

Public Sector Collective Bargaining in Virginia – Update and Strategy for Your Local

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What is Collective Bargaining?

- Definition from Oxford English Dictionary:
“Negotiation of wages and other conditions of employment by an organized body of employees.”
- Virginia Code does not include a definition of collective bargaining.

Collective Bargaining – Historical Perspective in Virginia

- *Commonwealth v. Arlington County Board*, 217 Va. 558 (1977) – In the 1970s, Arlington had contracts with multiple employee labor unions, including the fire fighters.
- Court found that the General Assembly hadn't given Arlington the right to enter into the agreements with employees.
- Held: Collective bargaining agreements entered into by Arlington were void.

Dillon's Rule

- The Virginia Supreme Court largely rested its decision invalidating Arlington's collective bargaining agreements on Dillon's Rule.
- What is Dillon's Rule?
 - Local governments are limited to the powers expressly granted to them by the Commonwealth.

Public Sector Collective Bargaining Prohibition in Virginia

- Va. Code 40.1-57.2 – Prohibited municipalities from entering into agreements with labor unions or employee associations.
- Passed in 1993.
- Was in effect until May 1, 2021.

Card Check Prohibition

- Va. Code 40.1-54.3 – Requires secret ballot election for designating labor organization.
- Passed in 2013.
- Not repealed by collective bargaining law. Remains in place.

House Bill 582/Senate Bill 939 – A New Day for Public Sector Collective Bargaining in Virginia

- On May 1, 2021, a new version of Va. Code 40.1-57.2 went into effect.
- The new statute:
 - Permits collective bargaining by municipalities if they have adopted an ordinance permitting collective bargaining.
 - Applies to cities, counties, towns, and school boards.
 - Does not apply to the Commonwealth.

What Does the Collective Bargaining Law Allow?

- Collective bargaining is by local option.
- No city, county, or school board is required to permit collective bargaining, but any city, county, or school board can pass an ordinance that allows for collective bargaining.

What Does the New Collective Bargaining Law Allow?

- If a municipality adopts such an ordinance, the ordinance must include “provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit.”

Scope of Collective Bargaining Rights Under New Law

- If your municipality adopts an ordinance to allow collective bargaining, the scope of your collective bargaining rights will be determined by the ordinance.

Types of Collective Bargaining

- General types of collective bargaining:
 - Meet and Confer Bargaining – A very limited form of collective bargaining where the parties meet to discuss issues but do not typically bargain. Generally does not result in a collective bargaining agreement.
 - Traditional Collective Bargaining – Parties meet to negotiate over matters that are negotiable under the ordinance with the goal of reaching a collective bargaining agreement that governs terms and conditions of employment.

Fiscal Impact of Negotiated Agreements

- New Statute requires that: “No ordinance or resolution adopted pursuant to subsection A shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.”

Fiscal Impact of Negotiated Agreements

- Once you've reached an agreement, the City Council or County Board still must have the right to appropriate the funds.
- Nothing in the statute requires the elected officials to have the right to veto any non-fiscal terms of negotiated agreements.

What Does the New Law Not Allow?

- Card Check
 - Virginia Code still contains right to a secret ballot election, so new ordinance should not permit card check certification.
 - Some municipalities may actually want card check to save time/money but it increases the risk of a legal challenge to your certification.

What Does the New Law Not Allow?

- Strikes
 - Prohibition on strikes in Va. Code 40.1-55 remains in place.
 - Any striking employee forfeits their job and is ineligible for employment by the Commonwealth or any municipality or school board for 12 months.

How Do We Get Our Municipality to Allow Collective Bargaining?

- Two ways that a municipality can move forward on a vote over a collective bargaining ordinance:
 1. The municipality can choose to adopt an ordinance on its own.
 2. On or after May 1, 2021, a majority of members of a proposed bargaining unit can provide a showing of interest.

First Option: Municipality Acts on Its Own

- At any time a municipality, on its own, can pass a collective bargaining ordinance.

First Option: Municipality Acts on Its Own

- Some municipalities hired counsel to draft the ordinance.
- Make sure that you are involved in the process or you may get a bad ordinance.
- Just because something is called “collective bargaining” doesn’t mean that it provides for collective bargaining.

Second Option: Showing of Interest

- The new statute provides that if your municipality hasn't acted on its own, you can force them to vote on collective bargaining by providing a showing of interest from a majority of members of your proposed bargaining unit.

