

2
3 **AN ORDINANCE GRANTING CERTAIN EMPLOYEES**
4 **OF THE CITY OF FORT WAYNE THE RIGHT TO**
5 **“COLLECTIVELY BARGAIN” IN CHAPTER 40 OF THE**
6 **FORT WAYNE MUNICIPAL CODE OF ORDINANCES**
7

8
9 WHEREAS, Collective bargaining is an employment right permitted to many
10 workers in the private sector across the United States;

11
12 WHEREAS, Collective bargaining in the private sector is largely governed by the
13 National Labor Relations Act;

14
15 WHEREAS, public sector employees in the State of Indiana, including those
16 employees of the City of Fort Wayne, do not have the same existing right to
17 collectively bargain and their employment relationships with their employers are not
18 subject to the terms of the National Labor Relations Act;

19
20 WHEREAS, employees of the City of Fort Wayne were permitted to collectively
21 bargain by local ordinance for a number of decades until that ordinance was repealed in
22 2014;

23
24 WHEREAS, employees of the City of Fort Wayne can be granted a right to
25 collectively bargain if the legislative body creates an ordinance permitting collective
26 bargaining for certain city employees;

27
28 WHEREAS, Common Council believes that it is in the best interest of the employees
29 of the City of Fort Wayne to provide them the right to choose whether or not they want to
30 participate in collective bargaining with the City;

31
32 WHEREAS, Common Council wishes to provide an effective collective bargaining
33 process for certain employees of the City of Fort Wayne, the City of Fort Wayne, and any
34 union(s) appropriately selected by eligible employees of the City of Fort Wayne; and

35
36 WHEREAS, Common Council wishes to introduce the accompanying Ordinance
37 drafted in collaboration with the City of Fort Wayne and other interested parties.
38

39 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL**
40 **OF FORT WAYNE, INDIANA, AS FOLLOWS:**
41

42 **Section 1.** That § 40.01 and § 40.02 of the Fort Wayne Municipal Code of Ordinances
43 are deleted in their entirety and replaced, and § 40.03 is changed to § 40.14 and restated as
44 follows (Ordinance will read §§ 40.01 – 40.14 as identified below):

1
2 SEE EXHIBIT A attached to this submission.
3

4 **Section 2.** In an abundance of caution and to eliminate any confusion, Common
5 Council states that this ordinance does not impact the remainder of Chapter 40,
6 specifically, “*Arbitration and Collective Bargaining For Police Officers and*
7 *Firefighters*” §§ 40.20 – 40.37. Those provisions remain in effect.
8

9 **Section 3.** That the City is directed to take all action necessary and proper for the
10 implementation of this Ordinance, including notifying all City departments, divisions,
11 or City-operated utilities of the Ordinance and its requirements. This shall include, but
12 not be limited to, notifying impacted departments of their new obligations under this
13 Ordinance.
14

15 **Section 4.** After passage and approval by the Mayor, this Ordinance shall be
16 effective as of January 1, 2021.
17

18 **COMMON COUNCIL OF THE CITY OF**
19 **FORT WAYNE**
20
21
22

23 _____
24 Glynn Hines, Council Member
25

26 _____
27 Sharon Tucker, Council Member
28

29 _____
30 Michelle Chambers, Council Member
31

32 _____
33 Geoff Paddock, Council Member
34

35 APPROVED AS TO FORMAL LEGALITY:
36
37

38 _____
39 Joseph G. Bonahoom, Attorney for City
Council

EXHIBIT A

COLLECTIVE BARGAINING

§ 40.01 APPLICATION.

(A) This section shall apply to all **ELIGIBLE EMPLOYEES** (defined below) of the City of Fort Wayne and its utilities (other than those public safety employees who are subject to §§ 40.20 – 40.37 of the Fort Wayne Municipal Code of Ordinances). This section shall apply to the City of Fort Wayne and all of its authorities, divisions and departments.

