



Interpretive Notice & Formal Opinion (“INFO”) #15B: The Collective Bargaining by County Employees Act (“COBCA”), [S.B. 22-230](#)

Overview

- The **Collective Bargaining by County Employees Act** (“[COBCA](#)”) covers rights and responsibilities for certain counties and their employees (effective July 1, 2023), as to:
 - **employee rights to seek representation** by an employee organization (typically, but not always, a union) through election, or other means, in certain cases;¹
 - **county responsibilities to engage in collective bargaining** if an employee organization is certified as the exclusive representative of any of its employees; and
 - **certain unfair labor practices (ULPs) prohibited** for both counties and employee organizations.
- The **County Collective Bargaining Rules** (“[COBCA Rules](#)” or “Rules”), 7 CCR 1103-16, effective July 1, 2023, implement and clarify application of COBCA, and set procedures for disputes, elections, or other COBCA matters. Parties to any COBCA matters should review not only COBCA, but the Rules as well.

Coverage

- COBCA covers **all counties** in Colorado, **except** any:
 - county with a **population under 7,500** — as of the 2020 census, 23 counties in Colorado;
 - combined **City and County** government — currently, Denver and Broomfield; and
 - **other local government or political subdivision of the state** (municipality, school or special district, public hospital, etc.).
- **Exceptions and exemptions are applied narrowly**, as Colorado statutes “shall be liberally construed” to fully carry out “the true intent and meaning of the general assembly.”² Given the legislature’s clear intent to expand rights,³ exceptions and exemptions are interpreted “narrowly to preserve the primary operation of the general rule” that “bestow[s] ... [a] right” — a rule commonly applied to laws that grant or broaden rights.⁴

¹ No election is needed if an employee organization (aka union) was: (1) voluntarily recognized before 2022; (2) voluntarily recognized after January 1, 2022, and before July 1, 2023 based on demonstration of majority support, or (3) recognized on or after July 1, 2023, based on majority vote in a secret ballot election. [C.R.S. 8-3.3-108\(1\)-\(2\)](#).

² C.R.S. 2-4-212 (“All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the general assembly may be fully carried out.”).

³ S.B. 22-230, 2022 Colo. Sess. Laws 1900, § 1 (legislative declaration: “creation of a statutory framework that recognizes the rights of county employees to join organizations of their own choosing, to be represented by those organizations, and to collectively bargain with their employer over wages, hours, and other terms and conditions of employment”).

⁴ [Brodak v. Visconti](#), 165 P.3d 896, 898–99 (Colo. App. 2007) (narrowly construing an exception to a statute “bestow[ing] on drivers the right to request a breath test in lieu of a blood test, subject to exceptions”) (citing [City of Edmonds v. Oxford House, Inc.](#), 514 U.S. 725 (1995) and [Comm’r of Internal Revenue v. Clark](#), 489 U.S. 726 (1989)). See also [Alhilo v. Kliem](#), 2016 COA 142, ¶¶ 19–20 (narrowly interpreting an exception to a statute barring certain evidence); [In re R.C., 2013 COA 77](#) (adopting narrower over broader reading of exception to a statute granting rights to seal records, under a “general rule of construction” that “where a statute establishes a general rule subject to exceptions,” the exceptions should be interpreted “narrowly to preserve the general rule’s primary operation” (*id.* 12 (quoting [Clark v. People](#), 221 P.3d 447, 450 (Colo. App. 2009)), especially because a “remedial statute is to be liberally construed to accomplish its object . . . exceptions to a remedial statute are to be strictly construed” (*id.* ¶¶ 8–9 (collecting other authority))).

Example 1: Arrakis County healthcare employees petition for union representation of a proposed bargaining unit of all employees at the County Medical Center, a public hospital, and the County Health Department.

- The bargaining unit can include employees in the Health Department (a county government entity), but not the Medical Center (a public hospital exempted by COBCA).

Example 2: A county sheriff asserts that a union representation petition should be rejected, arguing sheriffs aren't required to collectively bargain for two reasons: first, COBCA doesn't cover county sheriffs, who are separately elected from, and thus not part of, the general county government; second, requiring collective bargaining violates Colorado law on sheriff autonomy in personnel matters, such as at-will termination and how many staff to hire.⁵

- COBCA covers county sheriff employees, who may petition for representation by a union that, if elected, the sheriff has a duty to recognize and bargain with. First, county sheriff employees qualify as "county employees."⁶ Second, the legislature declined a request by sheriffs for exemption,⁷ so sheriffs are not on the COBCA list of exempt entities.⁸ Third, COBCA requires only bargaining, not any specific policies, so it doesn't infringe upon sheriffs' personnel discretion — because that discretion includes autonomy to grant (not just to restrict) employee rights if a sheriff agrees to that bargaining outcome.⁹

