

# Proposed Denver Charter Amendment

## ARTICLE IX. - EMPLOYMENT

### PART 9. - COLLECTIVE BARGAINING; DEPUTY SHERIFFS

#### § 9.9.1 - Statement of policy.

The protection of the public health, safety, and welfare demands that Deputy Sheriffs 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 and County of Denver that a system of collective bargaining will establish a productive relationship between the City and its Deputy Sheriffs and be used to set compensation, fringe benefits, a means for the collection of union dues and an agency fee, and a grievance procedure for resolving any of the above listed issues. In lieu of allowing Deputy Sheriffs to strike to resolve impasses in negotiations, the City hereby adopts a system of binding arbitration to resolve such impasses.

(Charter 1960, C5.83-1; added March 20, 1995)

#### § 9.9.2 - Definitions.

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

- (A) The term "Deputy Sheriff" shall mean all members sworn by the Sheriff in the Sheriff Department of the City and County of Denver, except the Sheriff, Deputy Sheriff Division Chiefs, and Deputy Sheriff Majors.
- (B) The term "Corporate Authorities" shall mean the Mayor and the City Council of the City and County of Denver, or their representatives.
- (C) The term "sole and exclusive bargaining agent" or "bargaining agent" shall mean an employee organization chosen by the Deputy Sheriffs pursuant to Section 9.9.4.
- (D) The term "final offer" shall be the written offer made latest in time by a party to the other party but at least seven (7) days prior to the start of a binding arbitration hearing.
- (E) "Compensation" means wages, rates of pay, salaries or other forms of pay.
- (F) "Fringe benefits" means: vacation leave; holidays; sick leave; bereavement leave; jury duty leave; leave for union activity; other paid or unpaid leave; payments for injuries, sickness, or death arising from the line of duty; health insurance; life insurance; allowances for uniform and equipment and the maintenance of uniforms and equipment; tuition refund; overtime pay; call back pay; shift differential; acting pay; payments for unused leave at separation; longevity pay; tuition refund; dependent's benefits; and any other financial or economic benefits to individual Deputy Sheriffs. The term "fringe benefits" shall only apply to Deputy Sheriffs employed by the City and County of Denver. The term "fringe benefits" shall not include pensions, ***except that it shall be established that all Deputy Sheriff members of the Denver Employee Retirement Plan shall have qualified for normal retirement under the terms and conditions of the plan as follows:***

***Normal retirement shall mean retirement at the earlier of the age of sixty-five (65) or the first day of any calendar month after which a member has attained his or her fifty-fifth birthday and where the member's age and credited service, while an active member, are or were equal to the sum of seventy-five (75). The "rule-of-75" is determined by adding the age of the employee while employed with the employer***

***to the years of credited service as an employee with the employer. If the total equals or exceeds the sum of seventy-five (75) then the requirements of the rule-of-75 have been met. The rule-of-75 must be attained by the member, while employed as an active member, prior to termination of employment. If the employee terminates employment, after earning the required service credit to be granted rule-of-75 unreduced benefits, but prior to reaching the age of fifty-five (55), the member may not apply for or receive retirement benefits under the rule until reaching age fifty-five (55).***

(Charter 1960, C5.83-2; added March 20, 1995; Ord. No. 408-13, § 2, 8-26-13, elec. 11-5-13)

§ 9.9.3 - Right to organize and bargain collectively.

- (A) Deputy Sheriffs shall have the right to bargain collectively with the City and to be represented by an employee organization in such negotiations limited to the following subjects: compensation, fringe benefits, a means for the collection of union dues and an agency fee, and a grievance procedure for resolving any of the above listed issues.
- (B) The Corporate Authorities and the bargaining agent shall not bargain on any subject except as it may affect those items identified in 9.9.3(A).

