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October 6, 2008

Daniel C. Kogovsek, Esq.
Pueblo County Attorney's Office
215 W. 10th Street, Room 312
Pueblo, CO 81003

VIA E-MAIL AND CERTIFIED MAIL

RE: Sheriff Kirk Taylor's Letter Dated 9/22/08 and Potential Legal Action

Dear Mr. Kogovsek,

The Colorado Fraternal Order of Police State Labor Council is in receipt of a letter from Sheriff Kirk Taylor dated September 22, 2008, regarding the status of the Fraternal Order of Police ("F.O.P.") in the Pueblo Sheriff's Office. This firm represents the Colorado State Lodge of the F.O.P. and its Labor Council and we hereby copy you in on the letter as it appears you may not be aware that the letter exists due to its callous disregard for the law. Sheriff Taylor's letter is in no uncertain terms an ultimatum from him and his office that he refuses to recognize the F.O.P. unless it abides by his unilateral conditions. This action by the Sheriff and the demands contained within his letter are unreasonable and illegal. Sheriff Taylor's demands amount to a violation of the constitutional rights of members of the Pueblo County Sheriff's F.O.P. Lodge #7 ("Pueblo F.O.P. Lodge 7"). Furthermore, the demands and threats contained therein could cause significant irreparable harm and damage to the Colorado Fraternal Order of Police State Lodge ("Colorado F.O.P. State Lodge").

Sheriff Taylor's letter has broad ramifications that go well beyond the Pueblo F.O.P. Lodge 7 level. All members of the Fraternal Order of Police in Colorado are members of the Colorado State Lodge. This includes all members of Pueblo F.O.P. Lodge 7. As a result, any potential legal action on this matter will be asserted by the Colorado F.O.P. State Lodge. The probability of significant irreparable harm and damage to the Colorado F.O.P. State Lodge is real, and we intend to pursue all legal action necessary to protect the constitutional rights of our members. It should be noted that Sheriff Taylor's action not only has the likely potential to affect the Colorado F.O.P. State Lodge's recruitment throughout the state, but if left to stand it also serves as a precedent that could create a cascade of reactions amongst law enforcement agencies both within the state and beyond. Therefore, we are prepared to respond to the Sheriff's action in a manner as comprehensive as his letter is precedent-setting.

In that accord, we believe that Sheriff Taylor's letter raises legal issues at the state and federal levels rather than the local and we have inquired with the Grand Lodge of the F.O.P. at the national level for assistance in responding to the coercive threats of the Sheriff. Sheriff Taylor's action, as a state actor, presents a situation that amounts to a prior restraint on his employees' first amendment rights enforceable by a Federal cause of action via 42 U.S.C. § 1983. Federal law also provides for attorney's fees and costs to the Colorado F.O.P. State Lodge pursuant to 42 U.S.C. § 1988. Federal law gives blanket protection to any law enforcement officer who wishes to join a labor organization. *Smith v. Arkansas State Highway Employees*, 441 U.S. 463 (1979); *Thomas v. Collins*, 323 U.S. 516 (1945). Sheriff Taylor's letter appears to be a deliberate attempt to break up the F.O.P. in order to prevent the exercise of its members' first amendment rights. Such conduct amounts to an illegal prior restraint on the freedom of assembly and free speech. *Healy v. Town of Pembroke Park*, 643 F.Supp. 1208 (S.D. Fla. 1986).

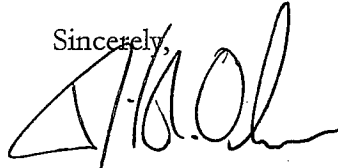
The Colorado F.O.P. State Lodge will pursue legal action on behalf of its members for all damages that result, including all attorney's fees and costs. At the meeting with the County Commissioners in July, your office expressed concerns over the potential legal costs associated with the Sheriff's challenges to a collective bargaining referendum. Although this firm and the Colorado F.O.P. State Lodge representatives were stunned at the Sheriff's audacious statement that he would not abide by the law if the citizens of Pueblo County passed such a measure, the legal costs associated with enforcing the referendum will pale in comparison to the legal battle that will ensue in federal court to enforce the basic constitutional rights of our members to assemble freely and to speak freely on matters of union concern.

The Sheriff's coercive edicts and the letter's attempt to bully the F.O.P. also violates the first amendment by its chilling effect on the exercise of its members' right to free speech. On the federal level, a law enforcement officer's speech about union issues is entitled to wide protection from the constitution. *Wulf v. City of Wichita*, 883 F.2d 842 (10th Cir. 1989). Speech about union matters can be impolite, even offensive, and still be protected by the first amendment. See *Chico Police Officers Ass'n v. City of Chico*, 283 Cal. Rptr. 610 (Cal. App. 1991). It goes without saying that this chilling effect is intended, and presents yet another reason why Sheriff Taylor's letter is in violation of federal law.