(B) The following definitions shall apply to this section:

(1) **CONFIDENTIAL EMPLOYEE.** This is an employee:

(a) Who works in the city's personnel office;

(b) Who has access to confidential or discretionary information that may be used by the city in negotiating a collective bargaining agreement under this section;

(c) Who works in a close and continuing working relationship with:

1. An individual holding elective office; or

2. Individuals who represent the city in negotiations under this section;

(d) Whose:

1. Functional responsibilities; or

2. Knowledge;

concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or

(e) Who is the administrative assistant or administrative aide of:

1. A division or department head; or

2. An individual holding elected office.

(f) Whose primary role is to handle and disseminate the City's public information but is not a public safety or computer facility communications employee.

1. No union contract presented to Council for approval after the effective date of this provision shall contain a provision that prevents the city from participating in a nonunion multiple political subdivision communications department or county public safety communications system and computer facilities district, that requires the terms of the union contract to apply to the operation of, and the city's participation in, a multiple political subdivision communications department or county public safety communications system and computer facilities district, or that requires the city to provide employment for individuals whose jobs may be eliminated as the result of the city's participation in a joint communications department or a county public safety communications system and computer facilities district.

(2) **PROFESSIONAL EMPLOYEE.** Any employee engaged in work (a) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (b) involving the consistent exercise of discretion and judgement in its performance; (c) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (d) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instructions and study in institution of higher learning or a hospital as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes. Additionally, an employee holding the position of "Chief Operator with WT5 certification" or "Chief Operator with WT4 certification" shall be considered a **PROFESSIONAL EMPLOYEE**.

(3) **PUBLIC SAFETY EMPLOYEE.** A member of either the city's police or fire department who is also a member of a police or fire pension fund and subject to §§ 40.20 – 40.37 of the Fort Wayne Municipal Code of Ordinances.

(4) **SUPERVISORY EMPLOYEE.** An individual having authority in the interest of the city, or its utilities, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other

employees, or responsibility to direct other employees, or to adjust employee grievances, or effectively to recommend such action, if the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(5) **SEASONAL EMPLOYEE.** An individual hired by the City into a position of a limited duration and may work either full or part time hours not to exceed 1,560 hours annually.

(6) **INTERLOCAL EMPLOYEE.** An employee of the City whose employment is subject to an interlocal agreement or joint employment relationship with the City and a non-City party.

(7) **PART-TIME EMPLOYEE.** An individual that is employed by the City under the conditions one of the following categories:

(a) Benefits part-time employee hired into positions of indefinite duration, normally working less than 30 but at least 20 hours per week; or

(b) No benefits part-time employee hired into positions of indefinite duration and working less than 20 hours per week.

(8) **ELIGIBLE EMPLOYEE.** An individual currently employed employee of the City that is not a **PUBLIC SAFETY EMPLOYEE, CONFIDENTIAL EMPLOYEE, SUPERVISORY EMPLOYEE, SEASONAL EMPLOYEE, INTERLOCAL EMPLOYEE** or **PART-TIME EMPLOYEE**.

§ 40.02 RIGHTS OF ELIGIBLE EMPLOYEES AND SELECTION OF BARGAINING UNITS.

(A) **ELIGIBLE EMPLOYEES** shall have the right to bargain collectively with and to be represented by such labor organization or organizations as so selected by a majority of **ELIGIBLE EMPLOYEES** in a bargaining unit voting in an election satisfying the requirements contained in 40.01 – 40.14.

(B) **BARGAINING UNIT** shall be defined, for purposes herein, as a one of two groups of **ELIGIBLE EMPLOYEES**, experiencing commonality of work and job functions, notably eligible civil city employees in one bargaining unit and eligible city utility employees in the second bargaining unit. No civil city employee shall be included or otherwise belong in the bargaining unit for city utility employees and no city utility employee shall be included or otherwise belong in the bargaining unit for civil city employees. A bargaining agent may represent **ELIGIBLE EMPLOYEES** of both civil city and city utilities, but separate agreements must be negotiated for each group.