(Charter 1960, C5.83-3; added March 20, 1995)

§ 9.9.4 - 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 Deputy Sheriffs if the majority of the Deputy Sheriffs voting in an election vote for such bargaining agent.
- (B) Questions concerning the selection or removal of any bargaining agent may be raised by petition of any Deputy Sheriff, group of Deputy Sheriffs, or employee organization representing Deputy Sheriffs but only if such petition is signed by at least thirty-three (33) percent of the Deputy Sheriffs. 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 said twelve months of the bargaining agent's certification by the American Arbitration Association (or its successor organization); and provided further that no petition may be filed during the term of any existing agreement between the City and the bargaining agent, except during the period from January 1 to January 31 of the final year of such an 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 Department of Safety for determination of whether it contains the requisite number of signatures. The Department of Safety 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 the selection or removal of any bargaining agent by taking a secret ballot of Deputy Sheriffs 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 nor more than thirty (30) days from the date of the filing of 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 Deputy Sheriffs voting in an election conducted pursuant to paragraph (c) of this Section shall be recognized by the Corporate Authorities as the sole and exclusive bargaining agent for all Deputy Sheriffs. In an election where none of the choices on the ballot receives a majority vote, the American Arbitration Association shall conduct a runoff election. In that case, the ballot shall provide for a selection between the two choices or parties receiving the highest and the second highest number of ballots cast in the election.

(Charter 1960, C5.83-4; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§ 9.9.5 - 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 nor more than three (3) years, notwithstanding the provisions of Article VII of this Charter relating to Budget and Finance. 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.

(Charter 1960, C5.83-5; added March 20, 1995)

§ 9.9.6 - Facilitation assistance.

It is recognized that from time to time, the bargaining agent and the Corporate Authorities may find it difficult to achieve agreement readily. Whenever it is deemed appropriate or beneficial to do so, the parties may engage the services of one or more experts, consultants, facilitators, or mediators as they may jointly agree may benefit the process of reaching agreement on one 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 the parties, unless otherwise agreed upon by the respective parties.

(Charter 1960, C5.83-6; added March 20, 1995)

§ 9.9.7 - Unresolved issues submitted to binding arbitration.

In the event that the bargaining agent and the Corporate Authorities are unable, within forty-five (45) days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to binding arbitration. 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.

(Charter 1960, C5.83-7; added March 20, 1995)

§ 9.9.8 - Binding arbitrator; selection.

- (A) Within 30 days after the adoption of this Section, 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 9.9.7 herein.
- (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. The dispute experience shall be in impasse 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 for 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 three (3) arbitrators from those qualified persons who apply. Placement on the permanent panel shall be approved by a resolution or ordinance by 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 six (6) years, and may be 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 or ordinance by the City Council unless that person has been selected to conduct a hearing concerning a particular dispute pursuant to paragraph (e) of this Section, and then that person can only be removed after issuing a decision in that dispute.
- (D) Each person put on the permanent panel shall sign an oath to uphold the terms of this Section.
- (E) After expiration of the 45-day time period referred to in Section 9.9.7, 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 5 (five) days. Within ten (10) days of receipt of this list, the bargaining agent and the Corporate Authorities shall meet and alternatively strike one name from the list until one name remains (if the panel has an odd number of names) or two names remain (if the panel has an even number of names). If one name remains, that person shall be the arbitrator for that dispute. If two 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.

(Charter 1960, C5.83-8; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 608-05, § 1, 8-9-05, elec. 11-1-05)

§ 9.9.9 - 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.

- (B) The hearing conducted by the arbitrator shall be concluded within seven (7) days of the time of commencement. Within five (5) days following the conclusion of the hearing, the parties may, if they deem necessary, submit written briefs to the arbitrator. Within ten (10) days of receipt of such briefs, or within ten (10) 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 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 9.9.10.

(Charter 1960, C5.83-9; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§ 9.9.10 - Factors to be considered by the arbitrator.

