

Division 7
PUBLIC SAFETY-ADMINISTRATIVE
COOPERATIVE AGREEMENT

Section 2-617 Statement of policy.

The protection of the public health, safety, and welfare demands that Police employees of the Fort Collins Police Department 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 City of Fort Collins to have a system of collective bargaining to establish a productive relationship between the City and its Police employees and to set compensation and certain other conditions of employment as specified this Division. In lieu of allowing Police employees to strike to resolve impasses in negotiations, the City hereby adopts a system of binding interest arbitration to resolve such impasses.

Section 2-618 Definitions.

As used in this Division, the following terms shall, unless the context requires a different interpretation, have the following meanings:

Police employees shall mean all full time sworn police officers maintaining the rank of Lieutenant and below of the Police Department of the City of Fort Collins, and Community Service Officers and Dispatchers of the Police Department equivalent to the rank of Lieutenant or below.

Corporate Authorities shall mean the City Manager and the Council of the City of Fort Collins or their representatives.

Sole and exclusive bargaining agent or bargaining agent shall mean an employee organization chosen by the Police employees pursuant to Section 2-620

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 binding arbitration hearing.

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 binding arbitration 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 binding arbitration 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 binding arbitration.

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; insurance (levels of contribution and levels of benefit); allowances for uniforms and equipment and the maintenance of uniforms and equipment; dependent's benefits,

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retiree benefits, and pension contribution levels; and any other financial or economic benefits granted to individual Police employees.

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

Section 2-619 Right to organize and bargain collectively; mandatory, prohibited, and permissive subjects of bargaining.

(a) Police employees shall have the right to bargain collectively with the City and to be represented by an employee organization in such negotiations.

(b) The following shall be mandatory subjects of bargaining for Police employees:

- (1) Compensation;
- (2) Fringe Benefits;
- (3) The number of hours in the workweek;
- (4) The definition and benefits of "seniority";
- (5) Personal safety and health equipment;
- (6) A bargaining agent recognition clause;
- (7) Procedures relating to labor/management cooperation and communication;
- (8) The notice and the time intervals regarding changes of shifts and the emergency exceptions thereto;
- (9) The collective bargaining agreement severability clause;
- (10) The duration of the collective bargaining agreement;

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(11) Procedures and notice relating to the layoff and recall of Police employees, but not the decision of whether to layoff or recall;

(12) Payment of fees as set forth in Section 2-633(D);

(13) A dues check-off and/or fair share clause;

(14) Grievance and grievance binding arbitration procedures for matters included in the agreement.

(15) The number of shifts and times the shifts begin and end;

(16) Procedures for internal investigations, procedures for just cause discipline; and procedures for promotions, assignments, rotations and transfers in the department;

(17) The number of hours in a work shift; and

(18) Physical, mental, drug, and/or alcohol testing;

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

(1) Any proposal that would conflict with a State or Federal law;

(2) Any proposal that would conflict with the City Charter;

(3) Any proposal over which the City has no authority to act because of State or Federal law;

(4) The standards of service of the Police Department and the City;

(5) The tables of organization of the Police Department;

(6) The budgets of the Police Department;

(7) Civilianization; and

(8) Training.

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

- (1) Off-duty employment;
- (2) Safety and health matters except as provided in 2-619(b) (5);
- (3) All other terms and conditions of employment not listed in (b) and c) above;
- (4) Staffing of the Police Department; and
- (5) Facilities of the Police Department.

Section 2.620 Selection and recognition of bargaining agent.

(a) The sole and exclusive bargaining agent for the purpose of bargaining shall be the sole and exclusive representative of all of the Police employees, if the majority of the Police employees voting in an election vote for such bargaining agent.