(C) The determination of two bargaining units, one for civil city **ELIGIBLE EMPLOYEES** and one for city utility **ELIGIBLE EMPLOYEES**, shall be the sole adopting mechanism for bargaining units of the **ELIGIBLE EMPLOYEES** of the City of Fort Wayne, irrespective of whether a subdivision or subdivisions of civil city employees and/or city utility employees was or were previously recognized by the City of Fort Wayne, or identified by certification, contract, or past practice, as a unit for collective bargaining.

(D) Union contracts negotiated after the effective date of this section will include a provision granting qualified employees with seniority rights within that union, as of the effective date of this section, the ability to exercise those seniority rights over similarly qualified or lesser qualified employees of other departments represented by that same union, even though the department may be covered by a different contract negotiated by the city/city utilities and that union for the purposes of fulfilling job vacancies.

§ 40.03 ANNUAL ELIGIBLE EMPLOYEE LIST.

(A) Common Council shall determine the employees that are considered **ELIGIBLE EMPLOYEES** and shall ratify a list of **ELIGIBLE EMPLOYEES** on an annual basis per the requirements of this subsection 40.03. Any list requiring submission shall include job position and title.

(B) No later than January 31, 2021 and no later than January 31 of any subsequent year, each **BARGAINING UNIT** shall submit to Common Council a list identifying the job position and title that

the **BARGAINING UNIT** believes the employees holding those titles in those positions should be considered for purposes of this Chapter 40. The list shall be presented to the City Clerk who shall notify Common Council of its receipt of the list at the next meeting of Common Council. If a **BARGAINING UNIT** is represented by a **BARGAINING AGENT**, the list shall be submitted by the representative agent. If a **BARGAINING UNIT** is not represented by a **BARGAINING AGENT**, the list shall be submitted by an interested agent that desires to be selected as the **BARGAINING AGENT** for the **BARGAINING UNIT** for which an **ELIGIBLE EMPLOYEE** list is being compiled. Disputes arising under this 40.04(B) from lists submitted by multiple interested agents shall be resolved by Common Council in its sole discretion.

(C) No later than January 31, 2021, and no later than January 31 of any subsequent year, the City of Fort Wayne, through the City's Legal Department, shall submit to Common Council by presenting the submission to the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common Council a list for each **BARGAINING UNIT** identifying the job position and title that the **BARGAINING UNIT** believes the employees holding those titles in those positions should be considered for purposes of this Chapter 40.

(D) All employees that appear on both the list submitted by the **BARGAINING UNIT** to Common Council and the list submitted by the City of Fort Wayne pertaining to the same **BARGAINING UNIT** shall be ratified as **ELIGIBLE EMPLOYEES** within that **BARGAINING UNIT**.

(E) The eligibility of any employee whose job position and title appears on only one of the lists submitted to Common Council for a particular **BARGAINING UNIT**, but not both, must be reviewed by Common Council within 30 days of the date in which the last timely submitted list was given to Common Council by the City Clerk. Common Council shall have exclusive authority to determine classification of any such job position and title and shall make a final determination as to the list of eligible employees by job position and title within 30 days of the date in which the last timely submitted list was given to Common Council by the City Clerk. If Common Council determines that a job position and title reviewed under this subsection 40.03 should be considered eligible and makes an affirmative declaration of the same, then the employee holding that job position and title shall be ratified as an **ELIGIBLE EMPLOYEE** within a particular **BARGAINING UNIT**.

(F) If, by the date identified in 40.03(B) or 40.03(C), only one list of job positions and titles is submitted for the purported eligible employees of a **BARGAINING UNIT**, then the job position and title identified on the list that is submitted shall be the ratified as the complete list of **ELIGIBLE EMPLOYEES** for the year in which the list was submitted and all employees in those job positions and titles on it shall be ratified as the complete list of **ELIGIBLE EMPLOYEES** for the **BARGAINING UNIT** for the year in which the list was submitted.

