COLORADO
Department of Labor and Employment

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Unfair Labor Practice Complaint No. 0022-24
Charging Party: Fraternal Order of Police, Lodge #47
Respondent: Douglas County and the Douglas County Sheriff's Office

COLORADO DIVISION OF LABOR STANDARDS AND STATISTICS
UNFAIR LABOR PRACTICE DETERMINATION AND ORDER

The Division of Labor Standards and Statistics (Division) has investigated Unfair Labor Practice (ULP) Complaint No. 0022-24, dated May 10, 2024, filed by the Fraternal Order of Police (FOP), Lodge No. 47, against Douglas County and the Douglas County Sheriff's Office (collectively, the County). As detailed below, the Division finds that Sheriff Darren Weekly, Undersheriff David Walcher, and County Commissioners George Teal, Abe Laydon, and Lora Thomas committed unfair labor practices in violation of the Collective Bargaining by County Employees Act (COBCA).

LEGAL STANDARD

C.R.S. § 8-3.3-103(1) guarantees county employees the right to:

> (a) [s]elf-organize; (b) [f]orm, join, or assist an employee organization; (c) [e]ngage in the collective bargaining process and the formation of a collective bargaining agreement through representatives of their own choosing; (d) [e]ngage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and (e) [r]efrain from any or all concerted activities without interference, constraint, or coercion by a county or an employee organization.

C.R.S. § 8-3.3-115(2)(a)-(c) provides that:

> A county, its representatives, its agents, or anyone acting on behalf of the county shall not:
>
> (a) [d]iscriminate against, coerce, intimidate, interfere with, or impose reprisals against, any county employee for forming or assisting an employee organization or expressing the county employee's views regarding county employee representation or workplace issues or the rights granted to the county employee in this article 3.3.;
>
> (b) [d]eter or discourage county employees or county employee applicants from becoming

> or remaining members of an employee organization or from authorizing payroll deductions for dues or fees to any employee organization; except that the county may respond to questions from a county employee pertaining to the county employee's employment or any matter described in this article 3.3., as long as the response is neutral toward participation in, selection of, and membership in an employee organization; [or]
>
> (c) [u]se any public funds or official position to support or oppose any employee organization; except that the provision of routine services and facilities and paid time for exclusive representatives may be provided by a county pursuant to a collective bargaining agreement between the county and an exclusive representative; . . .

Additionally, C.R.S. § 8-3.3-115(5) provides that:

> The expression of any personal view, argument, or opinion by an elected official must not be considered a violation of this section unless the expression contains a threat of reprisal or promise of a benefit or is made under coercive conditions. Representatives of counties may correct the record with respect to any false or misleading statement made by any person, publicize the fact of a representation election, and encourage county employees to exercise their right to vote in the election.

C.R.S. § 8-3.3-106 grants the Division authority to investigate ULP complaints and issue determinations. Under COBCA Rule 5.3.6, the Division "shall make a determination as to whether an unfair labor practice has been committed and issue written findings and orders, which shall be sent to all parties."

Under C.R.S. § 8-3.3-115(2)(a)-(b), the pertinent inquiry is the effect that the employer's conduct would tend to have on "reasonable employees." *See Town of Tewksbury*, 19 MLC 1808 (1993) (applying the same rule in the context of a county collective bargaining statute substantially similar to C.R.S. § 8-3.3-115(2)(a)). It is the effect that the employer's action had on the employees rather than the employer's motivation that is the essence of the case. *Id*. The National Labor Relations Board case law supports a similar objective inference when interpreting employer statements.[1]

[1] *See e.g.*, *Starbucks Corp.*, 2024 NLRB LEXIS 92, *15 (2024) ("[T]he test for evaluating alleged unlawful employer statements is an objective one--whether the statements would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their rights under the Act."); *GM Electrics*, 323 N.L.R.B. 125, 126 (interpreting employer representative statements from the perspective of a reasonable employee irrespective of the speaker's motivation or intent:

> We note that the applicants only heard Eaton's comments and observed her reaction, and neither they nor Eaton were told Murrieta's explanation for his statement about Ivie's union status. In this context, we find that Eaton's remarks–'I know he's union. They're all union.'--implied that union job seekers would be treated adversely by the Respondent in the application process. We find that such statements are coercive and have a reasonable tendency to interfere with employee rights under the Act.).

See also Mohawk Bedding Co., 204 N.L.R.B. 277, 278 ("Through the Employer's repeated reference to the Union causing other plants to close and the high unemployment situation locally, *the employees could reasonably infer* that their employment would be jeopardized if they supported the Union and that the Employer was willing to use its economic power to make the threat an actuality.") (emphasis added).

In addition, COBCA largely parallels the National Labor Relations Act (29 U.S.C. § 151 et seq.), and when interpreting the COBCA, it is proper to look to federal authority for its persuasive value. *Gomez v. JP Trucking, Inc., 2022 CO 21, ¶ 49, 509 P.3d 429, 440 (Colo. 2022) (*recognizing that "federal case law construing a federal enactment deserves great weight in interpreting a state enactment where the two enactments 'are identically or substantially so,' . . . or where the provisions of the state enactment are 'closely patterned after and designed to implement the policies of the federal' one") (internal citations omitted); *Indus. Com. of Colo. v. Bd. of Cty. Comm'rs*, 690 P.2d 839, 845 (Colo. 1984) ("[W]here the provisions and purposes of a state statute parallel those of a federal enactment, federal authorities are highly persuasive.").

If the Division ultimately determines that an unfair labor practice was committed in violation of COBCA, it has authority, pursuant to C.R.S. § 8-3.3-106(4) and COBCA Rule 5.3.7, to impose the following remedies:

- appropriate administrative remedies;
- actual damages related to employee organization dues;
- back pay, including benefits;
- reinstatement of the county employee with the same seniority status the employee would have had but for the unfair labor practice violation;
- other remedies to address any loss suffered by a county employee or a group of county employees from unlawful conduct by a county;
- declarative or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions; and
- any other remedies or relief authorized by law, including but not limited to C.R.S. Title 8, Articles 1, 4, 6, and 13.5.

FACTUAL BACKGROUND

In the months leading up to March 8, 2024, the FOP began collecting signatures to demonstrate a showing of interest required by COBCA to hold a representation election. On February 7, 2024, the FOP sent an email to Sheriff's Office employees in which it stated,

> Following thorough discussions and in response to the expressed desires of our members, we initiated a survey. Your voices were heard loud and clear through our recent survey, and the resonance was profound. An overwhelming 75% of you have cast a resounding "yes" vote for collective bargaining in Douglas County. In the spirit of transparency and support, I met with Sheriff Weekly to share the survey results and discuss our proposed course of action. Sheriff Weekly expressed his continued support for us and the FOP.

