

# The Mayor and Commissioners of the Town of Elkton

## Ordinance 9 - 2005

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BY: Mayor and Commissioners

INTRODUCTION: **December 7, 2005**

ADOPTION: **December 21, 2005**

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### AN ORDINANCE CONCERNING

#### **THE CODE OF THE TOWN OF ELKTON TITLE 2 ADMINISTRATION AND PERSONNEL**

**FOR THE PURPOSE** of amending the Code of the Town of Elkton, Title 2., Administration and Personnel, Chapter 2.24, Police Department Labor Code, providing for a revision to the definition of employee; providing specific reference to certain employee status under employee organization Unit A; providing specific reference to Unit A and Unit B with regard to exclusive representation; providing that the Director, Department of Human Resources, shall maintain communication between the Town and the employee organization regarding collective bargaining negotiations; eliminating the reference to retirement/pension plan as a benefit not subject to an impasse panel decision; establishing a new section providing pay, retirement/pension plan, and grievance parity for lieutenants; providing that an employee organization may not charge a service fee to non-members that exceeds 75% of current employee organization dues; and striking the provision that an employee, under a certain grievance process, shall not be entitled to employee organization representation.

**WHEREAS**, the Constitution of the State of Maryland, Article XI-E; Article 23A, Annotated Code of Maryland; and the Charter and Code of the Town of Elkton, provide the authority under which the Board of Commissioners may adopt, repeal, and/or amend the ordinances of the Town of Elkton; and

**WHEREAS**, the Charter of the Town of Elkton, § C9-4., was amended on July 2, 2004, to provide that the employees of the Elkton Police Department may organize and bargain collectively in order for them to participate in the formulation and implementation of personnel policies affecting their employment; and

**WHEREAS**, the Mayor and Commissioners adopted Ordinance 1-2005 amending the Code of the Town of Elkton, Title 2, Administration and Personnel, adding Chapter 2.24, Police Department Labor Code, which became effective on March 8, 2005; and

**WHEREAS**, the Mayor and Commissioners have determined that certain amendments, as hereafter stated, shall be made to the Code of the Town of Elkton, Title 2, Administration and Personnel, Chapter 2.24, Police Department Labor Code, to facilitate harmony with the police department's employee organization and further address the intent of this chapter.

**NOW, THEREFORE**, the Board of Commissioners of the Town of Elkton hereby ordains that:

- Section 1: The Code of the Town of Elkton, Title 2, Administration and Personnel, Chapter 2.24, Police Department Labor Code, shall be repealed; and
- Section 2: The Code of the Town of Elkton, Title 2, Administration and Personnel, Chapter 2.24, Police Department Labor Code, shall be re-enacted and read as follows:

**Code of the Town of Elkton**  
**Title 2**  
**Administration and Personnel**  
**Chapter 2.24**  
**Police Department Labor Code**

2.24.010 Purpose.

It is the policy of the Mayor and Commissioners of the Town of Elkton and the purpose of this Police Department Labor Code to promote a fair, harmonious, peaceful and cooperative relationship between the management of the Town and the employees of the Elkton Police Department, and to permit employees of the Elkton Police Department to participate in the formulation and implementation of personnel policies affecting their employment, and to protect and serve the public interest by assuring the effective, efficient, responsive, orderly and consistent operation of the Elkton Police Department.

2.24.015 Sense of the Mayor and Commissioners

It is the sense of the Mayor and Commissioners that the word “Council”, wherever used in Charter §C9-4, refers to the Mayor and Commissioners of the Town of Elkton.