(b) Questions concerning the selection or removal of a bargaining agent may be raised by petition of any Police employee, group of Police employees, or employee organization representing or wishing to represent Police employees but only if such petition is signed by at least fifty (50) percent of the Police 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 bargaining agent then certified or recognized by the City, no petition may be filed within twelve (12) months of the 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, 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 bargaining agent, the American Arbitration Association (or its successor organization) shall promptly send the petition to the Police Department for determination of whether it contains the requisite number of signatures. The Police Department 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 bargaining agent by taking a secret ballot of Police 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

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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 Police 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 Police 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.

Section 2-621 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 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. All 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 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.

Section 2-622 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. Fees and expenses of such individuals will be shared equally by

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the parties, unless otherwise agreed.

Section 2-623 Unresolved issues submitted to binding arbitration.

In the event that the bargaining agent and the Corporate Authorities are unable, within sixty (60) days from and including the date of their first meeting, to reach an agreement on a contract, final offers on any and all unresolved issues concerning mandatory subjects of bargaining shall be submitted to binding arbitration and final offers on any permissive subjects of bargaining may be submitted to binding arbitration if both parties agree to submit them. The obligation of the parties to bargain in good faith shall continue after submission of unresolved issues to binding arbitration. Any or all issues which are unresolved between the bargaining agent and the Corporate Authorities may be resolved by the parties until the sixteenth day following receipt of the decision of the arbitrator. Any agreements reached within fifteen (15) days following receipt of the decision of the arbitrator shall supersede the decision of the arbitrator. In the event the bargaining agent and the Corporate Authorities are able to reach agreement upon any or all issues prior to the receipt of the decision of the arbitrator, then the arbitrator shall make no decision on such issue or issues.

Section 2-624 Binding arbitrator; selection.

(a) Within forty-five (45) after the adoption of this Ordinance, the City shall, in some reasonable manner, solicit applications from persons who desire to be on a permanent panel of arbitrators to resolve impasses as described in Section 2-623.

(b) In order to be eligible to be on the permanent panel of arbitrators, a person must be impartial and disinterested and must be qualified by experience and training as a neutral Hearing Officer or arbitrator in labor/management disputes. These disputes shall be an impasse in negotiations between labor and management, disputes over the meaning or application of contracts between labor and management, or discipline. Any person whose only experience is as a hearings officer in any civil or Career Service system shall not be qualified. Persons who are members of the National Academy of Arbitrators or on the American Arbitration Association panel of labor arbitrators are presumptively qualified.

(c) The City Council shall create a permanent panel of at least five (5) arbitrators from those qualified persons who apply. Placement on the permanent panel shall be approved by reading resolution of the City Council. Any qualified person can be added to the permanent panel at any time. Persons on the panel shall remain on the panel for a term of four (4) years, and may be

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reappointed, provided that the members of the initial panel shall be appointed to terms of varying lengths not to exceed six (6) years. Any person on the permanent panel may be removed by passage of a resolution by the City Council unless that person has been selected to conduct a hearing concerning a particular dispute pursuant to subsection (e) of this section, and then that person can only be removed after issuing a decision in that dispute.

(d) Each person placed on the permanent panel shall sign an oath to uphold the terms of this Division.

(e) Within three (3) days of the expiration of the sixty (60)-day time period referred to in Section 2-623, the bargaining agent or the Corporate Authorities may request the list of names from the City Clerk and the City Clerk shall submit a list with the names of all members of the permanent panel to the bargaining agent and the Corporate Authorities within five (5) days. Within ten (10) days of receipt of this list, the bargaining agent and the Corporate Authorities shall meet and alternatively strike one (1) name from the list until one (1) name remains (if the panel has an odd number of names) or two (2) names remain (if the panel has an even number of names). If one (1) name remains, that person shall be the arbitrator for that dispute. If two (2) names remain, the Mayor shall select one of those two names to be the arbitrator for that dispute. The Mayor's selection must take place within five (5) days of the completion of the striking process by the bargaining agent and the Corporate Authorities. The determination of whether the bargaining agent or the Corporate Authorities strikes first shall be done by flip of a coin.

