

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF PUEBLO, STATE OF COLORADO**

**AN ORDINANCE PERTAINING TO THE METHOD USED BY THE BOARD OF
COUNTY COMMISSIONERS FOR APPROVING THE SALARY SET BY THE
SHERIFF PURSUANT TO C.R.S. § 30-2-106**

WHEREAS, C.R.S. § 30-10-302 provides that the Board of County Commissioners ("Board") has the statutory authority to establish rules and regulations to govern the transactions of its business; and

WHEREAS, C.R.S. § 30-2-106 rests the final approval power for salaries of the undersheriff and deputy sheriffs, as proposed by the sheriff, in the hands of the Board; and

WHEREAS, the Board of County Commissioners wishes to grant the power to collectively bargain to Deputy Sheriffs, Sergeants, and Lieutenants with the Sheriff; and

WHEREAS, the Board of County Commissioners finds that the adoption of such a collective bargaining system requiring the Sheriff to enter into collective bargaining negotiations with the willingness to resolve disputes relating to compensation, hours and the terms and conditions of employment and to reduce to writing any agreements reached through such negotiations is in the best interests of the public health, safety, and welfare of the citizens of Pueblo County; and

WHEREAS, the Board of County Commissioners finds said collective bargaining system would provide more efficient, effective, and responsive operation of Pueblo County government for the taxpayers of Pueblo County.

NOW, THEREFORE, BE IT RESOLVED by the Board that the following language be certified to the Pueblo County Clerk and Recorder to be placed on the November 2008 election ballot, to wit:

Shall the following collective bargaining system be implemented to provide a system whereby the approval of the board of county commissioners to compensation, hours and the terms and conditions of employment of deputy sheriffs as fixed by the sheriff is subject to the collective bargaining system?

Chapter 7.01 Statement of policy.

The protection of the public health, safety, and welfare demands that Sheriff's employees of the Pueblo Sheriff's Office not be allowed to strike or engage in any work stoppage, slowdown, or mass absenteeism. This necessary prohibition does not, however, require the denial to such employees the right to organize, the right to be represented by an employee organization of their choice, and the right to bargain collectively. It is hereby declared to be the policy of the County of Pueblo to have a system of collective bargaining to establish a productive relationship between the County and its Sheriff's employees and to set compensation and certain other conditions of employment as specified in this Amendment to the Pueblo County Code. In lieu of allowing Sheriff's employees to strike to resolve impasses in negotiations, the County hereby adopts a system of advisory fact finding with submission of all unresolved issues to qualified electors of the County of Pueblo to resolve such impasses. The Sheriff is required to abide by the following system of advisory fact-finding with submission of all unresolved issues to qualified electors of the County of Pueblo before requesting approval from the Board of County Commissioners as to the salaries set for the undersheriff and deputy sheriffs pursuant to C.R.S. § 30-2-106.

Chapter 7.02 Definitions.

As used in this Amendment to the Pueblo County Code, the following terms shall, unless the context requires a different interpretation, have the following meanings:

Compensation shall mean wages, salaries, and any other pay to Sheriff's employees. By way of illustration, the term shall include longevity pay, hazardous duty pay, shift differential, acting pay, call back pay, overtime pay, step pay, cost of living adjustments and payments for unused leave at separation.

Corporate Authorities shall mean the County Commissioners of Pueblo County, the County Commissioners' officially designated representatives, the Sheriff of the County of Pueblo or the Sheriff's officially designated representatives.

County Commissioners shall mean the Pueblo Board of County Commissioners.

Fair Share shall mean the fair share of the cost of negotiating and administering a negotiated agreement under this article, including all costs germane to collective bargaining and/or to the collective bargaining process, assessed bargaining unit employees who choose not to belong to the employee organization so chosen by the Sheriff's employees as their exclusive Bargaining Agent. The manner, method, and exceptions thereto shall be a subject of mandatory bargaining included in Chapter 7.04 (b) (12) of this Amendment to the Pueblo County Code.