2.24.020 Definitions.

- A. “*Confidential Employee*” - an individual employed by the Town who has access to confidential information, including budgetary and fiscal data, subject to use by the Town in collective bargaining or in the adjustment of grievances, or works in a close and continuing confidential relationship assisting or aiding a management employee.
- B. “*Employee*” - an individual employed by the Town and assigned to the Elkton Police Department; provided that, the term employee does not include the Chief of Police, or police officers serving at the rank of lieutenant or above or any supervisory employees, managerial employees or confidential employees, or any employee employed on a casual or temporary basis or while in the employee’s probationary period, but does include probationary police officers who have completed their initial entrance level training for certification by the Maryland Police Training Commission.
- C. “*Employee Organization*” - any lawful organization which admits employees to membership and exists for the purpose, in whole or in part, of representing employees in collective bargaining with the Town regarding their terms and conditions of employment.
- D. “*Grievance*” - a dispute concerning the application or interpretation of the terms of a collective bargaining agreement.
- E. “*Impasse Panel*” - the panel of three (3) arbitrators, as referenced in the Charter of the Town of Elkton, Article IX., § C9-4., B., utilized to resolve any disputed issues arising out of the negotiation of a collective bargaining agreement.
- F. “*Majority*” - 50% plus one of the valid votes cast in an election conducted pursuant to Section 2.24.050.

- G. *“Managerial employee”* - an individual employed by the Town who has authority to formulate policies that are applicable throughout a bargaining unit, or has a significant role in personnel administration, employee relations or the preparation and administration of Town budgets, or may assist directly in the preparation for and conduct of collective bargaining negotiations on behalf of the Town, or has a significant role in the administration of any collective bargaining agreements on behalf of the Town.
- H. *“Secondary Boycott”* - an activity by an employee organization or its members which is intended to induce, encourage, or coerce persons doing business with the Town to withhold, withdraw, or in any respect curtail their business relations with the Town.
- I. *“Strike”* - the refusal or failure by an employee or group of employees to perform their duties of employment as assigned if a purpose of the refusal or failure is to induce, force, or require the Town to act or refrain from acting with regard to any matter, including the willful absence of a group of employees from their positions, and the engaging in a slow-down by employees, and the refusal of employees to perform job duties.
- J. *“Supervisory Employee”* - an individual employed by the Town authorized to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, or responsibly direct employees, or adjust the grievances of employees, or effectively recommend any of the above actions.
- K. *“Terms and Conditions of Employment”* - include employee wages, hours of employment, health care benefits, compensated and uncompensated leave, expense allowances for employment-related clothing and equipment, retirement and/or pension system participation, participation in a deferred compensation program, training, discipline, promotional qualifications and examinations, job performance standards and grievance and safety procedures.

#### 2.24.030 Employee rights.

Employees shall have the right of self-organization, to form, join, assist or participate in any employee organization and to negotiate collectively through eligible representatives of their own choosing regarding their terms and conditions of employment. Employees shall also have the right to refrain from any and all such activities. Exercise of any rights pursuant to this Section shall be subject to the Charter and applicable provisions of any law or ordinance and the terms of any collective bargaining agreement. Nothing in this Chapter or in any collective bargaining agreement shall prohibit an employee from presenting, discussing or resolving any complaint, whether or not arising out of a collective bargaining agreement, directly with a supervisory or managerial employee or the Chief of Police, and without participation of any employee organization; provided that, no such resolution shall be in derogation of any other employee's rights pursuant to law or any collective bargaining agreement.

#### 2.24.040 Town rights.

Notwithstanding any other provision contained in this Chapter, it is the exclusive right of the Town to determine the amount of funds it will allocate to its Police Department and to each of its other departments and governmental activities, to determine the mission of its public safety and law enforcement department, to set standards of service to be offered to the public, and to exercise control and direction over its organization and operations, including the right to determine shifts and the number of employees on each such shift or to subcontract work or use volunteers. It is also the right of the Town to direct its employees, to hire, promote, transfer, assign or retain employees in positions within the Police Department and, in that regard, to establish work rules. The Town also retains the right to suspend, demote, discharge or take any other disciplinary action against its employees for any reason, not inconsistent with law, or to relieve its employees from duty in the event of lack of funds, or for other legitimate reasons. The foregoing provisions of this Section shall be a provision in every collective bargaining agreement reached between the Town and an employee organization. No collective bargaining agreement or impasse or grievance arbitration decision shall be binding on any party if said agreement or decision conflicts with or limits this Section.

