

STAFF REPORT



MEETING DATE:	2/26/13
SUBJECT:	Consider Approval of Employer-Employee Resolution and Related Actions
AGENDA ITEM:	12
STAFF CONTACT:	Dan Little

STAFF RECOMMENDATION:

It is recommended that the board of directors:

1. Adopt the attached Employer-Employee Relations Resolution; and
2. Approve and appoint a board of director's ad-hoc subcommittee to guide informal labor discussions.

DISCUSSION:

SRTA, as a newly established independent public agency, is required to have procedures to guide employer-employee relations consistent with applicable labor laws. The attached Employer-Employee Relations Resolution addresses formation of unions and labor bargaining rights. These resolutions are highly standardized; the attached procedures are based closely on another agency's recent update. Adoption of the resolution does not require formation of a union, it merely spells out procedures should eligible SRTA staff decide to organize. Approval of the attached resolution is independent of the second action item to pursue informal labor discussions. In fact, if labor discussions can continue informally to everyone's satisfaction, the laws and formalized processes in the Employer-Employee Relations Resolution would not be triggered.

SRTA staff was once unionized prior to formation of the independent agency. Staff has expressed no desire to organize at this time – stating instead that they prefer to communicate labor matters more informally with the board of directors. On February 20, staff met with SRTA legal counsel and the SRTA Fiscal Committee (board of director members Moty and Watkins) to discuss an informal employer-employee relations process. An informal process would facilitate communication, but without the confines of a more rigid and cumbersome union process. It was agreed that an informal process to develop an employer-employee MOU (or something similar) could be beneficial to all parties – especially for a small agency such as SRTA. From the employer perspective, an informal process would result in reduced costs and staff time. From the employee perspective, an informal process would ideally be more communicative, non-adversarial, and expeditious. Success towards these benefits would depend on good-faith efforts by all parties.

The SRTA Fiscal Committee recommends that the full board of directors consider approval of an informal employer-employee relations process and appoint an ad-hoc labor subcommittee to

help guide the process. It is envisioned that the subcommittee would meet once or twice to discuss labor proposals with staff representatives prior to consideration by the full board of directors in April. The labor committee should consist of two to three board members. It could be the SRTA chair and vice chair, the same members of the fiscal committee, or any other appointments deemed appropriate by the board of directors.

ALTERNATIVES:

The board of directors could reject the proposal for informal employer-employee relations. It would then be up to staff to invoke the formal union process with the board of directors as set forth in the resolution.

FINANCING:

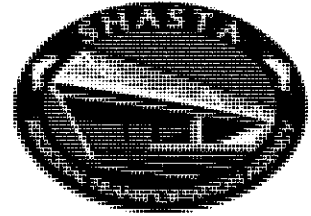
Adoption of Employer-Employee Relations Resolution will have no fiscal impact. Approval of an informal process, if successful, would result in reduced cost to the agency related to management time, legal fees and, if needed, labor negotiators.

A handwritten signature in black ink, appearing to read 'D. Little', is written over a horizontal line.

Daniel S. Little, AICP, Executive Director

Attachments: Resolution No. 13-03

RESOLUTION



RESOLUTION NUMBER:	13-03
SUBJECT:	Employer-Employee Relations

The Shasta Regional Transportation Agency (SRTA) Board of Directors hereby resolves that a new policy is hereby adopted to be known as the Employer-Employee Relations Resolution of SRTA as set forth below.

EMPLOYER-EMPLOYEE RELATIONS RESOLUTION

SECTION:

- I. Statement of Purpose
- II. Definitions
- III. Employee Rights
- IV. SRTA Rights
- V. General Provisions
- VI. Representation, Decertification and Combined Positions
- VII. Policy and Standards for Determination of Appropriate Units
- VIII. Modification of Representation Units
- IX. Appeals
- X. Meeting and Conferring
- XI. Impasse Procedures
- XII. Payroll Deductions on Behalf of Employee Organizations
- XIII. Employee Organization Activities – Use of SRTA Resources
- XIV. Construction
- XV. Severability

marital status, veterans status, denial of Family and Medical Care Leave, disability (mental and physical) including HIV and AIDS, medical condition (cancer and genetic characteristics), religion, and sexual orientation.

