

DIABLO WATER DISTRICT

REGULATION NO. 119

EMPLOYEE RELATIONS

Section I. Purpose.

- A. The purpose of this Regulation is to comply with and implement the laws and regulations of the State of California by providing orderly procedures for the administration of employer-employee relations between Diablo Water District and its employee organization(s) and for resolving disputes regarding wages, hours, and other terms and conditions of employment.

Section II. Definitions of Terms.

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

- A. “appropriate unit” means a unit established pursuant to Section VIII hereof.
- B. “consult” or “consultation in good faith” means to communicate verbally or in writing for the purpose of presenting or obtaining views or advising of intended actions.
- C. “employee” means any person regularly employed by the district, excluding those persons elected by popular vote and contractors.
- D. “confidential employee” means an employee who is privy to decisions of District management affecting employer-employee relations.

- E. “management employee” means:
1. any employee having significant responsibilities for formulating and administering District policies and programs, including but not limited to the General Manager and department supervisors.
 2. any employee having authority to exercise independent judgment to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- F. “professional employee” means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction; including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical and biological scientists.
- G. “employee organization” means any organization which includes employees of the District and which has as one of its primary purposes representing such employees in their employment relations with the District.
- H. “employer-employee relations” means the relationship between the District and its employees and their employee organization, or when used

in a general sense, the relationship between District management and employees or employee organizations.

- I. “grievance” is defined in Section 14.
- J. “impasse” means (1) a deadlock in the annual (or periodic) discussions between a formally recognized majority representative and the District over any matters concerning which they are required to meet and confer in good faith, or over the scope of such subject matter; or (2) any unresolved complaint by an affected employee organization, advanced in good faith, concerning a decision of the District Employee Relations Officer made pursuant to Section VIII or IX of this Resolution.
- K. “majority representative” means an employee organization, or its duly authorized representative, that has been granted formal recognition by the District Employee Relations Officer as representing the majority of employees in an appropriate unit.
- L. “mediation” or “conciliation” means the efforts of an impartial third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse, through interpretation, suggestion and advice. Mediation and conciliation are interchangeable terms.
- M. “meet and confer in good faith” (sometimes referred to herein as “meet and confer,” or “meeting and conferring”) means performance by duly authorized District representatives and duly authorized representatives of an employee organization (recognized as the majority representative) of

their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment, in an effort to: (1) reach agreement on those matters within the authority of such representatives and (2) reach agreement on what will be recommended to the District Board of Directors on those matters within the decision making authority of the Board of Directors. This does not require either party to agree to a proposal or to make a concession.

- N. “District Employee Relations Officer” means the District’s General Manager or his designee.
- O. “Resolution” means, unless the context indicates otherwise, this Resolution of the Diablo Water District.
- P. “recognized employee organization” means an employee organization which has been acknowledged by the District Employee Relations Officer as an employee organization that represents employees of the District. The rights accompanying recognition is either:
1. “formal recognition”, which is the right to meet and confer in good faith as the majority representative in an appropriate unit; or
 2. “informal recognition”, which is the right to consultation in good faith by all recognized employee organizations.
- Q. “scope of representation” means matters relating to employment conditions and employer-employee relations, including, but not limited to, wages,

hours and other terms and conditions of employment. District Rights (Section 4) are excluded from the scope of representation.

- R. "unit" or "bargaining unit" means the group of employees determined through the procedure defined in Section VIII A, B, and D.
- S. "Memorandum of Understanding" means a document containing the agreements between a formally recognized representative and the District, which shall become effective upon the ratification of the Board of Directors.
- T. "General Manager" means the general manager of the District.
- U. "Certified copy" means a true and correct copy which shall be transmitted from a responsible official of the union.

Section III. Employee Rights.

- A. Employees of the District shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, including but not limited to wages, hours and other terms and conditions of employment. Employees of the District 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 District. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights.

Section IV. District Rights.

- A. The rights of the District include, but are not limited to, the exclusive right to determine its mission; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of a lack of work or other legitimate reason; maintain the efficiency of District operations; determine the methods, means and personnel by which District operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its organization and the technology of performing its work; and such other management prerogatives as are traditional.

Section V. Meet and Confer in Good Faith – Scope.

- A. The District, through its representatives, shall meet and confer in good faith with representatives of formally recognized employee organizations with majority representation rights regarding matters within the scope of representation including wages, hours and other terms and conditions of employment with the appropriate unit.
- B. The District shall not be required to meet and confer in good faith on any subject preempted by Federal or State law or by the Water Code nor shall it be required to meet and confer in good faith on Employee Rights or District Rights as defined in Sections 3 and 4. Proposed amendments to this Resolution are excluded from the scope of meeting and conferring, but

are subject to consultation in good faith with representatives of an employee organization or organizations.