2.24.050 Recognition of employee organizations.

- A. Unless otherwise agreed by the Town, there shall be two (2) units of employees eligible for representation by an exclusive bargaining agent: UNIT A, consisting of all sworn police officers below the rank of lieutenant, including sergeants, corporals and probationary police officers who have completed their initial entrance level training for certification by the Maryland Police Training Commission, and UNIT B, consisting of all other employees of the Police Department as defined in Section 2.24.020B of this Chapter.
- B. An employee organization seeking recognition as exclusive bargaining agent for a unit of employees may file a petition seeking that recognition with the Town Administrator in the form approved by the Town Administrator.
- C. When a petition is presented to the Town Administrator that demonstrates that at least thirty percent (30%) of the employees in Unit A or Unit B have stated in writing that they seek to be represented for purposes of collective bargaining by the petitioning employee organization and said employee organization is eligible to represent that unit of employees, the Town Administrator shall, on behalf of the Town, grant recognition to the employee organization after verifying, by a secret ballot election conducted by the Board of Supervisors of Elections, that a majority of employees in said unit of employees desire such representation. The secret ballot election shall be conducted between fifteen (15) and thirty (30) calendar days after the Town Administrator determines that the petition satisfies the aforesaid thirty percent (30%) requirements. When an election is scheduled, other eligible employee organizations that demonstrate support by ten percent (10%) of the employees in the same unit of employees may intervene within seven (7) calendar days after the election date is announced, and such intervener may be on the ballot. Where two (2) or more employee organizations are on the ballot and no employee organization receives the vote of a majority of the employees and a majority also do not vote against representation by any of the employee organizations, a run-off election shall be held within thirty (30) calendar days after the first election date, with the choices being a vote for representation by the employee organization receiving the highest number of votes in the first election and a vote against representation by said employee organization.
- D. When an employee organization has been recognized, it shall have the exclusive right to represent employees for the purpose of collective bargaining with the Town regarding the terms and conditions of employment of the represented employees.
- E. When an employee organization is recognized by the Town as the exclusive bargaining agent for a unit of employees, an employee or group of employees in that bargaining unit or the Town may file a petition with the Town Administrator, in the form approved by the Town Administrator, asserting that the recognized employee organization no longer represents a majority of the employees in said unit of employees. If the petition is filed by an employee or group of employees, the petitioner(s) must demonstrate that at least thirty percent (30%) of the employees in said unit of employees have stated in writing that they do not wish to be represented by said employee organization. Upon receipt of a petition by the Town or by an employee or group of employees that meets the aforesaid thirty percent (30%) requirement, the Town Administrator shall, on behalf of the Town, certify that the employee organization is no longer recognized as the exclusive representative of that unit of employees after verifying, by secret ballot election conducted by the Board of Supervisors of Elections, that less than a majority of the employees in said unit of employees desire such representation. Subsection C (except for the first sentence thereof) shall be applicable to elections conducted pursuant to this Subsection E.
- ~~F.~~ No petition may be filed pursuant to this Section when the unit of employees affected by the petition are covered by a collective bargaining agreement that expires later than the June 30 that next follows the petition date, unless said agreement will have been in effect for three (3) years or more as of said June 30. After October 31, 2005, a petition may be filed only during the month of November in each year. No election shall be conducted more than once in any twelve (12) months among the employees in any unit of employees. The same employee organization (including its parent body, any subsidiary organization of said parent body or any affiliate thereof) may not, at the same time, be the exclusive representative of the employees in Unit A and Unit B.