Final Offer shall be the written offer made latest in time by a party to the other party at least seven (7) days prior to the start of a fact-finding impasse panel

hearing.

Fringe Benefits shall include, but not be limited to: vacation leave; holidays; sick leave; bereavement leave; jury duty leave; leave for union activity; other paid or unpaid leave; the method of selecting, applying for, and voting for leave; payments for injuries, sickness, or death arising from the line of duty; any insurance (levels of contribution and levels of benefit); allowances for uniforms and equipment and the maintenance of uniforms and equipment; dependent's benefits, retiree benefits, retirement plans and pension contribution levels; and any other financial or economic benefits granted to individual Sheriff's employees.

Mandatory Subject of Bargaining shall mean a subject which shall be discussed during negotiations if either party wishes to discuss it and may be submitted to advisory fact-finding by either party in the event of an impasse.

Permissive Subject of Bargaining shall mean a subject which may be discussed during negotiations only if both parties agree to discuss it and shall not be submitted to advisory fact-finding unless both parties agree to submit it.

Prohibited Subject of Bargaining shall mean a subject which shall not be included in any collective bargaining agreement and shall not be subject to advisory fact-finding.

Sheriff's Employee(s) shall mean all full time sworn Sheriff's employees holding rank at or below that of Lieutenant in the Pueblo County Sheriff's Office, and all full time non-supervisory civilian Sheriff's employees of the Pueblo County Sheriff's Office.

Sole and Exclusive Bargaining Agent or Bargaining Agent shall mean an employee organization chosen by the Sheriff's employees pursuant to Chapter 7.05

Chapter 7.03 Management Rights.

Management shall have the sole rights to direction of the working forces, including but not limited to, the right to determine the work to be performed by employees; to employ, promote, demote, transfer, layoff, discipline, suspend or discharge for cause; to assign work including mandatory overtime work; to increase and decrease the working force; to establish standards and methods; to transfer work or otherwise perform work as required by the demands to maintain the efficiency of public operations. The Corporate Authority, in exercising the Management Rights set forth herein, recognizes that certain express conditions of employment are governed by a negotiated agreement between the parties as set forth herein. Therefore in exercising Management Rights, nothing shall be construed or applied in any manner which negates, modifies, or supersedes the

rights of employees, or the Bargaining Agent, where such rights are expressly set forth in a negotiated agreement between the parties to the agreement as defined herein. However, nothing in a negotiated agreement between the parties to the agreement shall be construed to limit the authority of the Sheriff or County Government to exercise statutory powers to discipline other than that agreed.

Chapter 7.04 Right to organize and bargain collectively; mandatory, prohibited, and permissive subjects of bargaining.

(a) Sheriff's employees shall have the right to bargain collectively with the County and to be represented by an employee organization in such negotiations.

(b) The following shall be mandatory subjects of bargaining for Sheriff's employees:

- (1) Compensation and fringe Benefits; and
- (2) The number of hours & days in the workweek; and
- (3) The number of shifts and times the shifts begin and end; and
- (4) The number of hours in a work shift; and
- (5) The definition and benefits of "seniority"; and
- (6) Personal safety and health equipment; and
- (7) A Bargaining Agent recognition clause; and
- (8) Procedures relating to labor/management cooperation and communication; and
- (9) The collective bargaining agreement severability clause; and
- (10) The duration of the collective bargaining agreement; and
- (11) Procedures and notice relating to the layoff and recall of Sheriff's employees, but not decision of whether to layoff or recall; and
- (12) A dues check-off and fair share clause and payment of fees as set forth in Chapter 7.18 (d); and
- (13) Grievance and grievance binding arbitration procedures for matters included in the agreement; and
- (14) Procedures for internal investigations, procedures for just cause

discipline; and procedures for promotions, assignments, rotations and transfers in the department; and

- (15) Physical, mental, drug, and/or alcohol testing; and
- (16) The continuation, modification, and/or the deletion of any provision of the collective bargaining agreement.
- (17) All other matters traditionally considered mandatory subjects of bargaining.