(f) Nothing herein shall be construed to prevent the bargaining agent and the Corporate Authorities from agreeing to an arbitrator from the permanent panel.

Section 2-625 Hearings.

(a) The arbitrator shall call a hearing to begin within twenty-five (25) days of selection, and shall give at least ten (10) days notice in writing to the bargaining agent and the Corporate Authorities of the time and place of such hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all oral or documentary evidence and other data deemed competent and relevant by the arbitrator shall be received in evidence. The arbitrator 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.

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(b) The hearing conducted by the arbitrator shall be concluded within seven (7) days of the time of commencement. Within ten (10) days following the conclusion of the hearing, the parties may, if they deem necessary, submit written briefs to the arbitrator. Within twenty-one (21) days of receipt of such briefs, or within twenty-one (21) days after the conclusion of the hearing if no post-hearing briefs are filed, the arbitrator shall make written findings and conclusions setting forth the basis of the arbitrator's decision on the issues presented, a copy of which shall be delivered to the bargaining agent and the Corporate Authorities in the same manner on the same date. The written findings and conclusions shall be reached in accordance with the provisions of Section 2-626.

(c) By mutual agreement of the parties and the arbitrator, the provided time frames in this Division may be extended.

Section 2-626 Factors to be considered by the arbitrator.

The arbitrator shall conduct the hearing and render his or her decision with due consideration of the need for a prompt, peaceful and just settlement of all unresolved issues between the bargaining agent and the Corporate Authorities. The arbitrator may apply the standards commonly used in interest disputes but shall rely predominantly on the following in arriving at a decision:

- (a) The interests and welfare of the public;
- (b) The finances of the City;
- (c) The lawful authority of the City;
- (d) Stipulations of the parties;
- (e) Comparison of the compensation, fringe benefits, hours, and other terms and conditions of employment of Fort Collins Police employees with other Law Enforcement employees performing comparable services in public employment in comparable Colorado communities; and
- (f) The cost of living;
- (g) Any claims of failure of a party to bargain in good faith pursuant to Section 2-621; and
- (h) Other similar standards recognized in the resolution of interest disputes.

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Section 2-627 Final offer procedure.

The Corporate Authorities and the bargaining agent shall submit to the arbitrator final offers on each issue on which there was not agreement. The award of the arbitrator on each issue shall be the final offer of the Corporate Authorities or the final offer of the bargaining agent. The arbitrator shall state the reasons for the award in writing in accordance with Section 2-625(b).

Section 2-628 Finality of the arbitrator's decision.

(a) Except as otherwise provided in this section, the decision of the arbitrator shall be final and binding on the bargaining agent and the Corporate Authorities; provided that the arbitrator's decision shall be binding only for the term of the contract. Nothing herein shall prohibit the parties from agreeing to terms different from the decision of the arbitrator as long as such agreements are made within fifteen (15) days after receipt of the arbitrator's decision.

(b) The arbitrator's decision shall be subject to court review only pursuant to the terms of this section. Any party desiring court review must file suit in District Court no later than thirty (30) days after the date of the arbitrator's decision. Failure to file suit within this time frame shall waive the right to appeal the decision. A party may appeal to the District Court only on the following grounds:

(1) The award was procured by corruption, fraud or other similar wrongdoing; or

(2) The decision on any issue is arbitrary and capricious, to wit, there is no competent evidence in the record to support the decision; or

(3) The decision on any issue was reached without considering the factors listed in Section 2.626 hereof; or

(4)The award of the arbitrator on an issue was not the final offer of the Corporate Authorities or the final offer of the bargaining agent.