#### 2.24.060 Negotiations.

- A. Upon recognition of an employee organization as the exclusive representative of a unit of employees, the Town and the employee organization shall have the duty, through appropriate officials or their representatives, to negotiate collectively and in good faith with respect to the terms and conditions of employment of those employees. The obligation to negotiate in good faith does not require either party to agree to a proposal of the other or to make any concession. Negotiations for a first collective bargaining agreement between the parties or for modification or termination of an existing collective bargaining agreement shall commence within ten (10) business days after either party makes a written request of the other to commence such negotiations; provided that, said request to commence negotiations for modification or termination of an existing contract shall not be made earlier than one hundred and eighty (180) calendar days prior to the expiration date of said existing collective bargaining agreement.
- B. Negotiations with an employee organization which has been accorded exclusive recognition may be conducted during the duty hours of the employee organization representatives involved in the negotiations, provided that their attendance does not interfere seriously with the normal operations of the Town and that they have given at least two (2) days advanced notice to the Chief of Police.
- C. The Director, Department of Human Resources, shall act as the Town's primary representative for the purpose of maintaining communication between the Town and the employee organization regarding collective bargaining negotiations. The employee organization shall designate a primary representative for the same purpose and shall provide the Director, Department of Human Resources, with the name and the necessary contact information of the employee organization's primary representative.
- D. When the representatives of the parties reach agreement on the terms of a collective bargaining agreement, they shall prepare a written agreement and submit it to the Town Administrator, who shall subsequently present it to the Mayor and Commissioners for its ratification or rejection for its ratification or rejection. However, any agreement governing the relationship between the Town and a recognized employee organization shall conform to the provisions of this Chapter and all other applicable laws of the Town, State or Federal government. In the event of any conflict or inconsistency between a collective bargaining agreement and any such law, the provisions of said law shall prevail.
- E. Impasse panel. In the event that the parties are unable to reach an agreement by March 1 of any year in which collective bargaining is being conducted, the Town and the employee organization are authorized to submit to binding arbitration any unresolved issues arising out of the collective bargaining. The disputed issues shall be submitted to an impasse panel consisting of three (3) individuals who shall be selected as follows: 1) the Town and the employee organization shall each select one member within three (3) business days after the request by either party for convening an impasse panel; 2) the two (2) members so selected shall select a third member within three (3) business days after their selection. If the two members are unable to agree to a third member of the impasse panel, they shall make their selection from a panel maintained by an independent third party agency agreeable to both parties. If the parties are unable to agree on the independent third party agency, the third member shall be selected from a panel provided by the Federal Mediation and Conciliation Service. The third member of the impasse panel so selected shall serve as the panel's chairperson. The impasse panel shall hold a hearing on all disputed issues within thirty (30) calendar days of the selection of its chairperson and shall issue its final decision within thirty (30) calendar days of the conclusion of the hearing. The decision of the panel shall be final and binding upon the Town and the employee organization. The cost of the impasse panel proceedings (excluding any costs attributable to an impasse panel member unilaterally selected by one of the parties) shall be divided equally between the Town and the employee organization. Notwithstanding the aforementioned process, nothing shall be construed herein to prohibit the impasse panel from mediating the disputed issues at any time prior to the issuance of its final and binding decision.
- F. The panel from which the third member is selected pursuant to Subsection E shall consist of seven (7) members of the National Academy of Arbitrators, and the selection shall be determined by the alternate striking of names (the first to strike being determined by coin toss), with the last unstruck name being the third member. If the third member so selected is unwilling to serve or cannot serve within the time specified

in Subsection E, the next to last name shall be the third member, and so on. Members of the impasse panel designated by the Town and the employee organization are not required to be neutral, except that they may not be employees of the Town or the employee organization (or its parent or any affiliates).