Section VI. Consultation in Good Faith – Scope.

- A. All matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. The District, through its representatives, shall consult in good faith with representatives of all recognized employee organizations on employer-employee relations matters which affect them.

Section VII. Advance Notice.

- A. Reasonable written notice shall be given to each recognized employee organization affected by any rule, regulation or resolution (except this Regulation), directly relating to matters within the scope of representation proposed to be adopted or amended by the Board of Directors and each shall be given the opportunity to meet with such body, and/or its representative prior to adoption or amendment. Notwithstanding the foregoing, in cases of emergency when the District determines that a rule, regulation or resolution must be adopted or amended immediately it shall notify the employee organization of the new rule, regulation or resolution and an opportunity to meet with the Board of Directors shall be set for the earliest practicable time as determined by the District.

Section VIII. Recognition of Employee Organization.

- A. Petition for Recognition

1. There are two levels of employee organization recognition: formal and informal. The recognition requirements of each are set forth hereinafter.
2. Content of Petition for Formal Recognition: An employee organization that seeks formal recognition for purposes of meeting and conferring in good faith as the majority representative of employees in an appropriate unit shall file a petition with the District Employee Relations Officer containing the following information and documentation:
 - (a) Name and address of the employee organization.
 - (b) Names and titles of its officers.
 - (c) Names of employee organization representatives who are authorized to speak on behalf of its members.
 - (d) A statement that the employee organization has as one of its primary purposes representing employees in their employment relations with the District.
 - (e) A statement whether the employee organization is a chapter or local of or affiliated directly or indirectly in any manner with a national or international organization and, if so, the name and address of each such regional, state, national or international organization.
 - (f) Certified copies of the employee organization's constitution and by-laws.

- (g) A designation of those persons, not exceeding two in numbers, and their addresses, to whom notice sent by regular United State mail will be deemed sufficient notice on the employee organization for any purpose.
- (h) A statement that the employee organization recognizes that the provisions of Section 923 of the Labor Code are not applicable to District employees.
- (i) A statement that the employee organization has no restriction on membership based on race, color, creed, sex, or national origin.
- (j) A copy of any filings to the Federal Department of Labor, such as LM-2 reports, which the organization has filed over the past calendar year.
- (k) The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- (l) A statement that the employee organization has in its possession written proof, dated within one year of the date upon which the petition is filed, to establish that employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the District. Such written proof shall be submitted for confirmation to the District

Employee Relations Officer, or to a mutually agreed upon disinterested third party, such as a state mediator.

- (m) A request that the District Employee Relations Officer recognize the employee organization as the majority representative of the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

3. Content of Petition for Informal Recognition: An employee organization that seeks recognition for purposes of consultation in good faith shall file a petition with the District Employee Relations Officer containing the following information and documentation:

- (a) All of the information enumerated in Section VIII.A.2 (a) through (l).
- (b) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that employees have designated the employee organization to represent them in their employment relations with the District. Such written proof shall be submitted for confirmation to the District Employee Relations Officer, or to a mutually agreed upon disinterested third party.

- (c) A request that the District Employee Relations Officer recognize the employee organization for the purpose of consultation in good faith.
 - 4. Verification: The petition, including all accompanying documents, shall be verified, under oath, by the Executive Officer and Secretary of the petitioning organization that the statements are true. All changes in such information shall be filed forthwith in like manner.
- B. Formal Recognition as the Majority Representative of an Appropriate Unit
- 1. An employee organization that seeks formal recognition as the majority representative of an appropriate unit shall file a Petition for Recognition with the District Employee Relations Officer containing all of the information set forth in Section VIII of this Resolution, accompanied by written proof that at least 30% of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the District; provided, however, the employee organization may request that such written proof be submitted to a mutually agreed upon disinterested third party. Upon receipt of the Petition for Recognition, the District Employee Relations Officer shall determine whether there has been compliance with the requirements of the Petition for Recognition, and the proposed unit is an appropriate unit. If an affirmative determination is made by the District Employee Relations Officer on the foregoing two matters, they shall give notice of such

request for formal recognition to the employees in the unit and shall take no action on said request for 30 days thereafter. If either of the foregoing matters is not affirmatively determined, the District Employee Relations Officer shall inform the employee organization of the reasons therefore in writing. In determining an appropriate unit, the principal criterion in making this determination shall be a community of interest among the employees. Also considered may be other factors such as the classification structure; history of employee relations in the unit and among other employees of the District or in similar public employment; and the effect of the unit on the efficient operation of the District.