Following this email, the FOP sent a clarifying email (date unknown) to employees in which it stated,

> I am writing to provide some clarification regarding the collective bargaining process. It has come to my attention that there may be some question regarding Sheriff Weekly's stance on this matter. While Sheriff Weekly has consistently stated his opposition to collective bargaining from the outset, it's crucial to emphasize that he remains fully supportive of the Fraternal Order of Police (FOP) and its members. However, it's essential to note that

> supporting the FOP does not equate to supporting collective bargaining. I understand that some of you may have inferred Sheriff Weekly's support for collective bargaining based on his support for the FOP. However, I want to make it explicitly clear that this is not the case.

On February 14, 2024, Sheriff Weekly sent an email to all employees, which stated in part,

> I want to be very clear that I oppose collective bargaining and I feel it's totally unnecessary . . . In my opinion adding another layer of bureaucracy by introducing collective bargaining between me, our employees and our Commissioners is completely unnecessary. I promise you as your Sheriff I will continue to work with our Commissioners to ensure our employees are fairly compensated and that we continually look for opportunities to improve all aspects of your work environment.

The email additionally expressed the Sheriff's general support for the FOP:

> I fully support the Fraternal Order of Police to protect its members. I myself was a member of the FOP for many years and appreciate the men and women in our law enforcement communities in their efforts in education, legislation, information dissemination and community involvement.

It also detailed the Sheriff's Office's pre-existing efforts to improve employees' pay, benefits, and terms and conditions of employment.

On February 16, 2024, Sheriff Weekly sent another email to employees titled "Did You Know?" in which he stated, in part,

> I certainly hope you read my email that I sent on February 14 regarding the FOP and the attempt to form a union at the Sheriff's Office. I want to reiterate that I am absolutely opposed to that effort. Over the coming weeks, you will be receiving additional emails from me regarding many successes that we've achieved over the past few years, which demonstrate the overwhelming commitment of this County to the men and women of this Office. . . You may hear many promises from the FOP or outside union representatives. My promise and commitment to you is to provide you accurate and truthful facts to make an informed decision.

Sheriff Weekly sent additional emails on February 20th ("Did You Know? #2"), February 22nd ("Did You Know? #3"), February 26th ("Did You Know? #4"), February 28th ("Did You Know? #5"), March 1st ("Did You Know? #6"), March 7th ("Did You Know? #8"), March 13th ("Did You Know? #9"), and March 14th ("Did You Know? #10").[2] In response to the Division's Notice of Unfair Labor Practice Complaint and Demand for Response and Documents in which it requested, "All documents or written communications sent to employees (*i.e.*, emails, posters, invitations memoranda, or other documents) referencing collective bargaining, union organizing, or employee attendance at meetings during which union organizing was discussed[,]" The County failed to provide any of the above-referenced "Did You Know?" emails. The FOP provided the Division with the "Did You Know?" emails #1, 2, 3, 5, 8, 9, and 10, and the Division became aware of the "Did You Know? #6" email through another ULP complaint.

The February 20, 2024, "Did You Know? #2" email again reiterated Sheriff Weekly's opposition to the FOP's organizing efforts and touted various successes achieved for employees in the areas of pay and benefits.

[2] The Division has not been provided with evidence as to whether a "Did You Know? #7" email was sent to employees.

In his February 22, 2024, "Did You Know? #3" email, Sheriff Weekly wrote:

> If a union gets formed at the Douglas County Sheriff's Office (DCSO), the law in Colorado that allows for collective bargaining (Collective Bargaining by County Employees, C.R.S. § 8-3.3-101 to § 8-3.3-116) requires that the union negotiate with the Board of County Commissioners, NOT the Sheriff, for all of the terms and conditions of your employment. This makes all of the work that myself and Undersheriff Walcher have done to create strong relationships with the Commissioners, the County Manager, and the Human Resources and Budget Directors irrelevant.
>
> Instead, the Board of County Commissioners will work with the County Attorney's Office to negotiate the terms and conditions of your employment. And, on your behalf, the FOP legal counsel (from Missouri) will negotiate for the Deputies and Sergeants. I am not comfortable handing over your future and best interests to third-party, out-of-state strangers.
>
> This type of third-party interference is absolutely unnecessary at the Douglas County Sheriff's Office. We have formed EXCELLENT connections with our board and other key County staff. This trust and these local relationships are the best way to ensure that we have the staffing, budget, benefits, compensation and equipment to help you perform your job and ensure the health and safety of your families.
>
> This law and the formation of a union removes my ability to continue to support and advocate for each of your best interests, and instead places the responsibility in the hands of an unknown third-party. . .

The February 26, 2024, "Did You Know? #4" email and the February 28, 2024, "Did You Know? #5" email provided employees with information about union organizing efforts in Arapahoe County and the City and County of Denver. The March 1, 2024, "Did You Know? #6" email stated, "[b]y forming a union, you are giving up your destiny to someone else (union representatives, attorneys, etc.) in matters related to the terms and conditions of your employment. These individuals may have their own agenda and that's not a risk that I, personally, would be eager to take."

In his March 7, 2024, "Did You Know? #8" email, Sheriff Weekly wrote, "First, let me clear up some confusion and misunderstanding that has come to my attention. Some of you have told us you signed a union authorization card because the FOP stated I supported their unionization efforts. THIS IS FALSE! . . ." The email went on to inform employees of their ability to revoke their signed union authorization cards and further stated, "I firmly believe that unionization at the Douglas County Sheriff's Office has the potential to make things worse, not better, for you, your families, our department, and our community." Thereafter, on March 8, 2024, the FOP filed its petition for a representation election under COBCA.

On March 11, 2024, Captain Joel White sent an email to certain employees (the email was addressed to "SO Invest Supervisors") stating,

> …[a]ttached is the master schedule for guest speakers, Mr. Penn/TCG Consultants. This meeting is for Detectives, Corporals, and Sergeants. Lieutenants will not be present . . . This will be an opportunity to hear from Mr. Penn and his group about unions, union negotiations, and the related disadvantages of what unionization at the Douglas County Sheriff's Office would mean . . . The groups below must remain in place and for the selected times.

On March 13, 2024, Sergeant Andrew Sanders sent an email to six employees stating, "[w]e are required to attend a meeting for guest speakers concerning unions and union negotiations on Tuesday, March 19,

8 A.M. DCSO HQ Patrol Briefing Rooms. Please plan on attending and I have noted it on the vacation schedule."

In his March 13, 2024, "Did You Know? #9" email, Sheriff Weekly informed employees of COBCA's requirement for the County to provide employees' names, job titles, work locations, home addresses, personal e-mail addresses, and home or cellular telephone numbers to the petitioning employee organization as well as employees' right to opt out of providing such information. The email additionally offered a link for employees to exercise their opt-out rights.

On March 13, 2024, the Division issued an election notice to Arapahoe County and the Arapahoe County Sheriff's Office stating that the FOP filed an election petition on March 8, 2024, pursuant to COBCA, which requires a thirty percent showing of interest by county employees in the proposed bargaining unit.

