



INTRODUCED BY

ALDERMEN TERBROCK, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE ESTABLISHING A FRAMEWORK FOR THE CITY OF BALLWIN AND ITS POLICE OFFICERS TO ENGAGE IN COLLECTIVE BARGAINING.

WHEREAS, in light of the Missouri Supreme Court’s rulings in *Independence National Education Association v. Independence School District*, 223 S.W.3d 131 (Mo. banc 2007); *American Federal of Teachers v. Ledbetter*, 387 S.W.3d 360 (Mo. banc 2012), and *Eastern Missouri Coalition of Police Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755 (Mo. banc 2012), the City of Ballwin believes it is necessary to establish a framework for its police officers to engage in collective bargaining; and

WHEREAS, the City of Ballwin also believes it is necessary to adopt and implement procedures relating to the recognition of, collective bargaining with, and recertification or decertification of the employee’s designated bargaining representative;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, MISSOURI, AS FOLLOWS:

Section 1. Chapter 20 of the Code of Ordinances of the City of Ballwin shall be amended by adding a new Article VII thereto as follows:

Article VII. – Collective Bargaining

1. Establishment of Appropriate Bargaining Unit

1.1 The provisions of this Ordinance shall apply to all regular full-time, non-probationary personnel employed in the City’s Police Department, but excluding temporary or casual employees, clerical and confidential employees, and all other employees.

1.2 Any labor organization attempting or desiring to represent covered individuals employed by the City shall submit a specific, written description of the bargaining unit sought, together with specific exclusions, to the City, via certified mail addressed to the City Administrator. The request by the labor organization shall also include a representation that the labor organization has obtained the necessary showing of interest required in Article 2.

1.3 Within 15 days of receipt of the proposed bargaining unit description, the City shall convene a Police Personnel Committee that shall be responsible for representing the City throughout the collective bargaining process. The Personnel Committee shall consist of the City Administrator, the Chief of Police, and the City Attorney. In addition, the City may retain the services of a Special Counsel to aid and advise the Personnel Committee.

1.4 Within 30 days of receipt of the proposed bargaining unit, the Personnel Committee shall determine whether the proposed bargaining unit is appropriate and either (a)



agree to the unit, (b) send the description back to the labor organization for further specificity, or (c) reject the unit as being inappropriate with specific, written reasons for the rejection.

1.5 In deciding whether the proposed bargaining unit is appropriate, the Personnel Committee shall determine whether the employees sought to be included in the proposed bargaining unit share a clear and identifiable community of interest. The Personnel Committee shall consider the following criteria:

- (a) Similarity in the kind of work performed;
- (b) Similarity in the qualifications, skills, and training of the employees;
- (c) Common supervision and determination of labor-relations policy;
- (d) Frequency of contact or interchange among the employees;
- (e) Geographical proximity among the employees;
- (f) Similarity in employment benefits, compensation or method of determining compensation, hours of work, and other terms and conditions of employment;
- (g) Continuity or integration of work processes;

2. Showing of Interest

2.1 Any labor organization wishing to represent a bargaining unit as an exclusive bargaining representative shall notify the City Administrator in writing that the labor organization has signed authorization cards containing the signatures of over fifty percent (50%) of the public employees in the bargaining unit indicating that they wish to select the labor organization in question as their exclusive bargaining representative for the purpose of collective bargaining (“showing of interest”).

2.2 The adequacy of the showing of interest shall be determined administratively by the City Finance Director or by a Neutral Umpire designated by the City Administrator. The showing of interest determination is not subject to review or litigation. Any person who has evidence that any authorization card(s) was obtained improperly, such as through fraud, intimidation or coercion, may bring the evidence to the attention of the Finance Director or the Neutral Umpire, who shall have the discretion to disregard any authorization cards obtained improperly.

2.3 The Finance Director (or Neutral Umpire) shall keep the identity of the individuals in the proposed bargaining unit who have signed authorization cards in support of the union strictly confidential, and may not disclose that information to anyone, including but not limited to the affected department head, the City Administrator, or any other official or employee of the City.