(G) If, by the date identified in 40.03(B) or 40.03(C), no job position and title list is submitted to Common Council, the City of Fort Wayne shall not engage in collective bargaining negotiations with any entity authorized to negotiate on behalf of a **BARGAINING UNIT**, until a job position and title list of purported eligible employees is submitted to Common Council. If a job position and title list is submitted to Common Council under this subsection 40.03(G), the employees corresponding to the job position and title list shall be ratified as the complete list of **ELIGIBLE EMPLOYEES** for the **BARGAINING UNIT** for the year in which the list was submitted, unless the non-submitting party submits a responsive eligibility job position and title list within fifteen (15) days of the submission of an eligibility job position and title list submitted by the party who submitted. If the non-submitting party later submits an eligibility job position and title list within fifteen (15) days of the submission of the first list submitted to Common Council, then the subsections 40.03(C)-(E).

(H) Common Council may appoint a hearing officer to hear evidence on any issues and discrepancies arising out of the actions authorized under this Section 40.03 and report findings to Common Council based on any evidence presented, subject to any date or time restrictions identified in this subsection 40.03. Payment for the hearing officer(s)' services arising out of this Section 40.03 shall be shared equally by the **BARGAINING AGENT** representing or purporting to represent the **BARGAINING UNIT** at issue and the Administration of the City of Fort Wayne.

 **§ 40.04 SELECTION OF INITIAL BARGAINING AGENT.**

(A) Recognition as the exclusive bargaining agent for any bargaining unit shall be determined by those **ELIGIBLE EMPLOYEES** belonging to a particular bargaining unit according to the terms Sections 40.04 and 40.05.

(B) Any petition for recognition of an **INITIAL BARGAINING AGENT** must be signed by at least 30% of **ELIGIBLE EMPLOYEES** who are members of the bargaining unit seeking to select a bargaining agent and submitted to the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common Council. For purposes of this Chapter 40, **INITIAL BARGAINING AGENT** shall be defined as the first bargaining agent selected by an eligible and authorized bargaining unit for purposes of representing the bargaining unit in collective bargaining with the City of Fort Wayne after January 1, 2021.

(C) If a petition that satisfies subsection 40.04(B) above is filed with Common Council, an election shall be held within 60 days in which the membership may select an **INITIAL BARGAINING AGENT**. Common Council, through the City Clerk, shall give notice of the election to all **ELIGIBLE EMPLOYEES** in the bargaining unit for which a valid petition was filed to Common Council. The notice shall include the date and manner of the election. Said notice to **ELIGIBLE EMPLOYEES** shall be considered as sufficiently provided if it is made by the City Clerk to the City's Legal Department with a copy to Human Resources. The City's Legal Department shall provide the notice it receives to all affected **ELIGIBLE EMPLOYEES** in a manner identified by Common Council in its notice that may include, but is not limited to, posting notice in an commonly trafficked area at the place of employment, sending electronically to the last known email address of the **ELIGIBLE EMPLOYEES**, or mailing to the last known physical address of the **ELIGIBLE EMPLOYEES**. The election shall be by secret ballot, and shall be held on the premises where those voting are employed unless Common Council shall determine that the election cannot be fairly held there, in which case it shall be held at such place as Common Council shall determine, with notice of the change of location included in the required notice to **ELIGIBLE EMPLOYEES**. Common Council may promulgate rules as necessary to effectively conduct any election, including provisions for absentee voting. The provisions shall facilitate voting by all **ELIGIBLE EMPLOYEES**, and shall insure secrecy of the ballot. Common Council may determine after proper hearing any disputed issue concerning the eligibility of a person or persons to vote in the election or it may appoint a hearing officer pursuant to subsection 40.04(G). Payment for the hearing officer(s)' services arising out of this Section 40.04(C) shall be shared equally by the **BARGAINING AGENT** and the Administration of the City of Fort Wayne. The hearing must be held before an election and may be conducted by an authorized representative appointed by Common Council. A determination with respect to eligibility shall be applicable in the administration of this section and for any other purpose under this Chapter 40. In any election, there shall also be the option of "no representation" included on the ballot. In order for an **INITIAL BARGAINING AGENT** or "no representation" to be selected, it must receive an affirmative vote from a majority of those **ELIGIBLE EMPLOYEES** of the bargaining unit voting in the election. The decision of a majority of those voting shall control. If there are more than two candidates for bargaining agent, including "no representation," and no bargaining agent candidate or choice of "no representation" receives a majority of the votes cast, there shall be a run-off election between the two choices receiving the greatest number of votes. In the run-off election, the candidate or choice receiving the most votes cast shall be declared the winner. If, in the run-off, a candidate receives a majority of the