On March 22, 2024, Sheriff Weekly held an "informational meeting" about the collective bargaining election, during which employees were encouraged to vote "no" in the upcoming election. The County disputes that this meeting was mandatory.

On March 25, 2024, County Commissioners George Teal, Abe Laydon, and Lora Thomas released a YouTube video using public funds to speak out against the collective bargaining effort. This video was titled "Learn more from your Commissioners about the unwelcome attempt to unionize our Sheriff's Office." Some of the statements contained in the video are as follows:

- "We stand with Sheriff Weekly in firm opposition to this union effort. Sheriff Weekly was never in support of a union, despite the Fraternal Order of Police (FOP) sending out information to Sheriff employees indicating otherwise. This trickery by the union caused many employees to sign their names in support of a union because they were falsely led to believe Sheriff Weekly supported it."
- "The union now has enough signatures to force an election to determine if officers want to be represented by the FOP or vote "no" and allow Sheriff Weekly to continue to represent the interests of his employees and the interests of your family."
- "In Douglas County, we oppose the notion that outsiders would think they know what's best for our community, our Sheriff's office employees, and your safety."
- "We believe a union would not only interfere with the effective delivery of the exceptional law enforcement you have come to expect from your sheriff's office but also not be in the best interest of the employees who work there."
- "So when you hear that unions are trying to overtake the Sheriff's office, we ask you to pause and recognize that it is not in the best interest of our Sheriff's office, nor in the best interest of the employees who serve you."
- "We agree with Sheriff Weekly that unions are unnecessary in the Douglas County Sheriff's Office. We agree with you that living in a safe community and living in a community that is a great place to raise a family requires the right investment in the right assets at the right time and firmly focused on your safety."
- "We think the best path forward is without unions standing in the way of these goals and your very clear expectations of us for public safety outcomes in our service to you and your family."

On March 29, 2024, Undersheriff David Walcher sent an email to all commissioned officers[3] that stated,

> I know that some of you are tired of receiving these emails, but I hope you know that no one is more tired of this unionization effort than myself and the Sheriff. . . DID YOU KNOW……..RUMOR #2: 'We have a good Sheriff now and we are confident in his abilities. If we get a bad Sheriff in the future, we will not be able to do anything. If we don't vote a union in now, we will have lost our chance.' FALSE! THE TRUTH:
>
> ● The Colorado law that allows for collective bargaining puts NO constraints on when a union can be formed.
>
> ● We understand having a fear of the unknown, but making the right choice to vote NO today will not affect the right of employees to consider collective bargaining in the future . . .

On April 2, 2024, Undersheriff Walcher emailed employees to inform them that the Sheriff's Office had denied the FOP access to use the Sheriff's Office email system to contact employees. On April 3, 2024, Undersheriff Walcher again emailed employees regarding dates for the upcoming election and informed them that they could vote "no" on the question of union representation. On April 11, 2024, Undersheriff Walcher sent a reminder email referencing prior emails.

On April 11, 2024, after a pre-election conference on March 28, 2024, the Division issued a Notice of Election for posting and distribution stating that an in-person election would be conducted on April 29th, May 1st, and May 3rd at the Douglas County Sheriff's Office Headquarters and Highlands Ranch Substation.

On April 12, 2024, Undersheriff Walcher sent all commissioned officers an email that stated,

> Just to reiterate, the Sheriff and I are committed to providing you as much information as we can regarding the attempt by the FOP to unionize the Sheriff's Office, which is absolutely unnecessary. I believe it will hurt us as an organization and will be detrimental to our employees . . . Did You Know . . . Rumor #7: The Sheriff and Undersheriff are angry at us for this union attempt that the FOP has started. Even if we vote NO to the Union, they will remain angry. FALSE! The TRUTH:
>
> ● There is no doubt that the Sheriff and I are disappointed, especially after everything we've been able to accomplish and all that we are continuing to try and accomplish.
>
> ● The fact is that the Sheriff and I are disappointed - not with you, but with the underhanded and dishonest manner that the FOP went about tricking our employees into signing authorization cards. A number of you have told us you signed a card because FOP leadership and members claimed, through emails and personal conversations, that the Sheriff was in support of this effort. As you now know the Sheriff has NEVER supported unionization.
>
> ● However, rather than staying disappointed, we were concerned enough about the misinformation that we have been working with the County to ensure each of you has as much information as possible before you vote. That is why you have been receiving these

[3] Commissioned officers include all members of the Sheriff's office commissioned by the Sheriff with the authority to enforce laws and carry firearms granted under C.R.S. § 16-2.5-101.

> emails and training - to tell you the TRUTH so you can make an informed decision when you vote during the week of 4/29 - 5/3.
>
> ● We want to get back to business instead of being paralyzed and sitting on the status quo. We want to take what we have learned from you through this challenging time and make sure we continue to become an even better, more professional organization . . .

On or about April 23, 2024, Sheriff Weekly hung campaign posters in the office that featured a picture of the Sheriff in uniform next to the words "VOTE NO ON COLLECTIVE BARGAINING." Additionally, the poster contained a statement that Sheriff Weekly paid for it.

On April 24, 2024, Sheriff Weekly appeared in a YouTube video in which he urged employees to vote and stated,

> . . . please vote "no." We do not need a third party coming in and negotiating either your pay, your benefits, or policy. That's my job and I'm hearing you loud and clear. And we didn't need the unionization dust-up to do that. My door has always been open. Just because I'm the Sheriff does not mean I forgot where I came from. I care about you and I care about your families. And if we can improve the organization through changing policies, let's do it. I'm all in favor of that. And I expect you all to hold me accountable. That's fine. And I don't mind that at all. I'm not worried that I'm not going to be doing my job - I am. I'm going to be working hard for you every single day that I come to work. Just like the citizens are going to hold me and all of us accountable for the work that we do. And, so, please vote "no." I am listening to you. We don't need a third party coming in . . .

Sheriff Weekly appeared in an additional video (date unknown) in which he touted his accomplishments as Sheriff and stated,

> The County Commissioners fully support the Douglas County Sheriff's Office and this effort to unionize is absolutely unnecessary. We don't need an extra layer of bureaucracy in this organization. And I don't know what promises have been made to people that have either expressed to joining the union [sic] or why they signed the cards. I've gotten a lot of information, and many of you know this, that they were told that I wanted them to sign the cards, which is absolutely, one hundred percent, not true. I have received emails that were sent out that inferred that I supported this effort. And most of you have already heard that is absolutely not true. And, so, what I ask of you is to please vote "no" when the vote comes to fruition . . . because again, we don't need this extra layer of bureaucracy. I promise you as your Sheriff that I will do everything that I can to support you and your family and ensure that you guys get the benefits that you need.