The arbitrator shall conduct the hearing and render a 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 and the financial ability of the City to bear the costs involved;
- (B) The lawful authority of the City;
- (C) Stipulations of the parties;
- (D) Comparison of the compensation, fringe benefits, and pensions of Denver Deputy Sheriffs with positions with similar duties and responsibilities in other departments which are similar in the scope of duties and responsibilities. However, while the arbitrator may consider such comparisons in making a decision, in no event shall the arbitrator make an award:
  - (i) That is indexed or otherwise expressed as a relationship to the compensation or fringe benefits of any other employee or employees who are not Deputy Sheriffs of the Denver Sheriff Department, or
  - (ii) That modifies pensions of Deputy Sheriffs; and
- (E) The cost of living.

(Charter 1960, C5.83-10; added March 20, 1995)

§ 9.9.11 - 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 choosing the award in writing in accordance with Section 9.9.9(B).

(Charter 1960, C5.83-11; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§ 9.9.12 - Finality of the arbitrator's decision.

- (A) Except as provided in this subdivision, 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 the 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:
- (i) The award was procured by corruption, fraud or other similar wrongdoing; or
  - (ii) The decision on any issue is arbitrary and capricious, to wit, there is no competent evidence in the record to support the decision; or
  - (iii) The decision on any issue was reached without considering the factors listed in Section 9.9.10 hereof; or
  - (iv) 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 Section 9.9.8(E) hereof. The arbitrator who issued the award determined to be procured in corruption, fraud, or 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 9.9.10 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 9.9.10 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.

(Charter 1960, C5.83-12; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

#### § 9.9.13 - Fees and expenses of arbitration.

One-half 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 one-half shall be borne by the bargaining agent.

(Charter 1960, C5.83-13; added March 20, 1995)

#### § 9.9.14 - 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, provided such grievance procedure shall not conflict with any provisions of the Charter.
- (B) Whenever there is a conflict between the terms of the collective bargaining agreement and any provision of the Charter of the City and County of Denver, ~~applicable Career Service Rules,~~

~~applicable City Ordinances~~ or Federal or State laws, or executive orders, the agreement shall be deemed to be subordinate unless there is express violation of the terms of this Part 9.

(Charter 1960, C5.83-14; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§ 9.9.15 - Request for bargaining.

- (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 September 1 of the year before the contract period which will be the subject of the bargaining process. Bargaining shall begin no later than October 1. Notwithstanding the above, in any year in which the City may be required to bargain with more than one bargaining agent, the City Council may, before January 31, establish by ordinance a schedule for collective bargaining for Deputy Sheriffs. In no event shall the City Council modify the schedule as established in this paragraph by more than 30 days in either direction.
- (B) All time limits for action contained in this Part 9, except the times for requesting and commencing bargaining set forth in this Section, may be waived by mutual consent of the parties.

(Charter 1960, C5.83-15; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§ 9.9.16 - Prohibition.

- (A) Neither the bargaining agent nor the Deputy Sheriffs, 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, sitdown, 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 9.9.16 by the bargaining agent of the Deputy Sheriffs 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 9.9.16 by any Deputy Sheriff shall be just cause for discipline of the Deputy Sheriff, in addition to whatever other remedies may be available to the City at law or in equity. All provisions of Sections 9.1.4 and 9.1.5 and the Career Service rules shall apply to any disciplinary action under this Section.
- (D) No Deputy Sheriff or person seeking to become a Deputy Sheriff shall be appointed, promoted, reduced, removed or in any way discriminated against because of affiliations or non-affiliations with an employee organization; provided, however, that it shall be allowable and it shall not be in violation of this Charter for an agreement between the bargaining agent and the Corporate Authorities to require as a condition of employment the payment by Deputy Sheriffs to the bargaining agent of an amount not to exceed the normal dues and assessments required of members of the bargaining agent to finance collective bargaining, contract administration, and grievance administration so long as the City is adequately indemnified and held harmless as part of the agreement.

(Charter 1960, C5.83-16; added March 20, 1995; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§ 9.9.17 - Severability.

If any clause, sentence, paragraph, or part of this Section 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 Part 9 or its application.

(Charter 1960, C5.83-17; added March 20, 1995)