(c) The following shall be prohibited subjects of bargaining:

- (1) Any proposal that would conflict with State or Federal laws that are mandatory on the County of Pueblo; and
- (2) Any proposal that would conflict with provisions not superseded by this amendment or the collective bargaining agreement; and
- (3) Any proposal over which the County of Pueblo has no authority to act because of State or Federal law; and
- (4) The standards of service of the Pueblo Sheriff's Office and the County of Pueblo; and
- (5) The tables of organization of the Sheriff's Office; and
- (6) The budgets of the Sheriff's Office; and
- (7) Civilianization; and
- (8) Training to include, equalization or selection for outside department training.

(d) The following shall be permissive subjects for bargaining.

- (1) Off-duty employment; and
- (2) Safety and health matters except as provided in Chapter 7.04 (b) (6); and
- (3) The notice and the time intervals regarding changes of shifts and the emergency exceptions thereto; and
- (4) Staffing of the Sheriff's Office; and

- (5) Facilities of the Sheriff's Office.

Chapter 7.05 Selection and recognition of Bargaining Agent.

- (a) The Sheriff's employees' sole and exclusive Bargaining Agent for the purpose of bargaining shall be the sole and exclusive representative of all of the Sheriff's employees, as defined in Chapter 7.02 above, if the majority of the Sheriff's employees voting in an election vote for such Bargaining Agent.
- (b) Questions concerning the selection or removal of a Sheriff's employee Bargaining Agent may be raised by petition of any Sheriff's employee, group of Sheriff's employees, or employee organization representing or wishing to represent Sheriff's employees, but only if such petition is signed by at least fifty (50) percent of the Sheriff's employees. Such a petition may be submitted at any time to the American Arbitration Association (or its successor organization) provided that in the event there is a Sheriff's Employee Bargaining Agent then certified or recognized by the County, no petition may be filed within twelve (12) months of that Bargaining Agent's certification by the American Arbitration Association; and provided further that no petition may be filed during the term of an existing agreement with the Sheriff's Employee Bargaining Agent, except during the period from January 1 to January 31 of the final year of such agreement.
- (c) When a petition is filed concerning the selection or removal of a Sheriff's Employee Bargaining Agent, the American Arbitration Association (or its successor organization) shall promptly send the petition to the Sheriff's Office for determination of whether it contains the requisite number of signatures. The Sheriff's Office shall promptly make that determination and notify the American Arbitration Association (or its successor organization) of its conclusion. If the petition has the requisite number of signatures, the American Arbitration Association (or its successor organization) shall determine the question of selection or removal of any Sheriff's Employee Bargaining Agent or by taking a secret ballot of Sheriff's employees and certifying in writing the results thereof to the Corporate Authorities and the person, persons, and employee organizations involved. The secret ballot election shall be conducted not less than fifteen (15) days or more than thirty (30) days from the date of filing the petition. The American Arbitration Association (or its successor organization) shall certify the results of the above-described election within three (3) days of the close of the polls. The cost of running the election shall be borne equally by each organization on the ballot.
- (d) The employee organization selected by the majority of the Sheriff's Employees voting in an election conducted pursuant to subsection (c) above shall be recognized by the Corporate Authorities as the sole and exclusive Bargaining Agent for all Sheriff's employees unless and until the American

Arbitration Association or its successor certifies a different organization.

- (e) The election procedure shall follow the rules established by the American Arbitration Association.

Chapter 7.06 Obligation to bargain in good faith.