Employee Rights. County employees have a right to engage in, or refrain from, any of the following activities:

- **employee organizing** — organizing, forming, joining, assisting, or communicating with an employee organization for exclusive representation;
- **collective bargaining** — with an employer, through their chosen representatives, for a contract (a "Collective Bargaining Agreement" or "CBA") setting wages, benefits, hours, or other working conditions; or
- **concerted activity** — acting together, or communicating with, other employees for purposes of collective bargaining or "other mutual aid or protection," even if activities aren't directly union-related.¹⁰

⁵ *E.g.*, C.R.S. 30-10-506 ("Each sheriff may appoint as many deputies as the sheriff may think proper and ... revoke such appointments at will; except that a sheriff shall adopt personnel policies, including ... for the review of revocation of appointments.").

⁶ *E.g.*, [Dodge v. Padilla](#), 537 P.3d 409 (Colo. App. 2023) (employees of a county sheriff qualified as "county employees"; [Podboy v. Fraternal Order of Police](#), 94 P.3d 1226, 1228-1231 (Colo. App. 2004) ("law enforcement officers employed by the Denver Sheriff Department ... are employees of the City and County of Denver").

⁷ At a legislative hearing, the County Sheriffs of Colorado ("CSC"), in testimony by Joe Pelle representing CSC, acknowledged that COBCA covered county sheriffs, stating that CSC took an "amend position" of "kindly asking to be left out of this bill" because COBCA did "not respect the authority or autonomy of the elected office." After responses by Senator Liston ("If we excluded sheriffs then what about the other departments ... it seems like a house of cards.") and Fremont County Commissioner Kevin Grantham (excluding sheriffs would "create conflict between different departments" and complexity for counties), the legislature declined to exclude sheriffs as CSC requested (see SB230_L.535). Hearing on S.B. 22-230, S. Bus. Comm., 72nd Gen. Assemb., 1st Sess. (Apr. 27, 2022). The legislature amended COBCA to add or modify other exemptions (*e.g.*, counties under 7,500 in population, and "confidential employees"), and rejected other amendments to exempt certain entities or employees (including county human services departments and recording employees in county clerk offices) from COBCA coverage (*e.g.*, SB230_L.449, SB230_L.411, and SB230_L.537 (May 6, 2022 (available at <https://leg.colorado.gov/bills/sb22-230>)).

⁸ [C.R.S. 8-3.3-102\(6\)\(b\)](#) (listing entities excluded from the definition of "County" and exempt from COBCA).

⁹ [Tonjes v. Park County Sheriff's Office](#), 300 F. Supp. 3d 1308, 1319 (D. Colo. 2018) (law recognizing sheriff's personnel discretion "does not limit sheriffs' discretion in determining what policies to adopt. The legislative history reflects the intent to authorize sheriffs' policies that limit the power to terminate employees at will," if the sheriff chooses). See also [Cummings v. Arapahoe County Sheriff's Dep't](#), 440 P.3d 1179 (Colo. App. 2018).

¹⁰ County employees are prohibited from strikes, work stoppages or slowdowns, group sick-outs, or another action that disrupts, on a widespread basis, the day-to-day functioning of a county. [C.R.S. 8-3.3-115\(6\)\(a\)](#).

Certifying or Decertifying an Employee Organization to Represent Employees.

1. Employees or proposed representatives must file a **petition** at the Division to certify or decertify an employee organization as **exclusive representative** of a defined **collective bargaining unit**. A petition:
 - must be supported by a “**showing of interest**” of **30%** of the proposed bargaining unit;¹¹
 - may have “**written or ... electronic signature[s]**”;¹²
 - must be kept **confidential** by the Division;¹³ and
 - may be **filed** on or after July 1, 2023, without restriction on **signing or collecting** a petition before that date.¹⁴
2. The Division will determine the **scope of the bargaining unit** if the scope is disputed, or if the Division finds that COBCA requires modification of the proposed unit (e.g., positions that must be excluded).¹⁵
 - a. All parties have an **opportunity to be heard** on whether a proposed unit is appropriate under COBCA — which, depending on the case, may include exchanging information and/or a hearing. (Rule 4.4.3)
 - b. “The **burden to prove** [exempt] supervisory status,” or other bases for exclusion from the unit, is “on the party asserting it,”¹⁶ consistent with the broader principle that “exceptions and exemptions are applied narrowly” under Colorado statutes like COBCA (see Coverage section p.1).