votes cast in the run-off, that candidate shall be determined the bargaining agent for that bargaining unit. If, in the run-off, “no representation” receives a majority of the votes cast in the run-off, there shall be no bargaining agent selected for the bargaining unit and the bargaining unit shall not be represented by a bargaining agent until the next permissible certification and election occurs.

(D) If a majority of the **ELIGIBLE EMPLOYEES** of a bargaining unit voting in an election to select an **INITIAL BARGAINING AGENT** does not select an **INITIAL BARGAINING AGENT** at said election, there shall be no representation by a bargaining agent for the remainder of the year in which the valid petition for certification was submitted to Common Council by presenting the submission to the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common Council. In order to select an **INITIAL BARGAINING AGENT** in a subsequent year, the bargaining unit must file a new petition for representation with Common Council by presenting the submission to the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common Council that is signed by at least 30% of the **ELIGIBLE EMPLOYEES** of the bargaining unit. Once a valid petition is filed with Common Council, an election shall be held within 60 days according to the terms of subsection 40.04(C).

(E) Any properly conducted selection of an **INITIAL BARGAINING AGENT** under this Section 40.04 shall continue in full force and effect unless a petition for decertification that satisfies the requirement of subsections 40.04(A) and 40.04(B) is filed with Common Council by presenting the submission to the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common Council.

(F) Common Council may appoint a hearing officer to hear evidence on any issues arising out of the actions authorized under this Section 40.04 and report findings to Common Council based on any evidence presented. Payment for the hearing officer(s)’ services arising out of this Section 40.04(G) shall be shared equally by the **BARGAINING AGENT** and the Administration of the City of Fort Wayne.

(G) After the filing of a petition, but prior to the selection of an **INITIAL BARGAINING AGENT**, all currently existing terms and conditions of employment, employment contracts, and any other contracts or agreements between the City of Fort Wayne and **ELIGIBLE EMPLOYEES** belonging to a particular bargaining unit shall remain valid and in effect until a valid petition for selection of an **INITIAL BARGAINING AGENT** is submitted for a bargaining unit and any terms and conditions of employment, employment contracts, and any other contracts or agreements between the City of Fort Wayne and **ELIGIBLE EMPLOYEES** are properly repealed and/or replaced or are otherwise terminated.

(H) No person who is not an employee of the City shall solicit employees for union membership in employee working areas or on the employee’s working time.

§ 40.05 DECERTIFICATION OF EXISTING BARGAINING AGENT AND SELECTION OF NEW BARGAINING AGENT.

(A) A petition for decertification must be filed with the City Clerk who shall notify Common Council of its receipt of the decertifying petition at the next meeting of Common Council.

(B) Upon the filing of a petition for decertification signed by at least 30% of **ELIGIBLE EMPLOYEES** who are members of a bargaining unit, Common Council shall hold an election within 30 days of Common Council having received notice of the filing of the petition from the City Clerk to determine whether a majority of the **ELIGIBLE EMPLOYEES** of the bargaining unit voting desire to have the previous bargaining agent continue to represent the bargaining unit. Notice of the election shall be given to the affected bargaining agent and to all affected **ELIGIBLE EMPLOYEES**. Ballots shall be

returned to the City Clerk and counted by a committee of people authorized and appointed by Common Council. The committee authorized and appointed by Common Council to count ballots must total at least three people and must include at least one person appointed from Common Council, one person appointed by the Mayor, and one person appointed from the **BARGAINING AGENT** at concern. The ballot question shall be: "Should the [insert bargaining agent] continue as the exclusive bargaining agent for [insert bargaining unit]? YES__ NO__." If a majority of the **ELIGIBLE EMPLOYEES** of the bargaining unit voting vote no, Common Council shall grant the decertification petition and the agent shall be considered decertified. No more than one petition to decertify may be filed against any bargaining agent in any twelve month period.