- (a) It shall be the obligation of the Corporate Authorities to meet and bargain in good faith with the representatives of the Sheriff's employees' Bargaining Agent at all reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to a written contract and executed in a timely manner. Any such contract shall be for a term of not less than one (1) year or more than three (3) years. Except that the first collective bargaining agreement reached with the Sheriff's employees' Bargaining Agent under this Amendment to the Pueblo County Code shall be effective on a mutually agreed upon date of the Corporate Authorities and the respective Bargaining Agent, and will terminate on December 31st of that same year. All subsequent collective bargaining agreements shall be effective on a January 1 date and shall terminate on a December 31 date.
- (b) It shall be the obligation of the Sheriff's Employee Bargaining Agent to meet and bargain collectively in good faith with the Corporate Authorities at all reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to a written contract and executed in a timely manner.

Chapter 7.07 Facilitation assistance.

It is recognized that from time to time, the bargaining teams of the parties may find it difficult readily to achieve agreement. Whenever it is deemed appropriate or beneficial to do so, the parties may engage the services of one (1) or more experts, consultants, facilitators or mediators as they may jointly agree may benefit the process of reaching agreement on one (1) or more items. It is specifically contemplated that the parties might engage individuals who have demonstrated knowledge or expertise in a given topic under discussion or skills and abilities in dispute resolution to serve as a facilitator, mediator or other assistant to promote the parties reaching a voluntary resolution. The parties will share fees and expenses of such individuals equally, unless otherwise agreed.

Chapter 7.08 Hearings – Impasse Resolution

- (1) Once the parties reach an impasse, an advisory fact-finder shall be appointed by the following procedures:
 - a. Within three (3) days after the impasse, the Bargaining Agent for all Sheriff's employees or the Corporate Authorities shall notify the American Arbitration Association, or its successor organization, or a

similar organization agreed upon by both parties, that an advisory fact-finder is required. The parties shall request that said association or organization submit simultaneously to each party an identical list of seven (7) persons qualified to serve as an advisory fact-finder within ten (10) days after the notification.

- b. Within five (5) days from the service of the list on the parties, each party shall cross off two (2) names from the list, rank the remaining names indicating the order of its preference, and return the list to the association or organization. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable as an advisory fact-finder to that party.
 - c. Within ten (10) days after service of the last list on the association or organization, or within ten (10) days after the time the list must be returned by the parties, the association or organization shall, from among the persons who have been approved on both lists, appoint one (1) advisory fact-finder to serve and shall notify the parties of such appointment.
- (2) The advisory fact-finder shall call a hearing for the purpose of making recommendations on the unresolved issues. The hearing is to be held within thirty (30) days after the appointment of the advisory fact-finder by the association or organization, and the advisory fact-finder shall give not less than ten (10) days notice in writing to the Bargaining Agent for all Sheriff's employees and the Corporate Authorities of the time and place of such hearing. The hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the advisory fact-finder shall be received in evidence. The advisory fact-finder shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relating to or pertinent to the issues presented for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the advisory fact-finder may, or the County Attorney, if requested, shall invoke the aid of the District Court for Pueblo County, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.
- (3) The advisory fact-finder shall conduct a hearing and render a decision upon the basis of a prompt, peaceful and just settlement of all unresolved issues between the Bargaining Agent for all Sheriff's employees and the Corporate Authorities; provided however, that the decision shall be limited to a determination of which of the parties' final offers on each issue in dispute shall be accepted.