H. **EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION** means an organization that has been formally recognized by SRTA as the employee organization representing the employees in an appropriate representation unit pursuant to this Resolution, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees without regard to race, color, creed, gender, or national origin, or age (age 40 and over), marital status, veterans status, denial of Family and Medical Care Leave, disability (mental and physical) including HIV and AIDS, medical condition (cancer and genetic characteristics), religion, and sexual orientation.

I. **EMPLOYEE RELATIONS OFFICER** means the Executive Director in matters of employer-employee relations or his or her duly authorized representative.

J. **IMPASSE** means that the representatives of SRTA and an Exclusively Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters within the scope of representation, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

K. **MAJORITY** for the purposes of this Resolution shall mean 50% plus 1.

L. **MANAGEMENT EMPLOYEE** means any manager or mid-manager, designated by the Executive Director, who has significant responsibilities for the formulation or administration of SRTA policies and programs, or who regularly gives personnel, management or policy level advice. Nothing in this paragraph shall be deemed to preclude representation of non-managerial, non-supervisory employees by an employee organization that represents other non-managerial, non-supervisory employees.

M. **MANAGEMENT REPRESENTATIVE** means the Executive Director and/or person(s) duly authorized by the Executive Director to act as a representative of SRTA for employer-employee relations.

N. **MEDIATION** means the efforts of an impartial third person or persons functioning as an intermediary to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion, and advice.

O. **MEET AND CONFER IN GOOD FAITH** means performance by duly authorized SRTA representatives and by duly authorized representatives of an Exclusively Recognized Employee Organization of their mutual obligation to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by SRTA of its final budget for the ensuing year. This mutual obligation shall not require either party to agree to a proposal or to make a concession.

P. **PROFESSIONAL EMPLOYEES** means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including but not limited to planners, accounts and engineers.

Q. **PROOF OF EMPLOYEE SUPPORT** shall mean the documentation presented by an employee organization to the Employee Relations Officer indicating approval by the required

Section IV. SRTA RIGHTS

Subject to state law, nothing herein shall be construed to restrict any SRTA or legislative or managerial policy, including among others:

1. The exclusive right to determine the methods, means, and personnel by which SRTA government operations are to be conducted as well as to exercise complete control and discretion over its organization, operations and the technology of performing its work;
2. To determine the mission, function and necessity of all or part of each of its constituent departments, boards, and commissions;
3. To take all necessary actions to carry out their mission, functions and necessity, or any part thereof, as well as to set standards of service to the public;
4. To administer the SRTA Human Resources Policies and Procedures Resolution;
5. To classify or reclassify positions;
6. To add or delete positions or classes to or from the SRTA Budget or Salary Resolution;
7. To establish standards for employment, promotion, and transfer of employees;
8. To direct its employees, to establish rules and regulations; to take disciplinary action for proper cause;
9. To establish work schedules and work assignments; and to relieve its employees from duty for lack of work, lack of funds, or other legitimate reasons;
10. To be the sole judge of the qualifications and competence of its officers and employees and
11. To take whatever action may be necessary in an emergency situation. SRTA shall promptly notify an Exclusively Recognized Employee Organization affected by the action of any such emergency action that affects matters within the scope of representation.

Section V. GENERAL PROVISIONS

A. Proof of Support For Recognition and Decertification Petitions

The required number of employees whom the employee organization purports to represent shall provide proof of employee support. Documents submitted to SRTA as proof of employee support shall remain confidential and not be disclosed to any party other than the petitioner, except to indicate whether the proof of support is sufficient. Any party which contends that proof of employee support was obtained by fraud or coercion, or that the signatures on such support documentation are not genuine, shall file with the Employee Relations Officer in the form of declarations under penalty of perjury supporting such contention within 20 days of the petition which the proof of support accompanied. When *prima facie* evidence is submitted to the Employee Relations Officer, the Employee Relations Officer shall conduct further investigations. If, as a result of such investigation, the Employee Relations Officer determines that the proof of support is inadequate because of such misconduct, the petition shall be dismissed.

of a Memorandum of Understanding).

C. Posting Notices of Petitions

SRTA shall post a notice of any petition filed under this Resolution no later than 15 working days from its receipt. The notice will be posted conspicuously on employee bulletin boards in each facility of SRTA in which members of the unit claim to be appropriate are employed. The notice shall remain posted for 20 calendar days.