2. Within 30 days of the date notice to employees is given, any other employee organization (hereinafter referred to as the “challenging organization”) may seek formal recognition in an overlapping unit by filing a Petition for Recognition, provided, however, such challenging organization must submit written proof that it represents at least 30% of the employees in such unit. The District Employee Relations Officer shall hold a hearing on such overlapping Petitions, at which time all affected employee organizations shall be heard. Thereafter, the District Employee Relations Officer shall determine the appropriate unit or units as between such proposed overlapping units in accordance with the criteria set forth in Section VIII B.1. of this Resolution.

3. If the written proof submitted by the employee organization for the unit found to be appropriate establishes that it represents more than 50% of the employees in such unit, the District Employee Relations Officer may, in his/her discretion, grant formal recognition to such employee organization without a secret ballot election.
4. When an employee organization for the unit found to be appropriate submits written proof that it represents at least 30% of the employees in such unit, and it does not qualify for or has not been granted recognition pursuant to sub-Section VIII(b) (3), the District Employee Relations Officer shall arrange for a secret ballot election to be managed by the District Secretary. The secret ballot election shall be managed by the District Secretary and witnessed by one employee in the unit and one representative from each of the employee organizations whose names appear on the ballot. All challenging organizations that have submitted written proof that they represent at least 10% of the employees in the unit found to be appropriate, and have submitted a Petition for Recognition as required by Section VIII of this Resolution, shall be included on the ballot. The choice of “no organization” shall also be included on the ballot. Employees entitled to vote in such election shall be those persons regularly employed in permanent positions within the unit who were employed during the pay period immediately prior to the date which is 15 days before the election, including those who did not work during such period because

of illness, vacation or authorized leaves of absence and who are employed by the District in the same unit on the date of the election.

An employee organization shall be granted formal recognition

Following an election or run-off election if:

(a) that employee organization has received the vote of a majority of the ballots cast (i.e.: 50%+1).

(b) In an election involving three or more choices (e.g.: "Union A", "Union B", and "No Union"), where none of the choices receive a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election shall also apply to a run-off election.

5. There shall be no more than one valid election in a 12-month period within the same unit.

C. Decertification of Established Unit

1. A Petition for Decertification alleging that an employee organization granted formal recognition is no longer the majority representative of the employees in an appropriate unit may be filed with the District Employee Relations Officer only after a period of not less than 12 months following the date of such recognition, or such other date as may be allowed by law. Petitions for Decertification may be filed by an employee, a group of employees or their representative, or an

employee organization. The Petition, including all accompanying documents, shall be verified, under oath, by the person signing it that its contents are true. It may be accompanied by a Petition for Recognition by a challenging organization. The Petition for Decertification shall contain the following information:

- (a) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information;
- (b) the name of the formally recognized employee organization;
- (c) an allegation that the formally recognized employee organization no longer represents a majority of the employees in the appropriate unit and any other relevant and material facts;
- (d) written proof that at least 30% of the employees in the unit do not desire to be represented by the formally recognized employee organization. Such written proof shall be dated within six months of the date upon which the petition is filed and shall be submitted for confirmation to the District Employee Relations Officer or to a mutually agreed upon disinterested third party, such as a state mediator.
- (e) Should another organization simultaneously seek exclusive representation as a challenging organization, as provided in

this Section (above), a simultaneous representation election shall be conducted on the same ballot, and both questions (decertification and a new certification) shall be voted upon.

2. Following verification of the petition, accompanying documents and proof, the District Employee Relations Officer shall arrange for a secret ballot election to determine if the formally recognized employee organization shall retain its recognition rights. The formally recognized employee organization shall be decertified if a majority of those casting valid ballots vote for decertification.
3. There shall be no more than one valid decertification election in the same unit in any 12-month period.

D. Modification of Established Unit: A Petition for Modification of an established unit may be filed by an employee organization with the District Employee Relations Officer during the period for filing a Petition for Decertification. The Petition for Modification shall contain all of the information set forth in Section VIII A.2. of this Resolution, along with a statement of all relevant facts in support of the proposed modified unit. The Petition shall be accompanied by written proof that at least 50% of the employees within the proposed modified unit have designated the employee organization to represent them in their employment relations with the District; provided, however, the employee organization may request that such written proof be submitted to a mutually agreed upon

disinterested third party. The District Employee Relations Officer shall hold a hearing on the Petition for Modification, at which time all affected employee organizations shall be heard. Thereafter, the District Employee Relations Officer shall determine the appropriate unit or units as between the existing unit and the proposed modified unit. If the District Employee Relations Officer determines that the proposed modified unit is the appropriate unit, then he shall follow the procedures set forth in Section VIII B. of this Resolution for determining formal recognition rights in such unit.