Second Option: Showing of Interest

- Then they have to vote on whether to allow collective bargaining within 120 days.
- This doesn't mean that the municipality will vote to authorize collective bargaining.
- It also doesn't mandate what type of collective bargaining rights the municipality will permit if it votes to allow collective bargaining.

Second Option: Showing of Interest

- How does my local present this showing of interest to the municipality?
 - Determine how many employees are within your proposed bargaining unit?
 - This means you need to determine what ranks your bargaining unit will include.
- Get a simple authorization card from the majority of your proposed bargaining unit.

Second Option: Showing of Interest

- Card should include:
 - Name of employee,
 - Job title,
 - Email/contact information,
 - The employing department,
 - The exclusive representative,
 - The proposed bargaining unit, and
 - A statement that the employee wishes to designate the exclusive representative as his/her representative for purposes of collective bargaining.

What Should Collective Bargaining Ordinances Include?

- Collective bargaining rights will largely be determined by the municipality.
- Virginia is a large, diverse state.
 - Absent a state-wide law, there is not a one-size-fits-all fit approach to collective bargaining due to the political diversity of the state.
 - What areas should your municipalities collective bargaining ordinance include?

Collective Bargaining Ordinance – Scope of Collective Bargaining

- The new state law does not define what is or is not negotiable.
- Municipalities will define what is negotiable.
- You will want to think about what you want to negotiate over and ensure that it falls within the definition of what is negotiable in the ordinance.
- This is probably the most important part of the ordinance.

Collective Bargaining Ordinance – Scope of Collective Bargaining

- Sample broad definition of what is negotiable:
 - “Terms and Conditions of Employment” means personnel policies, practices, and matters, whether established by directive, regulation, or otherwise, affecting working conditions, including, but not limited to, compensation, the County’s pay plan, working conditions, retirement, pensions, and other benefits.

Collective Bargaining Ordinance – Scope of Collective Bargaining

- Municipality will probably propose a very broad management rights provision in the ordinance.
- Be vigilant when the ordinance is being drafted because everything in the management rights provision is something that they will not even have to have a conversation with you about during bargaining.
- The ordinances that passed have different approaches.

Collective Bargaining Ordinance – Scope of Collective Bargaining

- Discipline – Will you be able to bargain over discipline?
- What does it mean to bargain over discipline?
- Will you be able to bargain over disciplinary/investigative procedures?
- Will you be able to bargain over the substance of discipline (i.e. progressive discipline, just cause, penalty matrix, etc.)?

Collective Bargaining Ordinance – Bargaining Units

- How does the collective bargaining ordinance define bargaining units?
- Two main ways:
 - Setting standards to determine whether a proposed unit is “appropriate” and allowing exclusive representatives to propose units.
 - Predefining the units.

Collective Bargaining Ordinance – Bargaining Units

- Predefining Bargaining Units:
 - This means that, in the ordinance itself, the municipality says what the units will be.
 - This is the approach that ordinances in Virginia have taken.

Collective Bargaining Ordinance – Bargaining Units

- Things to consider:
 - What rank does the unit go through? Captains? Battalion chiefs? Higher?
 - Are dispatchers included in the same unit as fire fighters or in a different unit?
 - Are fire marshals in the fire unit, the police unit, or a different unit?

Collective Bargaining Ordinance – Certification/Decertification Procedures

- Collective bargaining ordinance must include procedures for how an exclusive representative is certified or decertified.
- Certification/Decertification process must involve secret ballot election under Virginia law.

Collective Bargaining Ordinance – Certification/Decertification Procedures

- Procedure would include:
 - How the union shows it has the support of a bargaining unit;
 - What percentage of employees the union has to show support from;
 - Who the union provides this showing to; and
 - Who and how an exclusive representative's certification can be challenged.

Collective Bargaining Ordinance – Arbitration/Grievance Procedure

- Ordinance should say that collective bargaining agreements must have a grievance and arbitration procedure for resolving disputes.
- Considerations:
 - Under Virginia law, municipalities must have a grievance procedure. How does this grievance procedure interact with the municipality's current grievance procedure?

Collective Bargaining Ordinance – Arbitration/Grievance Procedure

- Are things excluded from the grievance procedure in the ordinance?
- Many municipalities are trying to remove discipline from grievance procedures.