Example 3: County sheriff employees’ petition for a bargaining unit includes supervisory sergeants. The employer argues that sergeants are within the COBCA exclusion of an “executive employee”¹⁷ who: (A) has “management” of at least a “department or subdivision” as their “primary duty”; (B) “customarily and regularly directs ... two or more employees”; and (C) makes decisions or “recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees [that] are given particular weight.”¹⁸

→ Exemption depends on actual duties, not just job titles or job descriptions.

- An employee without a supervisor or manager title is still exempt if they primarily perform supervisory or managerial duties; but
- An employee with a supervisor or manager title is not exempt if they do not primarily perform supervisory or managerial duties. That means:
 - Sergeants are exempt if duties like these are their primary work: “managing patrol, detention, and investigative units; supervising and scheduling staff; ... performance reviews; and contributing significantly to ... hiring, firing, and disciplin[e].”¹⁹
 - Sergeants are not exempt if they have supervisory or managerial duties, but not as their “primary” duties, due to spending most of their time on front-line law enforcement duties (patrol, investigation, related paperwork, etc.).

¹¹ [C.R.S. 8-3.3-108\(1\)\(a\)](#).

¹² [C.R.S. 8-3.3-102\(22\)](#). Accord NLRB Casehandling Manual § 11001.7 (electronic signing, per Gen’l Counsel Mem. 15-08).

¹³ [C.R.S. 8-3.3-108\(1\)\(b\)](#) (“not disclose ... [any] employee who has participated in the showing of interest to any person”).

¹⁴ [C.R.S. 8-3.3-108\(1\)\(a\)](#) (election occurs if “[o]n or after July 1, 2023, ... a petition is filed”).

¹⁵ [C.R.S. 8-3.3-110\(2\)](#) lists factors as to proper bargaining unit scope; [C.R.S. 8-3.3-102\(1\)](#) lists employee types excluded.

¹⁶ [Oakwood Healthcare, Inc.](#), 348 NLRB 686, 687 (2006) (under NLRA) (emphasis added).

¹⁷ See [C.R.S. 8-3.3-102\(1\)](#) (excluding confidential, managerial, executive, and temporary, intermittent, or seasonal employees from the definition of “bargaining unit”).

¹⁸ [C.R.S. 8-3.3-102\(14\)](#).

¹⁹ Collective Bargaining Unit Determination, [Elbert County Sheriff’s Office](#) (Jan. 29, 2024); Unfair Labor Practice Determination, [Pueblo County Sheriff’s Office](#) (July 8, 2024), [affirmed by Administrative Law Judge](#) (Oct. 30, 2024), judicial appeal pending.

- c. After the bargaining unit scope is determined, the Division will determine the **sufficiency of the 30% showing of interest**, in “an administrative determination ... not subject to challenge by any person.”²⁰
3. A **secret ballot election** will be held once the bargaining unit scope and petition sufficiency are determined.
- a. Within 10 days of finding a sufficient showing of interest, the Division will set a **pre-election conference**, or otherwise solicit input from the parties, on election procedures. (Rule 4.6.1.)
 - i. At least three business days before the pre-election conference, or another date the Division orders, the county must provide the petitioner **contact information of employees** in the proposed unit.
 - ii. County employees may direct the county “not to provide some or all of their [contact] information” to the employee organization — but that **employee opt-out** doesn’t change their eligibility to vote, so the county must **still provide the Division** the employee’s contact information.²¹
 - iii. After the pre-election conference, the Division will issue an **election notice, with the tentative voter list**, and set a date for the county to **post and distribute** that notice (Rule 4.6.1(C) and 2.16)
 - b. Election procedures and scheduling shall be established by the Division, which will consider (but may not be bound by) the parties’ input or agreements and may be conducted **in person, and/or by mail**, at the discretion of the Division. (Rule 4.6.1.)
 - c. Notices and election ballots shall be in English, in Spanish if any party or eligible voter credibly indicates a need, and in **other languages** if needed and if possible in the time provided. (Rule 4.6.2.)
 - d. Ballots shall include the name of any **employee organization** supported by a “showing of interest” and a choice of “**no representation**” as an option for county employees. (Rule 4.6.3.)
 - e. Representation elections will follow certain procedures outlined in the Labor Peace and Industrial Relations (“LPIR”) Rules (specifically, LPIR Rules 5.3.2(C) - 5.3.3, 5.5.3 - 5.5.5, and 5.6.2 - 5.8.3), unless the Division orders different procedures. (Rule 4.6.4)
 - f. In reviewing ballots:
 - i. Ballots will be counted as **properly cast** if:
 1. **voter intent** can be determined, whether because the voter put a specific mark on the chosen option, or because they otherwise marked the ballot in a way to indicate the intended vote (e.g., circling “No” to indicate a vote against representation);
 2. they are **materially complete** — e.g., mail ballot return envelope includes a signature; and
 3. they are not **duplicate** ballots — e.g., the same voter attempts to vote more than once. (LPIR Rule 5.8.2.)
 - ii. The following are proper grounds for **challenging** a ballot:
 1. **identity** — i.e., the voter is absent from the voter list, and that absence is an accurate exclusion rather than an erroneous omission; or
 2. ineligibility due to **separation** from employment, or other **job change** that removed them from the bargaining unit (other than an unlawful termination or job change). (LPIR Rule 5.7.1.)
4. **Election results:**
- a. A **majority of valid ballots cast** will determine whether the employee organization is certified (or de-certified) to represent the unit. (Rule 4.6.6.)
 - b. If **no one option receives a majority** of votes — neither any one proposed representative nor the choice of “no representative” — the election will proceed to a runoff within 28 days. (Rule 4.6.7.)