2.4 The Finance Director (or Neutral Umpire) shall issue a written report immediately following determination of the adequacy of the labor organization's showing of interest. The report shall only indicate whether the labor organization has, or has not, provided the necessary showing of interest of over fifty percent (50%) of eligible voters.

2.5 The City shall have the option to voluntarily recognize the petitioned for unit if a proper showing of interest of over fifty percent (50%) of the employees in the bargaining unit has been made by the labor organization, or may require that the union be certified through the election process set forth in Article 3. The City may insist the union follow the election process notwithstanding the fact any City representative may have viewed the authorization cards presented to the City by the union.

3. Election Procedure

3.1 If the City Administrator decides to require a secret ballot election, the City Administrator shall consult with the representative of the labor organization that has presented the authorization cards, and together they shall select a mutually agreeable date for a secret ballot election to take place. The election shall be conducted at City Hall or by mail-in ballot, or by a combination of the two, and shall be set for a date falling no less than four weeks, and no more than eight weeks, after the later of the date upon which the proper showing of interest was validated or the bargaining unit was determined to be appropriate. In the event the City Administrator and the labor organization cannot agree mutually on a date, time and location for the election, the City Administrator shall have the authority to determine a reasonable date, time and location for the election to be conducted within the time constraints specified in this subsection.

3.2 Once an election date has been set, the City Administrator shall issue a notice informing all eligible voters of the date, time, and place of the election. Such notice shall be distributed to all eligible employees and shall be posted in the Police department.

3.3 All City employees shall have the right to freely express their opinions about whether the labor organization should be selected as the exclusive bargaining representative of the City employees in the bargaining unit. However, no employee or representative of the labor organization and no representative, official or employee of the City shall attempt to threaten, intimidate, coerce, or otherwise restrain any eligible voter in the free exercise of his or her individual choice to support or oppose the selection of the labor organization in question as the exclusive bargaining representative of the City employees in the bargaining unit.

3.4 The ballot shall read "Do you wish to select [labor organization] as the Exclusive Bargaining Representative for [description of bargaining unit] employed within the City of Ballwin?" The ballot will include check boxes for marking "yes" or "no" in response to this question.

3.5 No labor organization will be recognized as representing any employee by any means other than as prescribed in Articles 1 through 4 of this Ordinance.

3.6 The City shall retain the services of a Neutral Umpire to oversee the conduct of the election. The Neutral Umpire shall ensure that the election is conducted by secret ballot, using such procedures as the Neutral Umpire shall determine are appropriate for ensuring the privacy and security of each public employee's vote. Once the poll is closed, the Neutral Umpire shall oversee the opening and counting of the ballots. Representatives of the City's management team and representatives of the labor organization shall have the right to be present during the counting of the ballots.

3.7 Immediately following the ballot count, the Neutral Umpire shall issue a report indicating how many ballots were cast in favor of representation by the labor organization and shall certify the results of the election pursuant to the provisions of Section 3.8.

3.8 Any labor organization receiving the votes of more than fifty percent (50%) of all City employees in the bargaining unit who are eligible to vote shall be designated and recognized by the City as the exclusive bargaining representative for all City employees in the bargaining unit.

3.9 No labor organization may seek to represent any bargaining unit (or portion of any bargaining unit) by secret ballot election more than once in any consecutive, twelve (12) month period.

3.10 Confidential employees shall not be included within the same bargaining unit as non-supervisory employees within the Police Department. For this purpose, "Confidential employee" is defined as any employee employed by the City who, in the normal performance of his or her duties, has authorized access to confidential information affective the employer-employee relationship or who has a confidential working relationship with the Assistant City Manager, the City Manager, the Chief of Police, or any other supervisor or manager employed by the City.

