreed date, you can appeal to the Grievance Committee. The Grievance Committee will:

1. Try to find out what the Grievance is all about.
2. Hold a hearing if your grievance cannot be settled with the Committee's help.

## Step No. 4

Appeal to the Civil  
Service Commission

If the decision of the Grievance Committee does not satisfy you, you may appeal to the Civil Service Commission.

Remember -- You can get a Grievance Form from the Personnel Department or your Departmental Personnel Clerk.

City of Modesto -- The grievance procedure of the City of Modesto is representative of procedures adopted by cities which generally follow the recommendations of the League of California Cities in its publication, "A Suggested Personnel System" (including Ordinance and Rules), issued in 1966. The Modesto procedure is consistent with the grievance handling principles found in the procedures of public agencies referred to above. Its scope is limited to matters related to "wages, salaries, hours, and working conditions, for which appeal is not provided," presumably under other existing procedures. Provision is made for "informal" as well as "formal" handling of the grievance, and the aggrieved employee maintains full control over the processing of the grievance with the right to assistance by a person of his own choosing, including his labor organization. The final step of the formal procedure, in line with the recommendation of the League of California Cities, permits the City Manager to "designate a fact-finding committee or an officer not in the normal line of supervision to advise him concerning the grievance," but the City Manager's decision is final and binding. The Modesto grievance procedure is reproduced below, followed by the recommended procedure of the League of California Cities, on which it is based:

CITY OF MODESTO  
RULE 16 - GRIEVANCE PROCEDURE

16.1 Purpose and Objectives of Grievance Procedures

- (a) To promote improved employer-employee relations by establishing grievance procedures on matters for which appeal is not provided by other regulations.
- (b) To afford employees, individually or through qualified employee organizations, a systematic means of obtaining further considerations of problems after

every reasonable effort has failed to resolve them through discussions.

- (c) To provide that grievances shall be settled as near as possible to the point of origin.
- (d) To provide that grievances shall be heard and settled as informally as possible.
- (e) To assure that an employee shall be free from reprisal for using the grievance procedure.

#### 16.2 Matters Subject to Grievance Procedures

Any city employee shall have the right to present a grievance regarding wages, salaries, and working conditions, for which appeal is not provided.

#### 16.3 Informal Grievance Procedure

An employee should first attempt to resolve a grievance or complaint through discussion with his immediate supervisor without undue delay. If, after such discussion, the employee does not believe the problem has been satisfactorily resolved, he shall have the right to discuss it with his supervisor's immediate superior, if any. Every effort should be made to find an acceptable solution by informal means at the most immediate level of supervision. If the employee is not in agreement with the decision reached through such discussion, he shall then have the right to file a formal grievance in writing within ten (10) calendar days after receiving the informal decision of his superior or superiors. An informal grievance shall not be taken above the department or division head.

#### 16.4 Formal Grievance Procedure

Formal grievance procedure after exhaustion of the informal grievance procedure shall proceed as follows:

- (a) Department Review. The grievance shall be presented in writing to the employee's department head who shall discuss the grievance with the employee, his representative, if any, and with other appropriate persons. The department head shall render his decision and comments in writing and return them to the employee within fifteen (15) calendar days after receiving the grievance. If the employee does not agree with the decision reached, or if no answer has been received within fifteen (15) calendar days, he may present the grievance in writing to the City Manager. Failure

of the employee to take further action within ten (10) calendar days after receipt of the decision, or within a total of twenty-five (25) calendar days if no decision is rendered, will constitute withdrawal of the grievance.

- (b) City Manager Review. Upon receiving the grievance the City Manager or his designated representative shall discuss the grievance with the employee, his representative, if any, and with all other appropriate persons. The City Manager may designate a fact-finding committee or an officer not in the normal line of supervision to advise him concerning the grievance. The City Manager shall render a decision in writing to the employee within twenty (20) calendar days after receiving the grievance. The decision of the City Manager shall be final.

#### 16.5 Conduct of Grievance Procedures

- (a) The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.
- (b) The employee may request the assistance of another person of his own choosing in preparing and presenting his grievance at any level of review. Preparation of grievances shall be done at times other than during working or duty hours and at locations other than on city working premises.
- (c) Employees shall be assured freedom from reprisal for using the grievance procedures.

### **RECOMMENDED GRIEVANCE PROCEDURE LEAGUE OF CALIFORNIA CITIES**

#### **RULE XVI. GRIEVANCE PROCEDURES**

##### **SEC. 1. Purpose of Rule:**

- (a) To promote improved employer-employee relations by establishing grievance procedures on matters for which appeal or hearing is not provided by other regulations.
- (b) To afford employees individually or through qualified employee organizations a systematic means of obtaining further considerations of problems after every reasonable effort has failed to resolve them through discussions.

- (c) To provide that grievances shall be settled as near as possible to the point of origin.
- (d) To provide that appeals shall be conducted as informally as possible.

SEC. 2. Matters Subject to Grievance Procedure: Any employee in the competitive service shall have the right to appeal, under this Rule, a decision affecting his employment over which his appointing power has partial or complete jurisdiction and for which appeal is not provided by other regulations or is not prohibited.