²⁰ [C.R.S. 8-3.3-109\(3\)](#) (determination of sufficiency), 8-3.3-108(1)(b) (determination not subject to challenge).

²¹ [C.R.S. 8-3.3-109\(4\)\(a\)](#) lists the employee contact information to be furnished by the county.

- c. Within seven days after certification of results, a party may file, with supporting proof, any **objection** to the conduct of the election, or conduct affecting the results. Any other party may respond before the Division makes any findings or considers any remedies, including a new election. (Rule 4.6.8.)

County Rights & Responsibilities. Once an employee organization is certified, counties must:

- **collectively bargain in good faith** with the employee organization, which precludes the unilateral alteration of “wages, hours, and other terms and conditions of employment”;²²
- **allow representation at grievance meetings** for covered employees; and
- **facilitate administration** through various forms of information-sharing²³ and (where authorized by the employee) deduction of dues.
- **Executive powers:** [C.R.S. 8-3.3-105](#) protects certain county rights, including that COBCA and CBAs can’t restrict, duplicate, or usurp responsibility or authority **granted by a home rule charter or state law**.²⁴

Unfair Labor Practice (“ULP”) Complaints

- ULP complaints can be filed at the Division by employees, employee organizations, or counties, by **six months** after they knew or reasonably should have known of the violation.²⁵
- Only **specific labor/management relations matters** listed in COBCA — in particular, violations of the rights or responsibilities summarized above — qualify as ULPs, not all “unfair” acts.²⁶
- After investigating (and typically without a live hearing, unless one proves necessary), the Division **determines** whether a ULP occurred, and may **order remedies** such as:
 - fines and compliance orders (stop ULPs, post notices of rights, fix policies, etc.);
 - decertification of a union, under certain circumstances; and/or
 - orders to make whole an employee whose job a ULP impacted (reinstatement, pay replacement, etc.).²⁷
- ULP determinations may be **appealed** to a hearing officer for a **hearing**, with findings of *law* reviewed “de novo” (as if a decision was not previously made) and findings of *fact* reviewed for “clear error.” (Rule 5.4.)

Impasse Resolution procedures for CBA negotiation can be set by parties.²⁸ Otherwise, the following applies.

- **Mediation:** After the earlier of 90 days of unsuccessful negotiation or 120 days before a CBA expires, a party can require an agreed-on mediator (splitting costs) or the Federal Mediation and Conciliation Service.²⁹
- **Fact-finding:** If mediation fails, a party may request a fact finder from a Division roster who recommends an outcome — and if the employee organization votes to accept it, the County must hold a vote on whether to accept or reject the fact finder recommendation.³⁰

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_LaborRelations@state.co.us.

²² [C.R.S. 8-3.3-112\(1\) and \(2\)](#), [8-3.3-115\(1\)](#); but see [C.R.S. 8-3.3-105](#) (protecting county discretion on various topics without a duty to bargain).

²³ *E.g.*, [C.R.S. 8-3.3-112\(2\)](#): sharing employee contact information; access for new employee orientation and other times; annual rights notice.

²⁴ For more on home rule counties, see Colo. Const. Art. XIV, § 16, and [C.R.S. 30-35-103](#) and [30-35-201](#) to -202.

²⁵ For these and other details on ULP complaints and proceedings, see [C.R.S. 8-3.3-115](#) and Rule 5.

²⁶ [C.R.S. 8-3.3-115](#).

²⁷ Rule 5.3.7.

²⁸ [C.R.S. 8-3.3-114\(1\)](#).

²⁹ [C.R.S. 8-3.3-114\(2\)\(b\)](#).

³⁰ [C.R.S. 8-3.3-114\(4\) and \(5\)](#).