(C) **ELIGIBLE EMPLOYEES** who are members of an existing bargaining unit may not petition the Council to recognize them as a separate bargaining unit with the right to select their own bargaining agent.

(D) If an existing bargaining unit's agent is decertified, no election for a new bargaining agent may take place before 90 days have elapsed since decertification occurred. After 90 days have elapsed after a decertification, a bargaining unit's **ELIGIBLE EMPLOYEES** who wish to select a new bargaining agent must submit a petition signed by at least 30% of the **ELIGIBLE EMPLOYEES** to the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common Council. Once Common Council is notified of the petition for election of a new bargaining agent, an election that satisfies the requirements of 40.04(C) shall be held within 60 days of the petition having been presented to Common Council in which **ELIGIBLE EMPLOYEES** of the bargaining unit may select a new bargaining agent. In any event, no election contemplated under this 40.05(D) shall take place until 90 days have elapsed since decertification occurred. Common Council, through the City Clerk, shall give notice of the election to all **ELIGIBLE EMPLOYEES** in the bargaining unit for which a valid petition was filed to Common Council. The notice shall include the date and manner of the election. Said notice to **ELIGIBLE EMPLOYEES** shall be considered as sufficiently provided if it is made by the City Clerk to the City's Legal Department. The election shall be by secret ballot, and shall be held on the premises where those voting are employed unless Common Council shall determine that the election cannot be fairly held there, in which case it shall be held at such place as Common Council shall determine, with notice of the change of location included in the required notice to **ELIGIBLE EMPLOYEES**. Common Council may promulgate rules as necessary to effectively conduct any election, including provisions for absentee voting. The provisions shall facilitate voting by all **ELIGIBLE EMPLOYEES**, and shall insure secrecy of the ballot. Common Council may determine after proper hearing any disputed issue concerning the eligibility of a person or persons to vote in the election or it may appoint a hearing officer pursuant to subsection 40.05(G). The hearing may be held either before or after an election and may be conducted by an authorized representative appointed by Common Council. A determination with respect to eligibility shall be applicable in the administration of this section and for any other purpose under this Chapter 40. In any election, there shall also be the option of "no representation" included on the ballot. In order for a new **BARGAINING AGENT** or "no representation" to be selected, it must receive an affirmative vote from a majority of those **ELIGIBLE EMPLOYEES** of the bargaining unit voting in the election. The decision of a majority of those voting shall control. If there are more than two candidates for bargaining agent, including "no representation," and no bargaining agent candidate or choice of "no representation" receives a majority of the votes cast, there shall be a run-off election between the two choices receiving the greatest number of votes. In the run-off election, the candidate or choice receiving the most votes cast shall be declared the winner. If, in the run-off, a candidate receives a majority of the votes cast in the run-off, that candidate shall be determined the bargaining agent for that bargaining unit. If, in the run-off, "no representation" receives a majority of the votes cast in the run-off, there shall be no bargaining agent selected for the bargaining unit and the bargaining unit shall not be represented by a bargaining agent until the next permissible certification and election occurs.

(E) If a majority of the **ELIGIBLE EMPLOYEES** of a bargaining unit voting in an election does not select a new bargaining agent at said election, there shall be no representation by a bargaining agent for the remainder of the year in which decertification occurred. In order to select a bargaining agent in a subsequent year, the bargaining unit must file a new petition for representation with Common Council that is signed by at least 30% of the **ELIGIBLE EMPLOYEES** of the bargaining unit. Once a valid petition is filed with the City Clerk and received by Common Council, an election shall be held within 60 days of Common Council's receipt of notice according to the terms of subsection 40.05(D).