SEC. 3. Informal Grievance Procedure: An employee who has a problem or complaint should first try to get it settled through discussion with his immediate supervisor without undue delay. If, after this discussion, he does not believe the problem has been satisfactorily resolved, he shall have the right to discuss it with his supervisor's immediate superior, if any, in the administrative service. Every effort should be made to find an acceptable solution by informal means at the lowest possible level of supervision. If the employee is not in agreement with the decision reached by discussion, he shall then have the right to file a formal appeal in writing within ten (10) calendar days after receiving the informal decision of his immediate superior. An informal appeal shall not be taken above the appointing power.

SEC. 4. Formal Grievance Procedure: \* (Levels of Review Through Chain of Command.)

- (a) First Level of Review: The appeal shall be presented in writing to the employee's immediate supervisor, who shall render his decision and comments in writing and return them to the employee within 15\*\* calendar days after receiving the appeal. If the employee does not agree with his supervisor's decision, or if no answer has been received within 15 calendar days, the employee may present the appeal in writing to his supervisor's immediate superior. Failure of the employee to take further action within 10 calendar days after

\*Each city shall adopt such levels of review as are appropriate to its organization. Because of the size of the organization, a city may have only one level of review.

\*\*All times mentioned herein are suggested only and may be altered to meet the needs of the city.

receipt of the written decision of his supervisor, or within a total of 25 calendar days if no decision is rendered, will constitute a dropping of the appeal.

- (b) Further level or levels of review as appropriate: The supervisor receiving the appeal shall review it, render his decision and comments in writing, and return them to the employee within 15 calendar days after receiving the appeal. If the employee does not agree with the decision, or if no answer has been received within 15 calendar days, he may present the appeal in writing to the department head. Failure of the employee to take further action within 10 calendar days after receipt of the decision, or within a total of 25 calendar days if no decision is rendered, will constitute a dropping of the appeal.
- (c) Department review: The department head receiving the appeal of his designated representative, should discuss the grievance with the employee, his representative, if any, and with other appropriate persons. The department head shall render his decision and comments in writing, and return them to the employee within 15 calendar days after receiving the appeal. If the employee does not agree with the decision reached, or if no answer has been received within 15 calendar days, he may present the appeal in writing to the appointing power. Failure of the employee to take further action within 10 calendar days after receipt of the decision, or within a total of 25 calendar days if no decision is rendered, will constitute a dropping of the appeal.
- (d) Appointing power: The appointing power receiving the appeal or his designated representative should discuss the grievance with the employee, his representative, if any, and with other appropriate persons. The appointing power may designate a fact-finding committee, officer not in the normal line of supervision, or Personnel Board to advise him concerning the appeal. The appointing power shall render a decision in writing to the employee within 20 calendar days after receiving the appeal.

#### SEC. 5. Conduct of Grievance Procedure:

- (a) The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.
- (b) The employee may request the assistance of another person of his own choosing in preparing and

presenting his appeal at any level of review.

- (c) The employee and his representative may be privileged to use a reasonable amount of work time as determined by the appropriate department head in conferring about and presenting the appeal.
- (d) EMPLOYEES SHALL BE ASSURED FREEDOM FROM REPRISAL FOR USING THE GRIEVANCE PROCEDURES.

City of Richmond -- The grievance procedure of the City of Richmond, which was adopted in May, 1968, is reproduced below because it deviates from the more traditional types of grievance procedures discussed above in two significant respects. The Richmond procedure, in the first three steps, permits the union representative to present the grievance, and appears to give the union a great deal of control over the processing of the grievance. It is also being interpreted, according to the union, to allow the union to initiate the grievance. Further, provision is made in the final step to go beyond the City Manager's decision and to present the grievance to the Personnel Board on the premise that the Personnel Board is in a position to exercise independent judgment. It should be noted in connection with this last step, however, that the language refers only to the employee having the right to present the grievance to the Personnel Board, "with or without the assistance of a designated representative." The Richmond grievance procedure follows:

#### CITY OF RICHMOND PROCEDURES FOR GRIEVANCES - APPEALS - HEARINGS

In order to establish a proper procedure to permit the hearing and resolution of grievances related to any circumstance or situation bearing upon an employee's status or conditions of employment and to provide means for the resolution of complaints as rapidly as possible, the



following shall apply:

Grievance Procedure

a. The employee and/or his representative shall present his grievance personally, in writing or orally, to his immediate supervisor.

b. If the problem is not settled at this level the employee and/or his representative shall submit his grievance in writing to his division head. The written grievance must set forth the specific complaint and all pertinent facts. The division head will allow full discussion of the grievance; if the grievance is rejected, he shall give to the employee and/or his representative the reason or reasons therefor and forward the written grievance to the department head on which will be noted the reasons for this decision.

c. The employee and/or his representative may then present the grievance to the department head. At this meeting the department head, the employee and/or his representative and other designated parties who have direct knowledge of circumstances related to the grievance may be present. After full discussion, the department head shall, within two working days, advise the employee in writing of his decision and the reasons therefor. A copy of the decision shall be forwarded to the City Manager.

d. If the grievance remains, the employee and/or his designated representative may submit the grievance to the City Manager and a meeting may be held with designated parties to air the complaint. If the City Manager rejects the grievance, written notice of such rejection and the reasons therefor shall be given the employee.

e. If the matter still remains unresolved the employee shall have the right, with or without the assistance of a designated representative, to present the matter to the Personnel Board per the provisions for such appeal cited in Personnel Rule XI.

C. School Employees Under Winton Act

(Information lacking.)

D. Firefighters Under Labor Code

(Information lacking.)

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