(c) The court shall not conduct de novo review except to determine whether the award was procured by corruption, fraud or other similar wrongdoing. If the court determines that the award was procured by corruption, fraud or other similar wrongdoing, the entire award shall be vacated and the matter shall be remanded back to a different arbitrator selected pursuant to the terms of 2-

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624 hereof. The arbitrator who issued the award determined to be procured by corruption, fraud or other similar wrongdoing shall no longer be deemed qualified to be on the permanent panel of arbitrators, shall cease to be a member of the panel and shall not be eligible for reappointment to the permanent panel. If the court determines that the arbitrator's decision on any issue is arbitrary and capricious, the court shall remand that issue to the arbitrator with instructions to conduct a new hearing on that issue if either the bargaining agent or the Corporate Authorities so desires and, with or without a new hearing, to issue a new decision on that issue which is based on some competent evidence in the record. If the court determines that the arbitrator's decision on any issue was reached without considering the factors listed in Section 2.626 hereof, the court shall remand that issue to the arbitrator with instructions to conduct a new hearing on that issue if either the bargaining agent or the Corporate Authorities so desires and, with or without a new hearing, to issue a decision which considers the factors listed in Section 2.626 hereof as the arbitrator deems proper. If the court determines that the arbitrator's decision did not accept the final offer of either the Corporate Authorities or the bargaining agent on an issue, the court shall remand the issue to the arbitrator with instructions to accept the final offer of either the Corporate Authorities or the bargaining agent.

Section 2-629 Fees and expenses of arbitration.

Fifty (50) percent of the necessary fees and necessary expenses of arbitration (excluding all fees and expenses incurred by either party in the preparation or presentation of its case) shall be borne by the City and Fifty (50) percent shall be borne by the bargaining agent.

Section 2-630 Collective bargaining agreement; what constitutes.

(a) The collective bargaining agreement between the City and the bargaining agent shall consist of any and all terms actually agreed to by the parties or awarded by the arbitrator. At the request of either the bargaining agent 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 the arbitrator.

(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 Charter section of the City which is applicable only to employees of the City, the provisions of the agreement shall prevail.

Section 2-631 Request for bargaining.

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(a) In order to begin the bargaining process, it is the obligation of the bargaining agent to serve written notice of request for bargaining on the Corporate Authorities no later than May 1 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 Division, other than the times for requesting and commencing bargaining set forth in this section, may be waived by mutual consent of the parties.

Section 2-632 Terms and conditions of employment not to be reduced.

The compensation, fringe benefits, and other terms and conditions of employment granted to Police employees by policy, ordinance or Charter as of the date of adoption of this Division, and all sections thereof, shall not be reduced except by voluntary agreement between the Corporate Authorities and the bargaining agent.

Section 2-633 Prohibition.

(a) Neither the bargaining agent nor the Police employees, nor any person acting in concert with them, will cause, sanction, or take part in any withholding of services to the City by means of a strike, walkout, sit down, slowdown, stoppage of work, abnormal absenteeism, or other method. Therefore, all such actions are expressly prohibited.

(b) Violation of any provision of Subsection (a) of this Section by the bargaining agent of the Police Officers shall be cause for the City to terminate a collective bargaining agreement with the bargaining agent upon giving written notice to that effect to the chief representative of the bargaining agent, in addition to whatever other remedies may be available to the City at law or in equity.

(c) Violation of any provision of Subsection (a) of this Section by any Police Officer shall be just cause for discipline of the Police Officer, in addition to whatever other remedies may be available to the City at law or in equity. All provisions of Section 2-629 shall apply to any disciplinary action under this Subsection.

(d) No Police Officer or person seeking to become a Police Employee shall be appointed, promoted, reduced, removed or in any way discriminated against because of affiliations or non-affiliations with an employee organization; provided that it shall be allowable and it shall not be in violation of this Section for an agreement between the bargaining agent and the Corporate

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Authorities to require as a condition of employment the payment by Police employees to the bargaining agent of an amount not to exceed the normal dues and assessments required of members of the bargaining agent so long as the City is adequately indemnified and held harmless as part of the agreement.

Section 2.634 Severability.

If any clause, sentence, paragraph, or part of this Division, 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 Division or its application.