The video ends with an animation of a Douglas County Sheriff's Office badge.

On April 24, 2024, the FOP submitted a Motion to Withdraw the Petition for a Collective Bargaining Unit Election and Cancel the Election Scheduled to Begin on April 29, 2024, to the Division on the grounds that the County had committed numerous unfair labor practices in violation of COBCA with the intent to interfere with the election. The Division issued an official notice adjourning the election on April 25, 2024, and holding the petition in abeyance until November 4, 2024. On May 10, 2024, the FOP filed the Unfair Labor Practice Complaint, which is the subject of this determination and order.

LEGAL ANALYSIS

A. There is no Conflict Between C.R.S. § 8-3.3-115(2) and C.R.S. § 8-3.3-115(5)

The FOP suggests in its ULP complaint that Sheriff Weekly, Undersheriff Walcher, and County Commissioners George Teal, Abe Laydon, and Lora Thomas were required to maintain neutrality in their communications with employees regarding unionization efforts pursuant to C.R.S. § 8-3.3-115(2)(b), which provides, ". . . the county may respond to questions from a county employee pertaining to the county employee's employment or any matter described in this article 3.3., as long as the response is neutral toward participation in, selection of, and membership in an employee organization." The County argues that this neutrality provision is in direct conflict with C.R.S. § 8-3.3-115(5), permitting elected officials' right to express most personal views.[4] For the reasons set forth below, the Division disagrees that such a conflict exists.

When interpreting a statute, the Division must "seek to ascertain and give effect to the General Assembly's intent" by applying statutory "words and phrases in accord with their plain and ordinary meanings." *Elder v. Williams*, 2020 CO 88, ¶ 18; *see also* C.R.S. § 2-4-101. Moreover, the Division must also "look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts" and "avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results." *Elder*, 2020 CO 88, ¶ 18. When applying these principles to interpret COBCA section 8-3.3-115, subsections (2) and (5), no such irreconcilable conflict arises.

C.R.S. § 8-3.3-115(2) lists prohibited acts that, if performed by certain parties, constitute a violation of section 115 and establish an unfair labor practice. C.R.S. § 8-3.3-115(5) makes explicit that the expression of personal views by "elected officials" generally does not constitute an unfair labor practice, so long as the expression does not contain "a threat of reprisal or promise of a benefit or is made under coercive conditions." Subsection (5) also provides that "representatives of counties" may correct misstatements, publicize a representation election, and encourage county employees to exercise their right to vote in the election.

Importantly, section 115(2)'s restrictions apply to a particular group of parties: the county; the county's representatives; the county's agents; and anyone acting on behalf of the county (the "Subsection 2 Group"). However, section 115(5) provides a few exceptions for a subset of parties within the Subsection 2 Group: elected officials (the "Subsection 5A Group") and county representatives (the "Subsection 5B Group").

So, to the extent that either an elected official — who also qualifies as a member of the Subsection 2 Group — or a county representative — who already qualifies as a member of the Subsection 2 Group — establishes that a section 115(5) exception applies to their action, then that action is not a violation under section 115(2). In other words, the General Assembly contemplated that an uncoercive personal view of an elected official or the correction by a county representative of a false or misleading statement would not constitute the kind of discrimination or deterrence forbidden in the list of unfair labor practices listed in subsection 2.

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[4] The County also argues that the neutrality provision itself is unconstitutional in violation of the First Amendment, the Machinists' Doctrine, and the Garmon Doctrine. *See Chamber of Commerce of United States v. Brown*, 554 U.S. 60 (2008); *see also Chamber of Commerce of U.S. v. Lockyer*, 422 F.3d 973 (9th Cir. 2004). The Division does not have the authority to declare a statutory provision unconstitutional. Moreover, the Machinists' Doctrine and the Garmon Doctrine apply solely in the context of private employers under the jurisdiction of the NLRB.

Still, section 115(5)'s exception for elected officials is limited only to the "expression of any personal view, argument, or opinion" that does not "contain a threat of reprisal or promise of a benefit" and is not "made under coercive conditions." To that point, the Division must evaluate, for elected officials (here, Sheriff Weekly and County Commissioners George Teal, Abe Laydon, and Lora Thomas), the elected official's expression *and* the circumstances surrounding the expression to determine whether the elected official expressed their personal view, argument, or belief in a manner that contained a threat of reprisal or promise of a benefit or under coercive conditions. For county representatives (here, Undersheriff Walcher),[5] it must evaluate whether the expression is to "correct the record with respect to any false or misleading statement made by any person, publicize the fact of a representation election, and encourage county employees to exercise their right to vote in the election."

B. Sheriff Weekly's Actions and Statements Constitute Unfair Labor Practices in Violation of C.R.S. § 8-3.3-115(2)

1. Sheriff Weekly's False and Misleading Statements Threatened Reprisal for and Discouraged County Employees from Unionizing[6] in Violation of Section 115(2)(a) and (b), and Were Coercive and Official in Nature Such That They Were Not Expressions of Personal Opinion Under Section 115(5).

As explained above, during the union's solicitation of signatures to make a showing of interest in support of a union election and once an election was pending, Sheriff Weekly engaged in an extended email campaign, sending ten emails over the course of a month and a half, resulting in one-to-three emails to county employees each week. These emails presented negative characterization of the FOP union as facts, suggested without supporting evidence that unionization would result in worsened workplace conditions, and discouraged county employees from supporting the FOP unionization effort. These emails were sent from the Sheriff's work email address to the work email addresses of Sheriff Office employees. The Sheriff also issued a campaign poster opposing the union, that, though noting he personally paid for the poster, hung in the Sheriff's offices and depicted him wearing his Sheriff's uniform. Finally, the Sheriff recorded two YouTube videos discussing the unionization efforts, with at least one depicting an animation of a Douglas County Sheriff's Office badge.

The Division finds that Sheriff Weekly's email campaign implicitly threatened reprisals against employees who joined the union, in violation of section 115(2)(a), and discouraged county employees from joining a union, in violation of section 115(2)(b). For the reasons explained below, these emails, delivered via the Sheriff Office's work email at regular intervals and in an official tone and manner, were official and coercive in nature, taking them beyond the protection of section 115(5).

As discussed above, C.R.S. § 8-3.3-115(2)(a) and (b) make it an unfair labor practice for a county, its representatives, its agents, or anyone acting on behalf of the county to (a) coerce or threaten to impose reprisals against any county employee for forming or assisting a union or to (b) deter or discourage county employees or county employee applicants from becoming or remaining members of an employee organization.

An employer may lawfully communicate to its employees "carefully phrased" predictions based on "objective facts" as to "demonstrably probable consequences beyond [its] control" that it believes unionization will have on the employer. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 616-620 (1969).

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[5] The fact that Undersheriff Walcher was called upon to assume the role of acting Sheriff in the absence of Sheriff Weekly does not elevate him to the status of an elected official.