- (4) The hearing conducted by the advisory fact-finder shall be concluded within fifteen (15) days from the time of commencement. Within five (5) days following the conclusion of the hearing, a party may, if it deems necessary, and has so notified the advisory fact-finder at the time of the conclusion of the hearing, submit a written brief to the advisory fact-finder.
- (5) Within fifteen (15) days after receipt of the last written brief from a party, or within fifteen (15) days after the conclusion of the hearing if neither party notified the advisory fact-finder of its intent to file a written brief, the advisory fact-finder shall make written findings and a written opinion and decision on the issues presented. A copy of the written findings and decision on the issues presented shall be mailed or otherwise delivered to the exclusive representative and the public employer.
- (6) The factors to be given weight by the advisory fact-finder in arriving at a decision shall include:
 - a. The interests and welfare of the public.
 - b. Comparison of the compensation, hours, and terms and conditions of employment of the Sheriff's Employees involved in the collective bargaining with the compensation, hours, and terms and conditions of employment of other sheriff employees in comparable communities as determined by the advisory fact-finder.
 - c. Stipulations of the parties.
 - d. The lawful authority of the Corporate Authorities.
 - e. The financial ability of the Corporate Authorities to meet the costs of any proposed settlements.
 - f. Changes in the cost of living.
 - g. Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of compensation, hours, and terms and conditions of employment through voluntary collective bargaining, interest arbitration or otherwise between parties, in the public service or in private employment.

In making determinations, the advisory fact-finder shall give due weight to each relevant factor. All of the above factors shall be presumed relevant. If any factor is found not to be relevant, the advisory fact-finder shall detail

in the advisory fact-finder's findings the specific reason why that factor is not judged relevant in arriving at the advisory fact-finder's determination.

- (7) The cost of the advisory fact-finder and related hearings shall be borne equally by the Bargaining Agent for all Sheriff's employees and the Corporate Authorities.
- (8) The Corporate Authorities and the Bargaining Agent for all Sheriff's employees shall have ten (10) days after issuance of the fact-finder's report to consider the recommendations and to further negotiate the disputed issues. No later than the end of this ten (10) day period, the Corporate Authorities and the Bargaining Agent for all Sheriff's employees shall notify the other whether it accepts or rejects the recommendations on all of the remaining unresolved issues. If either the Corporate Authorities or the Bargaining Agent for all Sheriff's employees rejects any of the recommendations, the final offers of the Corporate Authorities and the Bargaining Agent for all Sheriff's employees on all of the issues remaining unresolved shall each be submitted as alternative single measures to a vote of the qualified electors of Pueblo County at a special election. The qualified electors shall select either the final offer of the Corporate Authorities or the final offer of the Bargaining Agent for all Sheriff's employees, as presented to the advisory fact-finder. Issues agreed to during the ten-day period shall not be included in the final offer of the Corporate Authorities or of the Bargaining Agent for all Sheriff's employees. The cost of such special election shall be borne by either the Corporate Authorities or the Bargaining Agent for all Sheriff's employees, whichever refuses to accept the recommendations of the advisory fact-finder. If both refuse to accept the advisory fact-finder's recommendations, the costs shall be borne equally by the Corporate Authorities and the Bargaining Agent for all Sheriff's employees.
- (9) Nothing in this article shall be construed to prohibit or otherwise impede the Corporate Authorities and the Bargaining Agent for all Sheriff's employees from continuing to bargain in good faith or from using the services of a mediator at any time during the conduct of collective bargaining. If at any point in the advisory fact-finding proceedings the parties are able to conclude their labor dispute, or any portion thereof, with a voluntarily reached agreement, the advisory fact-finder shall be so notified, and the proceedings shall be forthwith terminated or the resolved issues shall not be considered by the advisory fact-finder. If an agreement is reached after a special election has been scheduled and it cannot be cancelled or items removed from the ballot, the votes on the final offers of the public employer and the exclusive representative shall not be counted.
- (10) During these impasse resolution proceedings, existing compensation, hours and other terms and conditions of employment shall not be changed

except by an agreement between the Corporate Authorities and the Bargaining Agent for all Sheriff's employees, but such agreement shall be without prejudice to either's rights or position in the advisory fact-finding hearing.

- (11) The parties may agree to extend any of the time limits contained in this section except the date for beginning bargaining and the timeframe for accepting or rejecting the recommendations of the advisory fact-finder, provided that no extensions of time can extend the date for such acceptance or rejection beyond 15 days before the last date to certify the ballot for the special election to the county clerk and recorder.
- (12) Either party may resubmit issues to impasse resolution if changed circumstances require review of a mandatory subject of collective bargaining or the Pueblo County Budget is unable to fund a mandatory or permissive subject of collective bargaining.