- E. Duration of Formal Recognition: When an employee organization has been formally recognized, such recognition shall remain in effect from the date thereof and shall continue thereafter until such time as the employee organization voluntarily withdraws from representation by written notice of withdrawal delivered to the District, or the District Employee Relations Officer shall determine, on the basis of a secret ballot election conducted in accordance with the foregoing rules, that the formally recognized employee organization no longer represents a majority of the employees in the appropriate unit or until such time as the unit may be modified as provided in D. above.
- F. Impasses in Recognition Proceedings: Any unresolved complaint by an affected employee organization, advanced in good faith, concerning a decision of the District Employee Relations Officer made pursuant to sub-Sections A., B., C., or D. above, shall be processed in accordance with the

procedures set forth in Section 13 of this Resolution; provided, however, the written request for an impasse meeting, as described in Section 13 of this Resolution, must be filed with the District Employee Relations Officer within 7 days after the affected employee organization first receives notice of the decision upon which its complaint is based, or its complaint will be considered closed and not subject to the impasse procedures or to any other appeal.

Section IX. Dues Checkoff.

- A. Only a formally recognized employee organization (i.e., the majority representative of employees in the appropriate unit) may be granted permission by the District Employee Relations Officer to have the regular dues of its members deducted from their paychecks (hereinafter sometimes referred to as “dues checkoff”), in accordance with procedures prescribed by the District.
- B. Dues deduction shall be for a specified amount and shall be made only upon the voluntary written authorization of the member. Dues deduction authorization may be cancelled and the dues checkoff payroll discontinued at any time by the member upon voluntary written notice to the District. Dues deduction authorization or cancellation shall be made upon a form provided by the District. Dues deduction may be continued only upon voluntary written authorization of the member for a period of time not to exceed one year and ending November 30 of each year, in all cases.

Employee payroll dues deduction amounts shall be according to a uniform system.

- C. The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues checkoff authorized. When a member in good standing of the formally recognized employee organization is in a non-pay status for an entire pay period, no dues withholding will be made to cover that pay period from future earnings, nor will the member deposit the amount with the District which would have been withheld if the member had been in a pay status during that period. In case of an employee who is in a non-pay status during only a part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over employee organization dues.
- D. Dues withheld by the District shall be transmitted to the officer designated in writing by the employee organization as the person authorized to receive such funds, at the address specified.
- E. All employee organizations receiving dues checkoff shall indemnify, defend and hold the District harmless against any claims made and against any suit instituted against the District on account of checkoff of employee organization dues. In addition, all such employee organizations shall refund to the District any amounts paid to it in error upon presentation of supporting documentation.

- F. The following form shall be used to authorize deduction of employee organization dues from an employee's pay.

PAYROLL DEDUCTION AUTHORIZATION

Name: _____ S.S. No.: _____

I hereby authorize DIABLO WATER DISTRICT (District) to deduct the amount specified in the _____ (Union) Monthly Dues Schedule currently in effect and on file with the District Accountant from my paycheck on a monthly basis as my Union dues. The District shall transmit the dues withheld to such officer of the Union as may be designated in writing by the Union. This authorization shall remain effective until further written notice from me.

It is expressly understood and agreed that neither the District nor the Union, nor any employee of either of them, acting under this authorization shall be liable in any manner for failure or delay in making or transmitting the deduction hereby authorized.

Signature: _____ Date: _____

Section X. Reasonable Time Off to Meet and Confer.

- A. The formally recognized employee organization may select not more than two employee members of such organization to attend scheduled meetings with the District Employee Relations Officer or other management officials on subjects within the scope of representation during regular work hours without loss of compensation. Where circumstances warrant, the District Employee Relations Officer may approve the attendance at

such meetings of additional employee representatives with or without loss of compensation. The employee organization shall, whenever practicable, submit the names of all such employee representatives to the District Employee Relations Officer at least two working days in advance of such meetings. Provided, further: that no employee representative shall leave his or her duty or work station or assignment without specific approval of the department head or other authorized District management official, and that any such meeting is subject to scheduling by District management in a manner consistent with operating needs and work schedules. Nothing provided herein, however, shall limit or restrict District management from scheduling such meetings before or after regular duty or work hours under appropriate circumstances.