(F) Any properly conducted selection of a **BARGAINING AGENT** under this Section 40.05 by a bargaining unit selecting an agent to represent the bargaining unit in collective bargaining with the City of Fort Wayne shall continue in full force and effect unless a petition for decertification that satisfies the requirement of subsections 40.05(A) and 40.05(B) is filed with the Common Council.

(G) Common Council may appoint a hearing officer to hear evidence on any issues arising out of the actions authorized under this Section 40.05 and report findings to Common Council based on any evidence presented. Payment for the hearing officer(s)' services arising out of this Section 40.05(G) shall be shared equally by the **BARGAINING AGENT** and the Administration of the City of Fort Wayne.

(H) Upon decertification, but prior to the selection of a successor **BARGAINING AGENT**, all currently existing terms and conditions of the existing employment contracts between the City of Fort Wayne and **ELIGIBLE EMPLOYEES** belonging to a particular bargaining unit shall remain valid and in effect until the earliest of the following occurs: (1) a subsequent election for a bargaining agent is held and completed; (2) the current collective bargaining agreement expires; or (3) 90 days have passed since the previous bargaining agent was decertified. If a bargaining unit does not have a **BARGAINING AGENT** at the time of the existing labor contract's termination, the **ELIGIBLE EMPLOYEES** within the bargaining unit shall be considered to not have representation for purposes of subsequent employment negotiations until a successor **BARGAINING AGENT** is duly selected.

(I) No person who is not an employee of the City shall solicit employees for union membership in employee working areas or on the employee's working time.

§ 40.06 PAYROLL DEDUCTION.

The city shall, upon written receipt of authorization from a represented city employee, deduct from the pay of such employee any fee designated or certified by the appropriate officer of the employee's labor organization and remit those fees or fee to the employee's organization. To revoke such authorization, employees shall provide a written revocation to the city's labor director.

§ 40.07 AGENCY SHOP PROVISIONS.

There shall be no agency shop provisions in any labor agreements that require employee within a bargaining unit to either join the labor organization or pay dues. Such agency shop provisions are prohibited.

§ 40.08 NEGOTIATION PROCESS.

(A) It shall be the obligation of the city and the applicable labor organizations to meet and bargain in good faith for collective bargaining purposes. To ensure effective collective bargaining, as much as is possible, and to further expedite the collective bargaining process, the following negotiation procedure shall be utilized:

Step 1: To commence collective bargaining, the parties shall follow the terms and conditions of their

labor agreement with respect to notification regarding the intent and desire to negotiate. The parties shall attend and collectively bargain in good faith at all negotiation meetings that may be required under each such collective bargaining agreement. This requirement to initially meet and negotiate shall include three mandatory collective bargaining sessions between the parties, such meetings all to take place within 30 calendar days after initial notification as provided by one party to the other concerning the commencement of collective bargaining;

Step 2: If after exhaustion of step 1 above, the parties have not reached an agreement, the parties will still be obligated to bargain in good faith. In that regard, the parties shall be required to have at least two bargaining sessions within a 30 calendar-day period referenced in step 1 above;

Step 3: If an agreement has not been reached after steps 1 and 2 above, then the parties shall continue to confer and meet for purposes of collective bargaining and the parties shall utilize a three-member mediation committee. The three-member committee shall be appointed as follows: a representative designated by the Mayor, such representative not previously involved in this collective bargaining process with the city and the union in question; a representative designated by the union, such representative not previously involved in the collective bargaining process with the city and the union in question; and a member of Common Council designated by a majority of Common Council not previously involved in the collective bargaining process with the city and the union in question. Members of the committee shall serve without compensation. The three-member committee shall perform mediation functions between the parties and shall be utilized to define the differences between the parties and their respective positions. The three-member committee shall have the right to meet with either side alone or with both sides and further require meetings between the parties for purposes of collective bargaining. Such mediation process under this step 3 shall occur for a period of 30 calendar days.