D. Procedure Upon SRTA Receipt of All Petitions

Upon receipt of a Petition, the Employee Relations Officer shall determine whether there has been compliance with the requirements of the Petition. Note: For a Petition for Recognition, Severance, or Modification, the Employee Relations Officer shall also determine whether the proposed representation unit is an appropriate unit in accordance with this Resolution.

1. Notice to Petitioning Organization.

If the Employee Relations Officer makes an affirmative determination on the proof of employee support, he or she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall not take action on said request for thirty (30) days thereafter.

If proof of employee support is not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing. The petitioning employee organization may appeal such determination in accordance with Section IX of this Resolution.

2. Notice to Exclusively Recognized Employee Organization

If the petitioning organization seeks to represent employees who are then currently represented by an Exclusively Recognized Employee Organization, the Employee Relations Officer shall inform the Exclusively Recognized Employee Organization of the receipt of the petition, and any action thereon by the Employee Relations Officer.

E. Election Procedures

Election procedures are applicable to petitions for recognition, decertification and a combination thereof including severance unless specified.

1. General Information

Upon the appropriate showing of support by the petitioning Employee Organization(s) and, both SRTA and the Employee Organization have met the preconditions stated in Section VI, the Employee Relations Officer shall notify the appropriate Employee Organization(s) and shall arrange for a secret ballot election to ascertain the free choice of employees within the representation unit, unless the petition meets the requirements set forth in Sections VI.A and B, below.

When an election is required pursuant to this Resolution, it shall be conducted in the following manner consistent with the provisions of this Resolution:

- a. The Employee Relations Officer shall be agreed upon by the partners

e. The ballots shall also pose the question: "Shall [Union] be elected as the exclusive representative of all employees including the Professional Employees associated with this unit?"

f. The ballots shall be printed at no expense to the concerned Recognized Employee Organizations.

4. Notice of Election and Observers

a. A notice of election in a form approved by the Elections Supervisor shall be posted at locations serving employees in the unit involved at least five (5) calendar days prior to the election.

b. Each eligible employee organization and SRTA are authorized to provide one observer at each polling place. Each party shall be responsible for the presence of his observers and no balloting or counting shall be delayed because of the absence of one or more observers

5. Challenges to Voter Eligibility

a. Any authorized observer may challenge the eligibility of a voter. It shall be the duty of the Election Supervisor or his or her designee to place the challenged ballot in a sealed envelope indicating that the voter in question has cast a challenged ballot.

b. The Election Supervisor shall subsequently determine the eligibility of the voter who cast a challenged ballot and either count or reject said vote. The decision of the Election Supervisor shall not be subject to appeal and shall be final and binding on all parties.

6. Voting Locations, Voter Rights and Electioneering

a. Voting locations shall be agreed to by the parties or designated by the Election Supervisor after consultation with the parties no later than fifteen (15) days before the election.

b. The election will be by secret ballot and voters will be allowed to vote without fear of restraint or coercion.

c. Electioneering will not be permitted on the day of the election.

7. Election Supervisor Duties

a. At the conclusion of the election, the Election Supervisor, after adjudicating the status of the challenged ballots, shall count all the ballots and certify the results of the election. These results shall be final and binding on the parties.

b. The Election Supervisor is hereby authorized to make such administrative and procedural rulings, as he or she deems necessary to carry out the elections.

notice of the filing to the employees in the proposed unit, Recognized Employee Organizations, and the Board of Directors.

An employee organization that seeks to be formally acknowledged as an Exclusively Recognized Employee Organization representing employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