Section XI. Access to Work Locations.

- A. Reasonable access to employee work locations shall be granted officers of recognized employee organizations and their officially designated representatives, for the purpose of processing grievances within the scope of representation. Such officers or representatives shall not enter any work location without the consent of the Department Head or the District Employee Relations Officer. Access shall be restricted so as not to interfere with the normal operations of the department or with established safety or security requirements.
- B. Solicitation of membership and activities concerned with the internal management of an employee organization, such as collecting dues,

holding membership meetings, campaigning for office, conducting elections and distributing literature, will not be permitted during work hours.

Section XII. Peaceful Performance of District Services.

- A. Given that the District is a government public utility supplying water and water treatment for the public health and safety, participation by any employee in a strike or work stoppage may be unlawful and may subject the employee to disciplinary action, up to and including discharge. As used in this Section “strike or work stoppage” means the concerted failure to report for duty, the willful absence from one’s position, the stoppage of work or the abstinence in whole or part from the full, faithful performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions of compensation or the rights, privileges or obligations of employment.

Section XIII. Impasses; Appointment of Mediator.

- A. Should the parties while meeting and conferring in good faith reach agreement on subjects within the scope of bargaining, all such understandings shall be written and form the basis for a Memorandum of Understanding, which shall be submitted to the District Board for their consideration for adoption. Should the parties be unable to reach agreement, subjects on which impasse has been declared may be submitted to mediation by either party, upon written request within seven days of the party declaring impasse. A mediator shall be selected by the

mutual consent of the parties. If no mutual consent can be obtained, then each party shall appoint a person as a mediator, and the two persons so selected shall appoint the third mediator. In the absence of an agreement, the State Mediation and Conciliation Service shall be requested to furnish a mediator. A report which shall outline the contentions of the parties shall be issued by the mediator to the District Board, who may take action to resolve the dispute, if desirable, or may decline to take action.

Section XIV. Employee Grievance Procedure.

- A. A grievance is any dispute concerning the interpretation or application of the express provisions of the Memorandum of Understanding or this Regulation, excepting items covered under Section 4 of this Resolution. Whenever possible, an employee's complaint should be resolved through informal discussions with the immediate supervisor. If, after this discussion, the employee does not believe the problem has been satisfactorily resolved, they may discuss it with their immediate supervisor. Every effort should be made to find an acceptable solution by informal means at the lowest possible level of supervision.
- B. If the employee is not in agreement with the decision reached by discussion, they may then file a formal grievance in writing within ten (10) calendar days after receiving the informal decision of his or her immediate supervisor. The standard employee grievance form should be used in processing a formal grievance. The steps and time limits involved in a formal grievance are as follows:

1. First Step – The grievance shall be presented in writing to the employee’s immediate supervisor, who shall enter his or her decision and comments in writing and return the form to the employee within fifteen (15) calendar days after receiving the grievance. Failure of the employee to take further action within ten (10) calendar days after receipt of the written decision, or within a total of twenty-five (25) calendar days if no decision is rendered, will constitute withdrawal of the grievance.
2. Second Step – If the employee does not agree with the immediate supervisor’s decision, or if no answer has been received within fifteen (15) calendar days, the employee may present the grievance in writing to the General Manager. The General Manager upon receiving the grievance shall review the grievance, enter his or her decision and comments in writing and return the form to the employee within fifteen (15) calendar days after receiving the grievance. 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.
3. Fact Finding and Final Review – If the employee does not agree with the decision reached at the Second Step, or if no answer has been received within fifteen (15) calendar days, they may present the grievance for fact-finding. Fact-finding shall consist of a committee

that produces a report to the Employee Relations Officer. The committee shall consist of one District representative and one employee organization representative. The fact-finding committee shall produce a written report to the Employee Relations Officer that sets forth all uncontested facts surrounding the grievance and the report shall also set forth any contested facts. If both members of the committee can agree on a joint recommendation, then the report shall contain such recommendation for Resolution. If the members cannot agree on a joint recommendation, then the report shall have no recommendation for Resolution. The fact-finding report shall be submitted to the Employee Relations Officer within thirty (30) days after the grievance is submitted to fact finding. The Employee Relations Officer shall render a final and binding decision in writing to the employee within twenty (20) calendar days after receiving the fact-finding report.

- C. The time limits specified in (b) above may be extended to a definite date by mutual written agreement of the employee and the reviewer concerned.
- D. The employee may request the assistance of another person of his or her own choosing in preparing and presenting the grievance. The employee and the representative, if any, shall be assured freedom from reprisal for using the grievance procedure.