[6] Throughout this determination "union" will be used to mean an "employee organization" within the meaning of the COBCA statute.

However, if there is "any implication that an employer may or may not take action solely on [its] own initiative for reasons unrelated to economic necessities and known only to [it]," the statement is a threat of retaliation. *Id*.

In his email campaign, Sheriff Weekly made numerous false or misleading statements that were not based on objective facts and were inherently coercive. Such coercive statements fall outside the protected status of section 115(5) and constitute unfair labor practices under section 115(2)(a) since they threaten reprisal or retaliation against employees if they support and elect a union.

Specifically, in his February 22, 2024 "Did You Know #3" email, Sheriff Weekly stated that COBCA "and the formation of a union removes [his] ability to continue to support and advocate for [employees'] best interest, and instead places the responsibility in the hands of an unknown third-party . . ." and that if a union is elected, he would not be involved in subsequent negotiations - making "all of the work that [he] and Undersheriff Walcher have done to create strong relationships with the Commissioners, the County Manager, and the Human Resources and Budget Directors irrelevant."

First, COBCA does not remove the County employer from collective bargaining agreement negotiations following the successful election of an employee representative. In fact, section 112(4) states that "[a]n exclusive representative and a county shall make a good faith effort to complete negotiations so that the terms of a collective bargaining agreement may be effectively considered by the board of county commissioners during the adoption of the county budget." Further, section 113(1) states that "[a]n agreement negotiated between an exclusive representative and a county, with the approval of the board of county commissioners of the county, constitutes the collective bargaining agreement between the parties." The statute plainly contemplates that negotiations between the Sheriff's Office and the FOP (if elected) would determine the terms of a collective bargaining agreement that, once completed, would be considered by the county commissioners for approval. The NLRB has consistently held, and the Division agrees, that employer misrepresentations of statutory provisions constitute interfering with or coercing employees in the exercise of their labor rights. *See, e.g., Baddour, Inc.*, 303 NLRB 275 (1991); *Vemco, Inc.*, 304 NLRB 91#1, 913, 925-926 (1991) (finding employer's statements arguing it could legally close in response to unionization was a misinterpretation of statutory provisions and therefore violated Section 8(1)(a) by interfering with or coercing employees in their exercise of their labor rights); and *Emergency One*, 306 NLRB 800 (1992). As such, this conduct violated section 115(2)(a).

Second, Sheriff Weekly's statements that the election of a union would "remove [his] ability to continue to support and advocate for [employees'] best interest" alongside his statement that the work he has already done to advocate for employees would be made "irrelevant" imply that the parties would be bargaining from scratch. The NLRB has stated that "bargaining from scratch" "is a dangerous phrase which carries within it the seed of a threat that the employer will become punitively intransigent in the event the union wins the election." *See Coach & Equip. Sales Corp.*, 228 NLRB 440, 441 (1977). "[T]he phrase is coercive when it indicates that the employer will retaliate against employees by adopting a 'regressive bargaining posture' during negotiations or by 'unilaterally discontinu[ing] existing benefits prior to negotiations . . .'" *Hendrickson U.S.A., LLC v. NLRB*, 932 F.3d 465, 470-471 (6th Cir. 2019), quoting *Coach & Equip. Sales Corp.*, 228 NLRB at 440-441; *see also Stabilus, Inc. & UAW*, 355 NLRB 836, 855-856 (2010). The coercive nature of such statements is particularly clear in the presence of other unfair labor practices. *See Coach & Equip. Sales Corp.*, 228 NLRB at 440-441; *see also BP Amoco Chemical-Chocolate Bayou and Paper*, 351 NLRB 614, 617 (2007). Thus, here, the Sheriff's implication of bargaining from scratch violates section 115(2)(a) by threatening reprisals for supporting or joining a union.

Third, the frequency and nature of the emails in the context of the union soliciting signatures for a showing of interest and then the pending election, added to their coercive effect. As noted above, the length and

persistence of background antagonism to unionization has long been considered in evaluating the coercive nature of employer expressions. *See R. R. Donnelley & Sons Co. v. NLRB*, 156 F.2d 416, 417 (7th Cir. 1946) ("With this long, consistent, persistent background of antagonism to unions, the petitioner continued on every occasion to argue and plead with its employees against unionization and to propagandize in favor of its so-called non-union closed shop policy. Such conduct was clearly interference with the rights of the employees to organize and choose their own agent for purposes of collective bargaining as provided in Section 7 of the Act."; *McGraw-Edison Co. v. NLRB*, 419 F.2d 67, 71 (8th Cir. 1969) ("The multiplicity of the statements, the fact that some are attributable [**8] to officials of high rank, and the nature of their content lead us to conclude that the general counsel sustained the burden of proving the interference test . . ."). The persistence of the Sheriff's roughly twice weekly anti-union emails created an ongoing atmosphere of anti-union sentiment that rose to the level of coercion and interfered with his employee's right to unionize. In addition, the use of the Sheriff's work email caused the statements to reasonably be interpreted as the official position of the office. *See Dep't of the Air Force, Air Force Plant Representative Office*, 5 F.L.R.A. 492, 499 ("[W]here (as here) written statements by the head of an [Agency] are posted on all bulletin boards and circulated to unit employees, they are not merely the expression of personal views but may reasonably be interpreted as the [Agency's] official position with regard to the matters addressed in such statements").

That this roughly twice weekly email campaign arose in the context of a union soliciting signatures for a showing of interest and, then, a pending election further heightened its coercive effect. In the federal employee collective bargaining context, under the Federal Service Labor-Management Relations Statute's similar statute, public officials are only allowed to voice personal opinions when there is no representative election underway. When an election is underway, public officials may only:

> (1) publicize the fact of a representational election and encourage employees to exercise their right to vote in such election,
>
> (2) correct the record with respect to any false or misleading statement made by any person, or
>
> (3) informs employees of the Government's policy relating to labor-management relations and representation,

See 5 U.S.C.S. § 7116(e); *Dep't of the Air Force, Air Force Plant Representative Office*, 5 F.L.R.A. 492, 499 (explaining that in the context of representation elections, management's neutrality is required). As discussed in Part A above, C.R.S. § 8-3.3-115(2) and (5) when read together imply a similar requirement of neutrality, and while Colorado's statute is less directive, the Sheriff's frequent emails nonetheless were more likely to be interpreted as threats of reprisals for employees who supported the unionization efforts given that union organizing efforts were underway.

To the extent the County contends these emails constituted the Sheriff's expression of a personal view protected by section 115(5), the Division is unpersuaded. While Sheriff Weekly is an elected official to whom section 115(5) applies, his statements needed to be free from threats of reprisal and promises of a benefit and not made under coercive conditions to be protected by that statute. As explained above, his unsupported statements implicitly threatened reprisal for union support and the official nature of the emails deprived them of any "personal" nature and increased their coercive effect.