4. Hearing Procedure

4.1 In the event the petitioning labor organization disputes the Personnel Committee's determination regarding the appropriateness of the unit, the petitioning labor organization must file written objections with the City Administrator, via certified mail, within seven (7) days of the Personnel Committee's written decision. For this purpose, the date of mailing of the written objections shall constitute the date of the filing of objections. Failure to appeal the Personnel Committee's determination within this time period shall constitute a waiver of any objections to the Personnel Committee's determination, which shall become final and binding.

4.2 Any appeal under this Article shall be heard and adjudicated by a Neutral Umpire mutually selected the City Administrator and the labor organization. In the event the City Administrator and the labor organization cannot agree on a Neutral Umpire, the City Administrator shall have the discretion to nominate as Neutral Umpire a licensed attorney in good standing with the Missouri Bar Association with experience in municipal law.

4.3 The Neutral Umpire shall preside as hearing officer. The hearing officer shall determine the admissibility of any disputed evidence and/or witness testimony. Formal rules of evidence shall not apply to the hearing but may be used as a guide by the hearing officer in making any determinations required by this section. Decisions of the hearing officer regarding the admissibility of evidence or witness testimony shall be final and binding, and not subject to review.

4.4 Each party shall have the right to present arguments, witnesses and supporting documentation at the hearing in support of its position(s). The petitioning labor organization shall have the burden of proof by a preponderance of the evidence that the Personnel Committee's determination is erroneous. The hearing officer may allow each party to make opening statements. Thereafter, the petitioning labor organization shall present its case-in-chief, including its witnesses and evidence in support of its position. Each party shall have the right to cross examine witnesses called by the opposing party. The City shall be given the opportunity to rebut the petitioning labor organization's case-in-chief, including presenting its witnesses and any evidence in support of its position. Further rebuttal or surrebuttal shall be at the discretion of the hearing officer. The hearing officer may allow each party to make closing statements and/or to file post-hearing briefs at its sole discretion. The hearing shall be transcribed by a court reporter, the cost of which shall be borne equally by the City and by the petitioning labor organization.

4.5 Within fourteen (14) days of the later of the conclusion of the hearing or the filing of post-hearing briefs, the hearing officer shall render a decision on the disputed unit description issues, which shall be final and binding and not subject to review. The hearing officer shall prepare and issue to the parties a written decision.

5. Collective Bargaining

5.1 Any solicitation of City employees to consider joining a labor organization or a bargaining unit may not be conducted while such employee is on duty in his or her capacity as an employee of the City. The City shall not pay any labor organization representative or employee for time spent participating in collective bargaining or preparing for collective bargaining on behalf of a labor organization, except to the extent the person in question is an employee of the public body and elects to use accrued paid time off that was personally accrued by such person to cover the time so spent.

5.2 Supervisory employees shall not be included within the same bargaining unit as any City employees they directly or indirectly supervise. The same labor organization shall not represent both non-supervisory and supervisory City employees. For purposes of this section, the term "supervisory employee" means anyone with supervisory or managerial status, or any other status that would constitute a conflict of interest or potential conflict of interest with the supervisor's duty of loyalty to the City in his or her role as a supervisory employee. For the purposes of this subsection, Sergeants shall be considered supervisory employees.

5.3 The City may not enter into any collective bargaining unit that requires employees in the bargaining unit to become members of the union or to pay union dues, fees or assessments



as a condition of employment by the City. Each employee in the affected bargaining unit shall be free to join and/or to support, or to refuse to join and/or to support, any labor organization that is designated as the exclusive representative for a unit of City employees.

5.4 No sum shall be withheld from the earnings of any City employee for the purpose of paying any portion of dues, agency shop fees, or any other fees paid by members of a labor organization or by City employees who are nonmembers except upon the annual written or electronic authorization of the member or nonmember. Signing or refraining from signing any authorization described under subsection 1 or 2 of this section shall not be made a condition of employment or continued employment. Nothing contained in this paragraph shall be construed to require the City to agree to union dues checkoff provisions.