Collective Bargaining Ordinance – Impasse Resolution

- What happens if the parties cannot reach an agreement on a collective bargaining agreement?
- Ordinance should provide for some sort of impasse procedures.
 - Municipalities may want non-binding mediation only.
 - Non-binding mediation is unlikely to lead to an agreement.

Collective Bargaining Ordinance – Impasse Resolution

- Binding impasse would be more likely to lead to a collective bargaining agreement.
- Non-binding fact finding that goes before the elect officials has also been successful.

Collective Bargaining Ordinance – Impasse Resolution

- Under Virginia law, must still permit City Council or County Board to vote on fiscal terms.
- Can (1) make non-fiscal terms binding through agreement or impasse and (2) require municipality to recommend fiscal terms to elected officials after agreement or impasse.
- Most places still have Board approve entire agreement.

Collective Bargaining Ordinance – Challenging Ordinance Violations

- There may be times when the Local believes the municipality has violated the collective bargaining ordinance by, for example:
 - Committing an unfair labor practice/prohibited practice, or
 - Improperly claiming that a proposal is outside the scope of bargaining.

Collective Bargaining Ordinance – Challenging Ordinance Violations

- The ordinance will have to set out how these types of disputes are resolved. Some options include:
 - Getting an arbitrator appointed for each charge from an independent body such as FMCS or AAA;
 - Having a standing labor administrator appointed by the municipality; or
 - Having a standing three-member panel with one member appointed by the municipality, one appointed by the labor organizations, and the third appointed by the first two members.

Collective Bargaining Ordinance – Enforcing Contractual Rights

- Once you reach an agreement, both sides will need to approve it.
- Municipality has to have the right to approve/appropriate fiscal terms under Virginia law.
 - Municipality is not required to have the right to approve non-fiscal terms.
 - Ordinance can say that all non-fiscal terms are in place as soon as approved by union and City/County manager and that only fiscal terms can be rejected by elected officials.

Collective Bargaining Ordinance – Maintaining Contractual Rights

- Evergreen clause – ordinance should provide that once parties have reached an agreement; the agreement remains in place after expiration until a new agreement is reached.
- Otherwise it creates an incentive for municipality to let contract expire.

Collective Bargaining Ordinance – Other Union Rights

- There are many basic union rights that municipalities may be able to include in a collective bargaining ordinance. If these things are not included in an ordinance, you can seek them through bargaining.

Collective Bargaining Ordinance – Other Union Rights

- Official time;
- Weingarten rights;
- Formal meeting rights;
- Union Access;
 - Lists of employees;
 - Ability to meet with employees during orientation.

Collective Bargaining – What Happens After an Ordinance is Passed?

- After an ordinance is passed, your local will need to be certified as the exclusive representative in order to exercise the rights the ordinance provides.
- Keep the municipality's budgeting deadlines in mind when negotiating over a new contract.
 - If you are able to negotiate over wages, you will want to ensure that an agreement is reached, or an impasse decision is received, before the municipality passes its annual budget.
 - You'll need to consider the budget deadlines when determining when to file to be certified.

Collective Bargaining – What Municipalities Have Passed Ordinances?

- Alexandria
- Arlington County
- Fairfax County
- Loudoun County
- Richmond
- Charlottesville
- Prince William County

What to Do After an Ordinance Passes

- Determine what you need to do to be certified.
- How do you get certified as the exclusive representative?
- How can you show interest?
 - Authorization Cards
 - Dues Deduction List

Certification Process

- Who do you turn in your showing of interest to?
 - Labor Relations Administrator (LRA)
 - The City/County Manager/Executive/Administrator
 - Someone else?
- What happens with authorization cards? Who reviews them?

How Is Your Showing of Interest Determined?

- Municipality should provide list of everyone is believes is in bargaining unit to a neutral/LRA.
 - Who gets to see the list?
 - Is the list a public document?
 - How long does it take to establish a showing of interest?

Election Process

- Once showing of interest is established, you need to have a certification election.
- Negotiate an election agreement with the municipality.
- Two big things:
 - Manner of election
 - List of eligible employees

Manner of Election

- Remember: under Virginia law, election must be by secret ballot.
- How is election held?
 - In person;
 - Mail voting;
 - Electronic voting;
 - Hybrid.

List of Eligible Employees

- Need to reach agreement with municipality over who is eligible to vote in the election.
- Common issues:
 - Cut-off for who is/isn't a supervisor;
 - Confidential employees;
 - Recruits;
 - Part-time employees.