To be sure, the Division does not find that *all* of Sheriff Weekly's above-described conduct and statements constituted unfair labor practices. For example, certain of Sheriff's Weekly's statements, such as his references to prior improvements in pay, benefits, and terms and conditions of employment for Sheriff's

Office employees do not violate section 115(2)(a) because they are not unfounded predictions and are supported by objective evidence. His initial rebuttal of the Union's characterization that he "supported it" was also likely protected by section 115(5). And the expression of his personal opinion that the organizing effort is "unnecessary," taken alone, may not have run afoul of COBCA's protections, had it been made in a context that did not imply it was made in the Sheriff's official position and had it been unaccompanied by other unsupported predictions or discouragement of union participation. However, in the aggregate, the Sheriff's implicit threats and use of his official position to discourage union membership constituted unfair labor practices, authorizing the remedies ordered below.

2. Sheriff Weekly Held Captive Audience Meetings That Threatened Reprisals Against Any County Employee for Forming a Union in Violation of Section 115(2)(a).

On March 22, 2024, Sheriff Weekly held a meeting for Detectives, Corporals, and Sergeants that included presentations by consultants about "unions, union negotiations, and the related disadvantages of what unionization at the Douglas County Sheriff's Office would mean." Two emails were sent via the Sheriff's Office email to employees about this meeting, both of which made clear that attendance was mandatory. For example, in his March 11, 2024, Captain Joel White stated that employees attending the meeting "must remain in place and for the selected time." Additionally, Sergeant Andrew Sanders stated in his March 13, 2024 email, "[w]e are required to attend a meeting for guest speakers concerning union negotiations on Tuesday, March 19, 8 A.M. DCSO HQ Patrol Briefing Rooms. I have noted it on the vacation schedule."

As NLRB General Counsel Jennifer A. Abruzzo noted in her April 7, 2022, advice memorandum, such "captive audience" meetings "inherently involve an unlawful threat that employees will be disciplined or suffer other reprisals if they exercise their protected right not to listen to [employer speech concerning the exercise of their statutory labor rights]." Memorandum GC 22-04. The Division agrees and finds these meetings violated section 115(2)(a).

While section 115(5) permits *elected officials* to express their *personal* views, arguments, and opinions on union organizing, nothing in COBCA extends this right to outside consultants, nor permits even an elected official to force employees to listen to such expressions. COBCA, like the NLRA, provides employees with the right to engage in - and refrain from engaging in - a wide range of protected activities at work, and bars employers from interfering with employees' exercise of those rights. As General Counsel Abruzzo notes in her memorandum, in carrying out the "duty to ensure that employers do not unlawfully impair employee choice in that regard," the NLRB will "keep in mind the basic inequality of bargaining power between individual employees and their employers, as well as employees' economic dependence on their employers." (internal quotations omitted). The Division will do the same.

There is no question that these meetings were mandatory, despite the County's assertion to the contrary. Captain White's reference to the vacation schedule in his March 13th email underscores the mandatory meeting's inherently coercive and threatening nature, implying that employees were not permitted to use protected vacation time on the meeting date. As such, the Division finds that such meetings constitute unfair labor practices violating COBCA Section 115(2)(a).

3. Sheriff Weekly Used Public Funds and His Official Position to Oppose the Union in Violation of 115(2)(c)

In committing the above unfair labor practices, Sheriff Weekly used his work email and the work emails of his employees to deliver his anti-union message; he also used work time and public funds to hold the

captive audience meetings and appeared in his uniform in campaign posters. The evidence also shows that the consultants hired to present information to employees at these meetings were engaged using public funds in violation of section 115(2)(c). This use of public funds and the Sheriff's official position to oppose the union violated section 115(2)(c).

C. Undersheriff Walcher Committed Unfair Labor Practices in Violation of C.R.S. § 8-3.3-115(2)(b)

Towards the end of Sheriff Weekly's email campaign, and after the two mandatory meetings and the Commissioners' video, Undersheriff Walcher sent a series of four emails on March 29, 2024, April 2, 2024, April 3, 2024, and April 12, 2024. The Division finds that the March 29, 2024, and April 11, 2024 emails threatened reprisals against county employees who supported the unions in violation of COBCA Section 115(2)(a) and discouraged unionization in violation of section 115(2)(b).

As discussed above, predictions about the result of unionization that are unsupported by objective facts or which imply that an employer may take action based on its own initiative likewise run afoul of COBCA Section 115(2)(a). *See Gissel Packing Co.*, 395 U.S. at 616-620. In addition, C.R.S. § 8-3.3-115(2)(b) makes it an unfair labor practice for a county, its representatives, its agents, or anyone acting on behalf of the county to:

> [d]eter or discourage county employees or county employee applicants from becoming or remaining members of an employee organization or from authorizing payroll deductions for dues or fees to any employee organization; except that the county may respond to questions from a county employee pertaining to the county employee's employment or any matter described in this article 3.3., as long as the response is neutral toward participation in, selection of, and membership in an employee organization.

Undersheriff Walcher sent multiple emails to employees containing non-neutral statements clearly intended to discourage county employees from joining the FOP union. In his March 29th email, he expressed being "tired of the unionization effort" and suggested that the "right" way for employees to vote was to vote "no" in the upcoming election. In his April 12th email, he went further, stating that he believed unionization would be detrimental to the organization and its employees, and expressing his desire to "get back to business instead of being paralyzed and sitting on the status quo." His unsupported statements that unionization would "hurt us as an organization and will be detrimental to our employees" predicted adverse consequences from unionization without objective facts and, as such, were coercive. *Gissel Packing Co.*, 395 U.S. at 616-620; *Starbucks Corp.*, 2024 NLRB LEXIS 92, *11 ("[Store manager] cited no such objective facts in support of her statement that unionization would cost Starbucks money beyond what it could afford to keep stores open."); *Daikichi Corp.*, 335 N.L.R.B. 622, 623-624 (2001) (held that employer predictions of adverse consequences from unionization not based on objective facts are coercive). Moreover, when combined with the statement that there was a "right" way to vote, the Undersheriff's statements also implied that those who failed to vote "correctly" may be treated adversely. *See GM Electrics*, 323 N.L.R.B. 125, 126 (finding that where an employer's agent implied that union job seekers would be treated adversely by the employer in the application process, such statements were coercive and had a reasonable tendency to interfere with employee rights under the NLRA). Such expressions therefore constitute unfair labor practices violating section 115(2)(a).

Additionally, Undersheriff Walcher stated in his April 12, 2024, email that he and Sheriff Weekly were "disappointed . . . with the underhanded and dishonest manner that the FOP went about tricking our employees into signing authorization cards." The County argues that this statement (and others) qualifies as a correction of the record "with respect to any false or misleading statement made by any person,"

which is permissible when done by any representative of a county under section 115(5). The Division disagrees.