Chapter 7.09 Cooperative agreement; what constitutes.

- (a) The cooperative agreement between the County and the Sheriff's Employee Bargaining Agent shall consist of any and all terms actually agreed to by the parties or determined by special election. At the request of either the Bargaining Agent for all Sheriff's employees or the Corporate Authorities, the agreement shall contain a grievance procedure which culminates in final and binding arbitration by a neutral arbitrator. The grievance procedure may be established by voluntary agreement or by special election.
- (b) Whenever there is a conflict between the terms of the agreement and a rule, executive order, procedure, policy, or any ordinance or any other Title, Article or Chapter of the Pueblo County Code, which is applicable only to employees of the County, the provisions of the agreement shall prevail.

Chapter 7.10 Request for bargaining.

- (a) In order to begin the bargaining process, it is the obligation of the respective individual Bargaining Agent for all Sheriff's employees to serve written notice of request for bargaining on the Corporate Authorities for the first bargaining process no later than 150 days after the adoption of this Amendment to the Pueblo County Code. For all subsequent bargaining agreements, no later than May 1st of the year before the contract period which will be the subject of the bargaining process with bargaining to commence no later than May 15th.
- (b) All time limits for action contained in this Amendment to the Pueblo County

Code, other than the times for requesting and commencing bargaining set forth in this section, may be waived by mutual consent of the parties.

Chapter 7.11 Terms and conditions of employment not to be reduced.

The compensation, fringe benefits, and other terms and conditions of employment granted to Sheriff's employees by policy, ordinance or Charter as of the date of adoption of Title 7 herein and all chapters and subsections thereof, shall not be reduced except by voluntary agreement between the Corporate Authorities and the bargaining agent.

Chapter 7.12 Prohibition.

- (a) Neither the Sheriff's Employee Bargaining Agent, nor the Sheriff's employees, nor any person acting in concert with them, will cause, sanction, or take part in any withholding of services to the County of Pueblo by means of a strike, walkout, sit down, slowdown, stoppage of work, abnormal absenteeism, or other method that would interrupt or disrupt services to the County. Therefore, all such actions are expressly prohibited.
- (b) Violation of any provision of Subsection (a) of this Chapter by the Bargaining Agent of the Sheriff's employees shall be cause for the County to terminate a cooperative agreement with that respective Bargaining Agent upon giving written notice to that effect to the chief representative of that respective Bargaining Agent, in addition to whatever other remedies may be available to the County at law or in equity.
- (c) Violation of any provision of Subsection (a) of this Chapter by any Sheriff's employee shall be just cause for discipline of the Sheriff's employee, in addition to whatever other remedies may be available to the County at law or in equity. All applicable provisions contained in this Amendment to the Pueblo County Code shall apply to any disciplinary action under this Subsection.
- (d) Neither a Sheriff's employee, or person seeking to become a Sheriff's employee, shall be appointed, promoted, reduced, removed or in any way discriminated against by the Corporate Authority or Employee Bargaining Agent because of affiliations or non-affiliations with an employee organization; nor shall they be required to belong to any employee organization provided that it shall be allowable and it *shall not* be in violation of this Chapter for an agreement between the Sheriff's Employee Bargaining Agent and the Corporate Authorities to require as a condition of employment the payment by Sheriff's employees to the employee Bargaining Agent of a fair share representation fee not to exceed the normal dues and assessments required of members of the respective Bargaining Agent so long as the County is adequately indemnified and held harmless as part of the negotiated agreement.

Chapter 7.13 Severability.

If any clause, sentence, paragraph, or part of this Amendment to the Pueblo County Code, or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Amendment to the Pueblo County Code or its application.