- G. If unresolved bargaining issues are to be submitted to an impasse panel pursuant to Subsection E, each party shall serve on the other party, no later than five (5) business days after the third member is selected, a complete contract proposal, including both agreed and disputed issues. Each party shall serve on the other party, no later than ten (10) business days after the third member is selected or five (5) business days prior to the opening of the impasse hearing, whichever is earlier, a final contract proposal including both agreed and disputed issues. The final contract proposal of each party, as to any disputed issue, shall be no less favorable to the other party than its last previous proposal on that issue. As to each separate disputed issue, the impasse panel may choose only the Town's final proposal or the employee organization's final proposal as they are set forth in the final contract proposal previously served by each party on the other party.
- H. In making its decision, which shall be in writing and include its opinion as to each issue before it, the impasse panel shall take into consideration, among other pertinent factors:
- (1) The existing terms and conditions of employment of the bargaining unit employees.
  - (2) The terms and conditions of employment of other individuals employed by the Town, and the impact its decision would have on those individuals and on the other governmental activities of the town.
  - (3) The terms and conditions of employment of employees performing like duties under like conditions in comparable police departments in Maryland, also taking into account differences in cost-of-living and ability to pay in the other jurisdictions.
  - (4) Changes in the Consumer Price Index (All Urban Consumers: Washington-Baltimore, DC-MD-VA-WV, 1996=100).
  - (5) The availability to the Town of discretionary, general operating funds, not including funds already committed or budgeted, or funds in capital expenditure or contingency ("rainy days") funds.
  - (6) The effect of any proposal on the ability of the Police Department to accomplish its mission.
- The impasse panel may not choose any proposal that would require the Town to treat or result in the Town treating bargaining unit employees differently from other individuals employed by the Town with regard to any aspect of health care benefit plans and any decision contrary to this provision shall be void and the other proposal on that issue shall be binding.
- I. If a collective bargaining agreement expires without there being a successor agreement resulting either from an agreement of the parties or from a decision of an impasse panel, the Town may unilaterally institute all or any part of its final contract proposal pursuant to Subsection G; provided that, the Town may agree in writing to waive its rights pursuant to the Subsection.
- J. The parties may, by written agreement, waive any of the time limits and dates set forth in this Section.
- K. Subsections E. through I. of this Section 2.24.060 shall not be effective until March 1, 2006.

#### 2.24.065 Parity for police lieutenants.

- A. If Unit A, as delineated in Section 2.24.050A, is represented by an employee organization, police lieutenants (1) as a class, shall receive pay increases from the Town that are no less favorable to them than those received by sergeants as a result of collective bargaining negotiations between the Town and said employee organization, and (2) subject to any legal restrictions applicable to employee benefit plans, shall be permitted to be participants in any retirement/pension plans applicable to sergeants.

- B. Except as otherwise provided by Subsections C. and D. of this Section and/or by the Law Enforcement Officers' Bill of Rights (Public Safety Article, §§ 3-101., et seq., Annotated Code of Maryland, as amended), lieutenants may be terminated or demoted from that rank at will.
- C. If terminated from his/her employment as a sworn police officer of the police department for administrative, non-punitive reasons, a lieutenant who was promoted to the rank of lieutenant from a lower sworn rank within the police department shall be treated as if he/she were first demoted to the rank of sergeant and then simultaneously terminated from employment as a sergeant. In such case, the terminated lieutenant shall have the same right to grieve or otherwise challenge his/her termination as would a sergeant, and the validity of his/her termination shall be judged by the same standard and by the same procedure as would apply to the termination of a sergeant. If the challenge to the termination is sustained, the lieutenant shall remain employed by the police department as a sergeant.
- D. If demoted to a rank below sergeant for administrative, non-punitive reasons, a lieutenant who was promoted to the rank of lieutenant from a lower sworn rank within the police department shall have the same right to grieve or otherwise challenge the demotion to said lower rank as would a sergeant demoted to said lower rank, and the validity of his/her demotion below the rank of sergeant shall be judged by the same standard and by the same procedure as would apply to the demotion of a sergeant to a lower rank. If the challenge to said demotion is sustained, the lieutenant shall remain employed by the police department as a sergeant.

#### 2.24.070 Unfair labor practices.

- A. The Town and any agent thereof are prohibited from engaging in the following unfair labor practices with respect to this Chapter: 1) interfering with, restraining or coercing employees in the exercise of their rights of set forth in Section 2.24.030; 2) encouraging or discouraging membership in an employee organization by discrimination in employment, seniority, promotion or other terms or conditions of employment; 3) controlling or dominating an employee organization by any means; and/or 4) failing to negotiate in good faith with an employee organization.
- B. An employee organization and any agent thereof are prohibited from engaging in the following unfair labor practices with respect to this Chapter: 1) interfering with, restraining or coercing employees in the exercise of their rights set forth in Section 2.24.030; 2) inducing the Town or its representatives to commit any unfair labor practices; 3) failing to negotiate in good faith with the Town or its representatives; 4) interfering with, restricting or coercing the Town in its selection of representatives to deal with any employee organization or to exercise the Town's authority in dealing with employees represented by a recognized employee organization; and/ or 5) engaging in a secondary boycott.