The evidence provided by the County in support of its argument that the FOP falsely implied to employees that Sheriff Weekly was in support of employees' union organizing efforts consists of two emails from the FOP to employees. The first, sent on February 7, 2024, contains no material misrepresentations or implied misrepresentations. Instead, the email states, "Sheriff Weekly expressed his continued support for us and the FOP." This is a sentiment that Sheriff Weekly reiterated throughout his own communications with employees regarding the unionization effort. *See, e.g.,* Sheriff Weekly's February 14, 2024 Email ("I fully support the Fraternal Order of Police to protect its members. I myself was a member of the FOP for many years and appreciate the men and women in our law enforcement communities in their efforts in education, legislation, information dissemination and community involvement."); *see also,* Sheriff Weekly's February 26, 2024 Email ("As a former FOP member I support the FOP and the line of duty benefits for its members.").

Moreover, to the extent that employees misunderstood the FOP's statement as an assertion that Sheriff Weekly supported the unionization effort itself, the FOP clarified in its subsequent email (date unknown) to employees that:

> [w]hile Sheriff Weekly has consistently stated his opposition to collective bargaining from the outset, it's crucial to emphasize that he remains fully supportive of the Fraternal Order of Police (FOP) and its members. However, it's essential to note that supporting the FOP does not equate to supporting collective bargaining. I understand that some of you may have inferred Sheriff Weekly's support for collective bargaining based on his support for the FOP. However, I want to make it explicitly clear that this is not the case.

The FOP's emails, taken together, do not evince the "underhanded" or "dishonest" conduct of which it was accused. On the contrary, the fact that the FOP emailed employees unequivocally conveying Sheriff Weekly's opposition to the organizing effort shows that the FOP clarified any possible confusion among employees regarding its previous statements concerning Sheriff Weekly's support for the FOP.

Moreover, even assuming that a correction was warranted, the correction should be calibrated in nature and scope to the false or misleading statement. A correction that veers into discouraging employees from becoming members of an employee organization is a violation of C.R.S. § 8-3.3-115(2)(b). Such was the case here. This conclusion is also underscored by the timing of this purported correction. The purported false or misleading statement by the FOP appeared over two months prior to the Undersheriff's email (February 7 versus April 12) and had already been corrected by the Sheriff in an email on February 14 (and again on February 26). Given this context, there was no longer any need for the Undersheriff to correct the record.

The County contends that Undersheriff Walcher's statements in these emails constituted a "personal opinion" under section 115(5). The Division finds section 115(5) inapplicable to Undersheriff Walcher's statements for two reasons.

First, as explained in Part A, under the plain language of the statute, Undersheriff Walcher is not an "elected official" whose expression of personal opinion is protected from an unfair labor practice finding pursuant to section 115(5).

Second, Undersheriff Walcher's expressions contained implicit threats of reprisal (that no progress would be made if the union were voted in) and of benefits (that only by voting "no" would he and the Sheriff improve the "status quo"), which would remove those expressions from the purview of section 115(5).

Moreover, the context of the emails as a whole (including the Sheriff's prior emails and meetings, as well as the Commissioners' video) created coercive conditions discouraging union membership, heightening the coercive effect of the Undersheriff's emails. The length and persistence of background antagonism to unionization has long been considered in evaluating the coercive nature of employer expressions. E.g., *R. R. Donnelley & Sons Co. v. NLRB*, 156 F.2d 416, 417 (7th Cir. 1946); *McGraw-Edison Co. v. NLRB*, 419 F.2d 67, 71 (8th Cir. 1969). This coercive context would remove the Undersheriff's emails from any section 115(5) protections.

Accordingly, the Division has concluded that Undersheriff Walcher's actions violated COBCA Section 115(2)(a) and (b) and that the County's arguments to justify his conduct are unfounded.

D. The County Commissioners' Misleading Statements Constitute Unfair Labor Practices in Violation of C.R.S. § 8-3.3-115(2)

1. The Commissioners' False and Misleading Statements Threatened Reprisal for and Discouraged County Employees from Unionizing in Violation of Section 115(2)(a) and (b), and Were Coercive and Official in Nature Such That They Were Not Expressions of Personal Opinion Under Section 115(5).

The Division concludes that the conduct and statements of County Commissioners George Teal, Abe Laydon, and Lora Thomas resulted in the following unfair labor practices under section 115(2)(a) and (b). In their March 25, 2024 video statement, these Commissioners (1) implied they would refuse to negotiate with the union, if it were voted to represent the Sheriff employees, in violation of section 115(1); (2) coerced, interfered with, and threatened to discriminate against county employees for forming or assisting with the forming of a union by making unsupported predictions about the effect of the union in violation of section 115(2)(a); and (3) explicitly deterred and discouraged county employees from becoming members of the FOP Union, again on the basis of unsupported predictions or implied threats of unlawfully refusing to negotiate in violation of section 115(2)(b).

The County contends this conduct did not constitute unfair labor practices, but instead constituted expressions of "personal opinion" devoid of any threat of reprisal or any promise of benefit or any coercive conditions. Moreover, the County contends that, as county representatives, these county commissioners were permitted to "correct the record with respect to any false or misleading statements made by any person (e.g., correcting the union's claim that the Sheriff supported the union), publicize the fact of a representation election, and encourage county employees to exercise their right to vote in the election," pursuant to section 115(5). Neither of these arguments are supported by the Commissioners' statements or the context in which the statements were made.

Throughout their March 25, 2024 video, Commissioners Teal, Laydon, and Thomas repeatedly expressed their opposition to the FOP's organizing effort (e.g., "We stand with Sheriff Weekly in firm opposition to this union effort."). In examining the Commissioners' statements detailed above, the Division finds that they contain threats of reprisal and coercion in violation of section 115(2)(a). In drawing this conclusion, the Division continues to find persuasive the reasoning of *Gissel Packing*, which, as noted throughout this determination, interprets substantially similar definitions of unfair labor practices under the National Labor Relations Act and provides guidance for when statements by employers constitute threats of reprisal or otherwise interfere with county employees' right to unionize.

In examining whether the Commissioners' statements were made under coercive conditions, the Division considers the total context in which the statements were made from the standpoint of their impact on employees, acknowledging that because of employees' economic dependence on their employer, they

may be more likely to experience such statements as coercive than a disinterested observer would. *See United Parcel Serv. v. NLRB*, 41 F.3d 1068, 1071-72 (6th Cir. 1994); *see also NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969).

In *Gissel Packing Co.*, the Supreme Court explained that in order to qualify as lawful advocacy, an employer's statements must be "carefully phrased on the basis of objective fact." *Gissel*, 395 U.S. at 618. Here, County Commissioners made false or misleading statements that were not based on objective facts when they claimed that the FOP engaged in "trickery" that "caused many employees to sign their names in support of a union because they were falsely led to believe Sheriff Weekly supported it." As discussed above, the record does not support such allegations of "trickery" by the FOP.