(B) The time limits and other requirements as referenced in steps 1 and 2 may be altered or changed by mutual agreement of the city and the appropriate labor organization. The requirements to bargain and negotiate as herein referenced in this subsection shall not impose upon either side the duty to bargain over what are part and parcel of a collective bargaining agreement has not expired. That is, certain terms and conditions contained in a collective bargaining agreement will have a duration of greater than one year. If the term for such issues has not elapsed there shall be no requirement to bargain over same.

§ 40.09 FURTHER MEDIATION.

After completion of steps 1, 2, and 3 in § 40.08(A) and an impasse still exists, both parties are urged to continue collective bargaining in hopes of reaching a settlement. In that regard, the parties shall, within 10 days from completion of step 3 in § 40.08(A), once again meet and confer. Such meeting shall include in attendance a designated representative of the Mayor and a designated international staff representative of the union who will assist the representatives of the city and the union in hopes of reaching a settlement. If a settlement cannot be reached, then either the city or union shall have the right to request the services of a Mediator through the Federal Mediation and Conciliation Service. The Mediator's session shall be scheduled as soon as a Mediator is available. In addition, throughout the process, the labor agreement shall remain in full force and effect.

§ 40.10 DECISIONS SUBJECT TO COUNCIL APPROVAL.

Notwithstanding the entirety of this Chapter 40, all decisions in regard to annual pay, annual raises, and monetary fringe benefits shall be subject to approval by the Common Council, in accordance with budgetary guidelines, as provided by IC 36-4-7-3. All contracts negotiated under this Chapter 40 shall include language stating that all decisions in regard to annual pay, annual raises, and monetary fringe benefits shall be subject to approval by Common Council.

§ 40.11 STANDARDS FOR PAYMENT OF PREMIUM PAY UNDER COLLECTIVE BARGAINING AGREEMENTS.

Payments for work in excess of the employee's work schedule shall be governed by the Federal Fair Labor Standards Act and the collective bargaining agreement.

§ 40.12 NO STRIKE AND NO LOCKOUT.

(A) Notwithstanding any right or protection created or otherwise identified in this Chapter 40, no City employee shall have the right to **STRIKE**. For purposes of this Chapter 40, **STRIKE** 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 in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment.

(B) This act does not limit, impair, or affect the right of a City employee to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of employment or their betterment as long as the expression or communication does not interfere with the full, faithful, and proper performance of the duties of employment.

(C) Notwithstanding any right or protection created or otherwise identified in this Chapter 40, the City shall not have the right to **LOCKOUT** City employees. For purposes of this Chapter 40, **LOCKOUT** means the exclusion of employees by the City from their place of work until certain terms are agreed to.

§ 40.13 NO AUTOMATIC MODIFICATION.

The City shall not enter into any collective bargaining agreement that contains a clause providing for an automatic modification of that agreement based upon the terms and conditions of employment contained in any other collective bargaining agreement, commonly known as a "me too" clause.

§ 40.14 PROHIBITION ON PROVISIONS REGARDING HEALTH INSURANCE.

(A) Applicability. This section shall be effective for all agreements or contracts (including collective bargaining agreements) covering employees of the City of Fort Wayne (excluding police officers or firefighters as defined in § 40.22) entered into after the effective date of this section by the City of Fort Wayne, or entered into by any City of Fort Wayne subdivision, department, division, commission, authority, institution, establishment, facility, or governmental unit under the supervision of the City of Fort Wayne.

(B) Prohibition against provisions regarding spousal and/or retiree health insurance. The City of Fort Wayne, and any City of Fort Wayne subdivision, department, division, commission, authority, institution, establishment, facility, or governmental unit under the supervision of the City of Fort Wayne is prohibited from entering into any agreement or contract (including collective bargaining agreements) that includes any provision that purports to establish the terms and conditions of eligibility or coverage, for spousal health insurance, and/or retiree health insurance.

(C) Employees hired prior to January 1, 2014 who retire from the City of Fort Wayne shall be provided health insurance subject to the same terms and conditions, and with the same premium contributions, deductibles, and co-pays as active employees.

(D) Nothing in this section shall limit the city's authority or ability to contract for employee health insurance with a health insurance provider or broker.