5.5 In the event a labor organization is certified or voluntarily recognized as the exclusive bargaining representative of a unit of City employees, the City shall designate a City Negotiating Team that shall meet as soon as administratively feasible to commence negotiations with the labor organization for a collective bargaining agreement. Both sides shall bargain in good faith, and make an earnest effort to reach a mutually acceptable agreement, but neither side shall be required to offer any particular concession or to agree to any particular proposal.

5.6 If the parties reach an agreement, management shall present the agreement to the City Council for approval on. Before any proposed agreement or memorandum of understanding is presented to the City Council, the labor organization, as a condition of its presentation, shall establish that it has been ratified by a majority of its members. The City Council may approve the entire agreement or any part thereof. If the City Council rejects any portion of the agreement, the City Council may return any rejected portion of the agreement to the parties for further bargaining, adopt a replacement provision of its own design, or state that no provision covering the topic in question shall be adopted. Any tentative agreement reached between the parties' representatives shall not be binding on the City or the labor organization unless and until approved by the City Council.

5.7 The City and labor organization shall not be subject to binding mediation, binding interest arbitration, or interest arbitration in the event the parties are unable to reach an agreement. The parties may, however, mutually agree to utilize the services of a neutral mediator, including but not limited to a representative of the Federal Mediation and Conciliation Service, but the mediator shall not have any power to bind either party.

5.8 In the event the parties are unable to reach a tentative agreement, the City Negotiating Team may present to the City Council the most recent contract offer made to the labor organization during contract negotiations. If the City Council determines that the City Negotiating Team has engaged in good faith negotiations with the labor organization concerning the terms and provisions of the proposed contract, the City Council may enact part or all of the tendered contract offer. The decision of the City Council shall be final and binding, and not subject to review or appeal.

5.9 The term of any labor agreement, provision of a labor agreement, or extension of a labor agreement shall not exceed a period of three years.

6. Decertification and Recertification

6.1 City employees within the bargaining unit shall have the right to decertify the labor organization as their exclusive bargaining representative at any time. In the event that the majority of the employees in a designated bargaining unit determine that they no longer wish to be represented by a recognized labor organization, they may revoke their designation of the labor organization by tendering a signed and dated petition for revocation to the City Administrator. Upon receipt of such a petition, the City Administrator shall investigate the veracity of the petition. If the City Administrator determines that the petition to revoke representation is authentic, the City Administrator shall so report to the Board of Aldermen, which shall then revoke recognition of the labor organization.

6.2 A labor organization designated as the exclusive bargaining representative for any City employees covered by this Ordinance shall recertify its majority status at least once every three years. Any labor organization that does not recertify its majority status in a timely fashion shall be decertified as exclusive bargaining representative of the bargaining unit. To meet the recertification requirement, continuation of the labor organization's status as the exclusive bargaining representative shall be favored in a secret ballot election conducted by a Neutral Umpire by more than fifty percent (50%) of the City employees in the bargaining unit, or by presentation of authorization cards signed by more than fifty percent (50%) of the City employees in the bargaining unit, at the option of the City Administrator. The authorization card validation procedure set forth in Article 2 shall apply to recertification cards.

7. Strikes

7.1 Strikes and other unlawful conduct by any employee, whether individually or in concert with others (including sympathy, unfair labor practice, or wildcat strikes), sit downs, slow downs, work stoppages, boycotts, sick-outs, "blue flu," any acts honoring a picket line, or any other acts that interfere with the City's operations are prohibited. Employees who violate this provision are subject to disciplinary action, up to and including termination of employment.

8. Severability

8.1 If any term or provision of this Ordinance is found to be invalid or unenforceable, the remaining terms and provisions of this Ordinance shall remain in full force and effect and shall in no way be affected, impaired or invalidated.



Bill No. 4023
Ordinance No. _____

Section 2. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this _____ day of _____, 2019. _____
TIM POGUE, MAYOR

APPROVED this _____ day of _____, 2019. _____
TIM POGUE, MAYOR

ATTEST: _____
ERIC HANSON, CITY ADMINISTRATOR