Further, the Commissioners' statements appeared to be made on behalf of the County Commission *as a whole*, i.e., in their official positions, rather than indicating the Commissioners' individual or "personal" views, exemplified by their joint appearance in the video. This, too, is an unfair labor practice under section 115(2)(c), and this context enhanced the coercive effect of all statements the Commissioners made in the video. By presenting the views in the video as the official view of these Commissioners, the video created a stronger implication that the County Commission would not respond as favorably to union negotiation as it would to negotiations with the Sheriff, without presenting any objective basis for this prediction. The Sheriff had already clearly communicated to his employees that his connections with the County Commission would ensure greater benefits for employees: "We have formed EXCELLENT connections with our board and other key County staff. This trust and these local relationships are the best way to ensure that we have the staffing, budget, benefits, compensation and equipment to help you perform your job and ensure the health and safety of your families." As such, the Commissioners' statements lent strength to the Sheriff's claims that he alone had the requisite connections to the County Commission to provide benefits to his employees and that another entity would not be able to negotiate as successfully.

More coercively, the Commissioners' statements strongly implied that these Commissioners in their official positions would not negotiate in good faith with a union: "In Douglas County, we oppose the notion that outsiders would think they know what's best for our community, our Sheriff's office employees, and your safety." While the Commissioners are entitled to personally believe unions are ineffective, they cannot imply that, in their official capacity, they will fail to negotiate in good faith with a lawfully installed union. It is an unfair labor practice for a County to refuse to negotiate in good faith with respect to wages, hours, and other terms of employment under COBCA. C.R.S. § 8-3.3-115. Thus, there can be no lawful nor objective basis for these Commissioners to suggest that they would render a union ineffective by committing such an unfair labor practice. This conduct is analogous to implying the Commissioners would be "bargaining from scratch" with the union, which, as noted above, indicates that the employer will retaliate against employees for unionizing by adopting a 'regressive bargaining posture' during negotiations or by 'unilaterally discontinu[ing] existing benefits prior to negotiations . . .'" *Hendrickson U.S.A., LLC v. NLRB*, 932 F.3d at 470-471, quoting *Coach & Equip. Sales Corp.*, 228 NLRB at 440-441.

The Commissioners' statement that "we believe a union would not only interfere with the effective delivery of the exceptional law enforcement you have come to expect from your sheriff's office but also not be in the best interest of the employees who work there," is also unsupported by any objective facts. The Commissioners provided no specific examples or evidence regarding how a union might interfere with the sheriff's office's work or create a less safe community. Rather, they implied without evidence that the community would be less safe and employees' interests less protected with union "interference." This, too, suggests the County Commission would adopt a regressive bargaining posture with a union.

The Commissioners' conduct was coercive, especially when viewed alongside other misleading statements and "conscious overstatements"[7] contained in the video, such as the statements that the FOP has enough signatures to *"force* an election . . ." (emphasis added) and that "unions are trying to *overtake* the Sheriff's office" (emphasis added), and the implications that without a "no" vote, Sheriff Weekly cannot "continue to represent the interests of employees" or their families and that unions would stand in the way of employees' (and citizens') ability to "liv[e] in a safe community and liv[e] in a community that is a great place to raise a family." The latter statement is false for the reasons discussed above in Part B, and the Commissioners offered no reasonable basis for the remaining claims. Indeed, the Commissioners' claims included an embellishment about how the community as a whole would suffer if the employees formed a union. In this context, it is clear that these many comments amounted to a threat that the Commissioners would respond unfavorably to union demands. *See Gissel*, 395 U.S. at 618 ("If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion . . ."); *see also Indiana Cal-Pro, Inc. v. NLRB*, 863 F.2d 1292, 1298 (6th Cir. 1988).

Additionally, disseminating false or misleading information is a form of manipulation that can lead employees to make decisions based on misinformation rather than on a clear and accurate understanding of the facts. *See Gissel*, 395 U.S. at 618. Such comments can create a climate of fear and uncertainty that interferes with employees' ability to make informed decisions about their workplace. By manipulating employees' perceptions of the union and the potential risks associated with non-unionization, Commissioners Teal, Laydon, and Thomas have effectively undermined the unionization process and, in doing so, have committed an unfair labor practice in violation of sections 115(2)(a) and (b). By engaging in conduct that threatened reprisal and otherwise was made under coercive conditions, the Commissioner's conduct was not protected by section 115(5).

2. The Commissioners Used Public Funds and Their Official Position to Oppose the Union in Violation of 115(2)(c)

Finally, by utilizing public funds and their official positions (facts undisputed by the County) to disseminate inherently coercive, false, and misleading statements, Commissioners Teal, Laydon, and Thomas have also committed unfair labor practices in violation of section 115(2)(c), which prohibits a county representative from using "any public funds or official position to support or oppose an employee organization . . ."

COMPLIANCE ORDERS AND REMEDIES

Having concluded that Douglas County Sheriff Darren Weekly, Undersheriff David Walcher, and County Commissioners George Teal, Abe Laydon, and Lora Thomas committed unfair labor practices in violation of the Collective Bargaining by County Employees Act, the Division hereby orders the following:

A. The County and all its representatives shall immediately cease and desist from engaging in any unfair labor practices, including but not limited to those outlined above;

B. The County shall distribute this Determination and Order to all employees in electronic form and post physical copies within 7 days;

[7] *Gissel Packing Co.*, 395 U.S. at 620 ("At the least [the employer] can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees.").

C. The County shall post the attached Notice within 7 days at all worksite locations informing employees of their rights under COBCA along with this Determination and Order; and

D. The County shall produce to the Division within 14 days: (a) evidence of electronic distribution of this Determination and Order to all employees, and (b) photographic evidence of posting the Notice with this Determination and Order at all worksite locations.

Notice is hereby given that if these orders are not complied with, the employer(s), as well as individual officials responsible for executing these orders, may be assessed daily fines.[8]

Any party in interest may appeal this determination within 35 days pursuant to COBCA Rule 5.5, 7 CCR 1103-16.

Dated this 1st day of November 2024.

Labor Relations Unit
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

Emailed to the parties named herein on November 1, 2024.

[8] *E.g.*, C.R.S. 8-1-108(3) ("All orders of the division shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose . . . ."), 8-1-140(2) ("[A]ny *employer*, *employee*, or any *other person* [who] fails, refuses, or neglects to perform any duty lawfully enjoined . . . by the [Division] or fails, neglects, or refuses to obey any lawful order made by the [Division] . . . , for each such violation . . . shall pay a penalty of not less than one hundred dollars for each day such violation, failure, neglect, or refusal continues") (emphases added), C.R.S. 8-1-101(11) ("orders" covered by 8-1-140(2) include "any decision, rule, regulation, requirement, or standard promulgated by the director").