#### 2.24.080 Right of check-off of dues and service fees.

If there is provision for check-off in a collective bargaining agreement, the employee organization party to said agreement, upon the presentation of payroll deduction authorization cards to the Town's finance department, in a form approved by the Town and duly executed by individual employees, shall be entitled to have each such employee's membership dues or service fees deducted from the employee's wages and remitted to the designated employee organization. Any such authorization may be revoked by the employee upon thirty (30) days written notice by the employee to the employee organization and the Town's finance department or immediately upon the expiration of a collective bargaining agreement applicable to such employee. An employee organization may not charge a service fee to non-members that exceeds seventy-five percent (75%) of the then current dues it is charging members of the employee organization.

#### 2.24.085 Dispute resolution

If a dispute arises between the Town and any employee organization as to a question concerning representation arising under Section 2.24.050, or if there is a claim by the Town or any employee organization that there has been a violation of Section 2.24.070, the dispute or claim shall be heard by a single Hearing Officer selected by the parties in the same

manner as the chairperson of an impasse panel is selected pursuant to Section 2.24.060, and the cost of such proceeding shall be apportioned in the same manner as set forth in Section 2.24.060. The Hearing Officer shall issue a written decision which includes his opinion as to the matter before him and, where appropriate, a remedy. The Hearing Officer may not order a remedy that is not permitted under the federal National Labor Relations Act. The Hearing Officer's decision, if it conforms to the Town's Charter and Code and all other applicable laws, shall be final and binding on the Town and the employee organization which are the parties to the proceeding. Where not otherwise provided or governed by applicable law, including this Chapter, the Hearing Officer, in making decisions pursuant to this Section, may be guided, but not bound, by the law under the federal National Labor Relations Act. Any hearings conducted pursuant to this Section or Section 2.24.060 shall not be open to the general public and the number of members or employees of the parties (other than participants in the hearing) who are permitted to attend a hearing shall be determined by the Hearing Officer or the chairperson of an impasse panel, whichever is applicable.

#### 2.24.090 Grievance procedure.

A collective bargaining agreement between the Town and an employee organization may provide procedures for consideration and resolution of grievances by binding arbitration. In the event that an employee claims that there has been a violation of the laws, rules or regulations of the Town or the State affecting the terms or conditions of the employee's employment, and said claim may also be a grievance as defined in this Chapter, the employee has the right to choose whether to proceed through the grievance procedure or through a Town or State dispute resolution procedure which may be applicable to such claims. Once an employee has elected to pursue a specific procedure, the employee is bound by that election and subsequently may not choose to follow a different procedure. If the employee elects the Town or State procedure, the claim may not also be the subject of a grievance as defined in this Chapter. Where a matter may be the subject of both a grievance and an unfair labor practice claim, the Town or employee organization or employee seeking relief may proceed only through one process (i.e., grievance or unfair labor practice claim).

#### 2.24.100 Strikes prohibited.

Strikes are prohibited. An employee organization shall not engage in, initiate, sponsor, support or direct a strike. If a strike occurs that is in violation of the preceding sentence, the employee organization representing any employees engaging in a strike shall publicly repudiate said strike and shall take every affirmative action requested of it by the Town to effect an immediate termination of the strike. If any employee organization violates this provision, its recognition as exclusive representative, if any, may, at the Town's option, be revoked and any collective bargaining agreement to which it is a party may, at the Town's option, be annulled, and it shall not be eligible, without the consent of the Town, to participate in elections or be recognized as an exclusive representative for a period of one (1) year thereafter for each calendar day in which it is acting or failing to act in violation of this Subsection. Any employee participating in a strike may, at the Town's option, be terminated or otherwise disciplined without recourse to any contractual procedure or any procedure in this Chapter and without regard to the discipline of any other employee engaging in such strike.

**\*\* END OF SECTION \*\***

#### **DATE OF EFFECT**

**THIS ORDINANCE** shall be effective on the **10<sup>th</sup>** day of **January, 2006**.

Mayor Joseph L. Fisona  
Commissioner Charles H. Givens, Sr.  
Commissioner Earl M. Piner, Sr.  
Commissioner C. Gary Storke