1. Name and address of the employee organization.
2. Names and titles of its officers, as well as designation of the officials authorized to act as representatives of the organization in matters relating to employer-employee relations with SRTA.
3. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing the employees in their employment relations with SRTA.
4. A statement of whether or not the organization is a chapter or local of, or affiliated with, a regional or state, or national or international labor organization and, if so, the name and address of each such regional, state, national or international labor organization.
5. Certified copies of the national and local organization's constitution and/or bylaws if applicable.
6. A designation of the name and address of the person or office to which notices may be sent by regular United States mail, and which notices will be deemed sufficient notice to the organization for all purposes.
7. A statement that the organization has no restriction on membership based on race, color, creed, national origin, gender, age, religion, sexual orientation, veterans status, mental or physical disability or medical condition.
8. The job classification(s) and/or position title(s) of SRTA employees in the unit claimed to be appropriate.
9. A statement, accompanied by appropriate proof, that the employees in the unit claimed to be appropriate and the approximate number of employees therein. Proof of support shall conform to the provisions of Section V.A, above.
10. A statement, accompanied by appropriate proof that the employee organization has in its possession, proof of employee support as herein defined, to establish that at least thirty (30) percent of the employees in the unit claimed to be appropriate and have designated the employee organization to represent them in their employment relations with SRTA. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.
11. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

agreement on the matters in dispute, a written memorandum shall be prepared setting forth said agreement, which shall include a description of the unit to be established. The execution of the agreement shall resolve the matter and the Employee Relations Officer shall certify the unit(s) agreed upon and notify the parties.

If no amended petition or challenging petition(s) have been filed and the disagreement cannot be resolved by mutual agreement among the parties, the Employee Relations Officer shall determine the challenges and the appropriate unit or units as between such proposed overlapping units in accordance with the criteria set forth in this Resolution. Any of the parties or SRTA may petition to have the matter submitted to the appeal process set forth in Section IX, including the intervention of the California State Mediation and Conciliation Service.

E. In the Absence of a Petition

In the absence of a petition to establish representation units, the Employee Relations Officer may establish appropriate representation units in accordance with the criteria in Section V after consultation with the Recognized Employee Organizations.

F. Decertification Petitions

1. Filing Period

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the thirty (30) day period falling no more than one hundred twenty (120) days or less than ninety (90) days before the expiration of the Memorandum of Understanding, or when there is no Memorandum of Understanding in effect (e.g., after the expiration of a Memorandum of Understanding).

2. Proof of Support

Such petition must be accompanied by proof of employee support, as set forth in this section, equal to at least thirty percent (30%) of the employees occupying permanent budgeted positions within the appropriate representation unit. A Decertification Petition may be filed by two or more employees, or their representative, or an employee organization and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete.

- 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 established appropriate unit and of the incumbent Exclusively Recognized Employee Organization seeking decertification as a representative of the unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- d. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented

- A. The efficient operations of SRTA and its compatibility with the primary responsibility of SRTA and its employees to effectively and economically serve the public, and
- B. Effective representation based on recognized community of interest considerations.
- C. The appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered in community of interest analysis shall be:
 - 1. The unit shall include the broadest feasible groups of employees based upon internal and occupational community of interest. Fragmentation of units is to be avoided.
 - 2. Consistency with the organizational patterns of SRTA.
 - 3. The history of employee relations in the unit, among other employees in SRTA, and in similar public employment.
 - 4. Similarity of duties, qualifications, skills, and working conditions of employees.
 - 5. No SRTA employment classification title shall be included in more than one representation unit. Supervisory employees and non-supervisory employees shall not be included in the same unit.
 - 6. Professional employees shall not be denied the right to be represented separately from non-professional employees by a professional employee organization consisting of such employees.
 - 7. Management and/or confidential employees shall not be included in any unit which includes non-management and/or non-confidential employees.

Section VIII. MODIFICATION OF REPRESENTATION UNITS

- A. Employees or an employee organization may file a petition for modification of an established representation unit. The petition shall be submitted to the Employee Relations Officer, accompanied by proof of employee support that the petitioner represents more than fifty percent (50%) of the employees who, if the petition were successful would be placed in a separate or another bargaining unit.
- B. The petitioners shall also submit a list of the classifications to be included in the modified unit, the number of employees in each classification, as well as the divisions and departments to which they belong. Requests for modification of an established representation unit may be filed no more than 120 or less than 90 days prior to the expiration of any governing MOU. SRTA may also propose a unit modification under the provisions of this section without proof of employee approval.
- C. The Employee Relations Officer shall give notice of the request for modification of an established representation unit to the employees in the proposed unit, to the recognized representative of the unit or units affected thereby, to affected departments, and to Recognized Employee Organization(s).
- D. Within thirty (30) days of the date the notice provided for in subdivision B above is given to the employees in the proposed modified unit, a challenge(s) to the appropriateness of the proposed modified unit or a petition for the establishment of a different unit, may be filed by employees representing at least thirty percent (30%) of the employees in the proposed modified unit or fifty percent (50%) of the employees in the original representation unit who would remain