Certification Election

- How long will the election be?
- Process to verify the votes?
- Observers



Collective Bargaining Representation Voting System

City of Alexandria fire and emergency medical services employees' representation election

Official Results

Ballot ending: 02/22/2022 12:00:00 (Eastern)

The ballots were cast and tallied as follows.

TOTAL		
Do you wish to be represented for purposes of collective bargaining by:	Total	Percent
1 The International Association of Fire Fighters, Local 2141	163	99.39
2 No Representation	1	0.61
Total	164	

- There were 239 eligible voters, of which 164 cast a ballot, representing 68.6% of the eligible voters.
- There were 0 ballots cast in which the voter did not make a selection.

These Official Results witnessed and certified by Sean J. Rogers, Labor Relations Administrator; Reid Coploff, Counsel for IAFF Local 2141; Josh Turner, President IAFF Local 2141; Meghan Roberts, Deputy City Attorney for Alexandria; Kevin Stokes, Chief Labor Relations Officer; and Gerald Feldkamp, BallotPoint Election Services.

Sean J. Rogers, Labor Relations Administrator	<i>Sean J. Rogers</i>	<i>gf</i>
witness	signature	
Reid Coploff, Counsel for IAFF Local 2141	<i>Reid Coploff</i>	<i>gf</i>
witness	signature	
Josh Turner, President IAFF Local 2141	<i>Josh Turner</i>	<i>gf</i>
witness	signature	

You're Certified – Now What?

- Does employer need to maintain the status quo?
- What can employer change without bargaining?
- Look to your ordinance.

Duty of Fair Representation

- Ordinance may have a duty of fair representation
- What does that mean?
 - Have to treat all BUEs the same, without regard to membership.
 - Big change for many Locals

Starting to Bargain

- Does ordinance have a time by which you have to start bargaining?
- Ground Rules
 - Process – dates, times, length of bargaining sessions, location
 - Timeline to submit proposals
 - Confidentiality

Bargaining Process

- Union normally submits more proposals than management
- What do you want to bargain?
 - Be sure to look at ordinance to keep in mind scope of bargaining

Bargaining Proposals

- Wages
- Leave
- Retirement
- Dispute Resolution
- Discipline
- Promotions
- Details
- Drug Testing
- Official Time
- Transfers
- Non-Discrimination
- Unit Recognition
- Tardy Policy
- Light Duty
- Uniforms
- Facilities
- Electronic Monitoring
- Investigation Rights
- Specialty Pay
- Duration
- Schedules
- Health Insurance
- Personnel Files
- Probationary Period
- On-Call
- Layoffs/RIFs
- Tuition Reimbursement
- Outside Employment
- Paid Family Leave
- Minimum Staffing

Bargaining Impasse Resolution

- What happens if you can't reach an agreement?
- Ordinance will have some sort of impasse triggering date
- What is impasse?

Bargaining Impasse Resolution

- What happens during impasse?
- What information do you need to present?
- Who testifies?
- What exhibits do you need to present?

Contract Ratification

- Once you have an agreement what happens?
- Needs to be approved by:
 - Governing body (at least the funds);
 - Your membership.

Collective Bargaining Agreement

- What's the end result of all of that bargaining?

COLLECTIVE BARGAINING AGREEMENT

BETWEEN THE

CITY OF ALEXANDRIA, VIRGINIA

AND THE

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

LOCAL 2141

EFFECTIVE FROM
JULY 1, 2023 through JUNE 30, 2026

Arlington County, Virginia

Collective Bargaining Agreement Between
Arlington Professional Firefighters and Paramedics
Assoc., IAFF Local 2800, and
Arlington County Government



July 1, 2023 Through June 30, 2026

What Happens After You Have a Contract?

- Is having a contract an ongoing relationship?
- How do you address issues after your CBA is in place?
 - Labor-management partnership
 - Mid-term bargaining
 - Zipper clause

Welcome Today's Panelists

- Josh Turner, President, IAFF Local 2141
- Brian Lynch, President, IAFF Local 2800
- Robert Young, President, IAFF Local 2068
- Keith Andes, President, IAFF Local 995
- Jay Dorsey, President, IAFF Local 2363
- Kurt Detrick, President, IAFF Local 539
- Bill Boger, President, IAFF Local 1568