Sheriff Taylor's demands to the Pueblo F.O.P. Lodge 7 leadership and threatened action against the F.O.P. constitute significant cause for the Colorado F.O.P. State Lodge to enforce its members rights through a federal lawsuit. If, however, County leadership has endorsed Sheriff Taylor's actions, the Colorado F.O.P. State Lodge has viable and meritorious legal claims against the County of Pueblo as well for allowing the Sheriff to act in such a manner. The Colorado F.O.P. State Lodge is determined to secure a fair resolution on its legal claims and the concerns expressed herein. As such, any legal action filed by the Colorado F.O.P. State Lodge on this matter may seek damages and other relief against Sheriff Taylor as well as Pueblo County for the unlawful demands of the Sheriff and the trouncing of the constitutional rights of members of the Pueblo F.O.P. Lodge 7. Any continued action by Sheriff Taylor against the FOP, or any action taken against the Pueblo F.O.P. Lodge 7 leadership or its members for asserting and protecting their rights will only serve to complicate the issues further and lend to additional action.

The Fraternal Order of Police does not only represent law enforcement, they *are* law enforcement, first and foremost. Its members are loyal and dedicated public servants for agencies across this state and this nation. Their greatest calling is to respectfully uphold the law, especially the Constitution. The Colorado F.O.P. State Lodge will not stand for the ultimatums within Sheriff Taylor's letter. If Sheriff Taylor or the County acts on the demands, the Colorado F.O.P. State Lodge will protect its rights and the rights of its members by all available means. Sheriff Taylor's action amounts to a direct attack on the Colorado F.O.P. State Lodge's ability to recruit new members throughout the state in addition to its ability to maintain membership levels in Pueblo F.O.P. Lodge 7. It is our hope that such attacks cease to continue immediately.

Sincerely,

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

David Osborne
General Counsel, Colorado F.O.P.

CC: Mike Violette
Executive Director
Colorado F.O.P. State Labor Council

Frank Gale
President
Colorado F.O.P. State Lodge

Enclosure



J. R. Hall
Undersheriff
Charlene Gralson
Bureau Chief
Law Enforcement

Kirk M. Taylor
Sheriff

Darlene Alesia
Bureau Chief
Detention
Steven G. Douglas
Director
Emergency Services

September 22, 2008

Tommy McLallen
President, F.O.P. Lodge 7
P. O. Box 1450
Pueblo, CO 81002

Re: Status of F.O.P./Sheriff's Employee Association

Dear Sgt. McLallen:

When I took office in January of 2006, I was an immediate supporter of the Pueblo Sheriff's Employee Association and took no action to alter the recognition of the association made by the previous sheriff. However, in the recent months following the affiliation of the Officers Association with the F.O.P., it has become clear that the present organization is acting well beyond the limits of the Officers Association in prior years. For these reasons, I am informing you that effective immediately, the Pueblo County Sheriff's Office no longer recognizes the F.O.P. as the recognized officers association of Sheriff's employees.

Instead, I am offering you and the F.O.P. opportunity to earn the recognition of this office by making certain pledges and meeting certain guidelines. These requirements are:

1. Written recognition that the F.O.P. is not a labor union or the bargaining agent of its members and is instead, an officers association intended solely to provide insurance and legal defense benefits to its members and to communicate the interests of its members to the Sheriff.
2. That the F.O.P. have written by-laws approved by majority vote of all Sheriff Office members and that such by-laws accurately describe the limits of the F.O.P. role and the obligations of the F.O.P. to its members.
3. That the F.O.P. make a written acknowledgement that no communication of any kind including internet posting, newspaper ad or communication in any other media will suggest that the F.O.P. is a labor union or a bargaining agent of Sheriff's Office employees.

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ti-mall sheriff@co.pueblo.co.us

4. That the F.O.P. make a written acknowledgement that no action of the F.O.P. may interfere with the mission of the Sheriff's Office and that F.O.P. activities by Sheriff's Office employees may not interfere in any way with the performance of their duties as Sheriff's Office employees.
5. That the F.O.P. make a written acknowledgement that any effort by the F.O.P. to seek recognition as a labor union or bargaining agent of Sheriff's Office employees will be conducted through the Pueblo County Labor Recognition Policy and that such efforts at recognition shall include a written pledge that the F.O.P. agrees not to seek to negotiate for pay and benefits per that policy.


If the F.O.P. can meet the above requirements within 10 days from your receipt of this letter, I will meet with you to discuss drafting an agreement documenting recognition of your organization solely as an officers association.

If, on the other hand, the F.O.P. does not meet these guidelines within 10 days from your receipt of this letter, I will sever all official connection between the F.O.P. and this office.

I sincerely hope your organization chooses to create an officer's organization consistent with the above guidelines. If you do, your organization will be a valuable source of input and communication to this office without the unnecessary tension and distraction that we have recently experienced.

I will expect your answer within 10 days.

Respectfully,


Kirk M. Taylor
Pueblo County Sheriff