reassignment of an existing job classification to another unit, the Employee Relations Officer's authority to make such assignment shall be limited to those instances where there has occurred a material change in the circumstances affecting the unit determination of the class in question. Examples of material changes and circumstances shall include, but not in any way be limited to, substantial reorganization of a SRTA department, a consolidation and/or elimination of a SRTA department(s) or a substantial change in the duties or obligations of a SRTA department or a SRTA job classification.

Section IX. APPEALS

In the event agreement is not reached between SRTA and affected employee organizations concerning the appropriateness of a proposed representation unit or a modification thereof the employee organization may, within ten (10) days of notice thereof request the intervention of the California State Mediation and Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter, appeal such determination to SRTA Board of Directors for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Section 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a registration request or a representation petition or a decertification petition or a unit modification petition has not been filed in compliance with the applicable provision of this Resolution may, within fifteen (15) days of notice of such determination appeal the determination to the Board of Directors for final decision.

Appeal to the Board of Directors shall be filed in writing with the Clerk to the Board, and a copy thereof served on the Employee Relations Officer. The Board of Directors shall begin consideration of the matter within thirty (30) days of the filing of the appeal. The Board of Directors may, in its discretion, refer the dispute to a third party hearing process. Any decision of the Board of Directors on the use of such procedure, and/or any decision of the Board of Directors determining the substance of the dispute shall be final and binding.

Any costs incurred as a result of the use of the appeals process shall be borne by the party incurring them, provided, however, that costs incurred for the services of a third party hearing officer and/or panel as may be requested solely by the Board for an advisory opinion shall be borne by SRTA.

Section X. MEETING AND CONFERRING

A. Only Exclusively Recognized Employee Organizations shall be entitled to meet and confer with duly designated management representatives on wages, hours, and other terms and conditions of employment for such units. The number of employees receiving paid released time to act as representatives of such employee units shall be limited to three (3) "at any one meeting. However, employee organizations may request additional representatives to receive paid released time, dependent upon the type of negotiations. Criteria for consideration of additional table representatives shall include whether multiple units are represented and other compelling factors presented by the bargaining unit. When same table multi-unit meeting and conferring is agreed upon, additional employee paid released time will be allowed at the rate of one representative per additional unit, up to a maximum of five (5) total employee representatives.

1. To identify and specify in writing the issue or issues that remain in dispute.
2. To review the position of the parties in a final effort to resolve such disputed issue or issues.
3. If the dispute is not resolved, to discuss arrangements for the possible utilization of the impasse procedures provided herein.

B. Impasse Procedures

1. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be promptly submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues nor shall an employee organization or SRTA representative provide such information to the public or media, unless SRTA and employee organization agree otherwise.
2. If mediation is not used or successful, then fact finding, if requested by an employee organization, shall be initiated pursuant to the mandatory fact finding procedures set forth in state law.

C. Cost of Impasse Procedures

The costs for the services of a mediator and fact-finder or chairperson of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding shall be as specified in state law.

Section XII. PAYROLL DEDUCTIONS ON BEHALF OF EMPLOYEE ORGANIZATIONS

Upon acknowledgement by SRTA of an Exclusively Recognized Employee Organization under this Resolution, only such Exclusively Recognized Employee Organization may be provided payroll deductions of membership dues and programs upon the written authorization of employees in the unit represented by the Exclusively Recognized Employee Organization on forms approved therefore by SRTA. The providing of such service to the Recognized Employee Organization by SRTA shall be contingent upon the Recognized Employee Organization's conformance with the terms of this Resolution and in accordance with the provisions of the Memorandum of Understanding and/or applicable administrative procedures.

Section XIII. EMPLOYEE ORGANIZATION ACTIVITIES - USE OF SRTA RESOURCES

Access to SRTA work locations and the use of SRTA paid time, facilities, equipment and other resources by employees or recognized organizations and those representing them shall be authorized only to the extent provided for in a Memorandum of Understanding and/or administrative procedures, shall be limited to activities pertaining directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of SRTA operations.