

Local Government Collective Bargaining: Virginia's "New Frontier"

Building a Collective Bargaining Ordinance (Or Not)

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Va. Code § 40.1-57.2

Expressly permits local governing bodies (counties, cities, towns, school boards) for the first time in the state's history to legally recognize and bargain with a **labor union** or other **employee association** as the exclusive bargaining agent of their employees, and to **collectively bargain** and enter a **collective bargaining agreement** "with respect to any matter relating to them or their employment or service", by ordinance or resolution.

Optional

Importantly, the law does not *require* localities or school boards to recognize any bargaining agent or to permit bargaining at all.

So, What's Different Here?

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Before May 2021

Local government employees in Virginia have the right to form and join unions and other employee associations (and the right not to join), as guaranteed by Virginia's "right to work" laws. Va. Code §§40.1-57.3 and 40.1-58, *et seq.*

Now:

Local government employees in Virginia have the right to form and join unions and other employee associations (and the right not to join), as guaranteed by Virginia's "right to work" laws. Va. Code §§40.1-57.3 and 40.1-58, *et seq.*

So, What's Different Here?

Before May 2021:

Local government employees in Virginia have the right to address with their employers through employee organizations issues of public concern (which often coincide with their terms/conditions of employment) in forums the locality/school board makes available to others though localities/school boards are not required to act, and . . .

So, What's Different Here?

Before May 2021:

...employers may choose, purely in their discretion, to "meet and confer" with employee associations, but could not legally grant them exclusive representative status or negotiate/bargain with them to create legally enforceable contract rights for employees.

So, What's Different Here?

Now:

Employees have the right to compel their local public employer to vote to adopt (or not) an ordinance or resolution to “provide for” collective bargaining, which ordinance or resolution shall provide procedures for the recognition of a labor union or other employee association as the employees' exclusive bargaining agent, authorized to enter into a collective bargaining contract.

So, What's Different Here?

Before May 2021:

No local elected constitutional officers (i.e., sheriffs, Commonwealth's attorneys, circuit court clerks, treasurers, commissioners of the revenue) or their employees are authorized to exclusively recognize or collectively bargain with any union or association of their employees as an agent of those employees.

So, What's Different Here?

...and now:

No local elected constitutional officers (i.e., sheriffs, Commonwealth's attorneys, circuit court clerks, treasurers, commissioners of the revenue) or their employees are authorized to exclusively recognize or collectively bargain with any union or association of their employees as an agent of those employees.

So, What's Different Here?

Before May 2021:

Any local government employee who engages in a strike shall be terminated from employment and banned from re-employment by the Commonwealth or any Virginia public body for a year (i.e., public employees may not strike).

Now:

Any local government employee who engages in a strike shall be terminated from employment and banned from re-employment by the Commonwealth or any Virginia public body for a year (i.e., public employees may not strike).

Choosing Collective Bargaining (or not)

Maintain the Status Quo?

You may, but note that...

The status quo is already being redefined by the collective bargaining legislation.

Requires assessment of your current employee relations climate.

Building a Collective Bargaining Framework

Ordinance – Contents

Definitions of fundamental terms, e.g.

- Collective Bargaining
- Employee
- Employee organization
- Exclusive bargaining representative
- “Confidential” employee
- Supervisors, Managers
- Temporary employee

Ordinance Content

Exemptions from collective bargaining rights, e.g.,

- Elected officials and members of boards, commissions
- "Representatives" of the governing body (defined as including administrative and executive officers and their deputies, etc.)
- Supervisory employees (non-bargaining unit supervisors)
- Confidential employees (as defined)
- Temporary, Intermittent, Seasonal employees (as defined)

Ordinance Content

- A process for **certification and decertification** of exclusive bargaining representative by (1) specified election procedures; or (2) "administratively acceptable" evidence of the wishes of a majority of the bargaining unit.

Ordinance Content

- Responsibility on both sides to "**negotiate in good faith**", i.e. to meet at reasonable times, with due regard for the timetable for locality budget development and approval, with the intent to reach a contract governing certain terms and conditions of the employment of members of the bargaining unit.

Ordinance Content

- Scope of **collective bargaining subjects**: same as that enabled under the state code – "wages, hours and other terms and conditions of employment" – or something narrower and more limiting?
- Mandatory, permissive and prohibited subjects

Ordinance Content

- Language preserving certain **management rights**.

Ordinance Content

- Negotiation and bargaining **impasse** resolution procedures, and other dispute resolution procedures such as **non-binding mediation and binding (?) arbitration.**

Ordinance Content

Bargaining Units

What are **bargaining units**?

How and by whom determined?

Criteria

Ordinance Content

- Specific **bargaining representative duties/responsibilities.**
- Specific **management duties/responsibilities**

Ordinance Content

- Specified "**prohibited conduct**" for employers and bargaining representatives (taking a page from the NLRA "unfair labor practice" approach)

Ordinance Content

Administration Provision: Dedicated Labor-Management Relations Officer/Board/Committee? Other Third-Party Entity?

A labor relations administrative official, office or body, appointed by the employer (and selected or constituted with employee organization input), responsible for administering the provisions of the collective bargaining ordinance, and developing related procedures.

Other Issues to Consider:

- Budget: Management's commitments remain "subject to appropriation".
- Interplay between contract provisions/obligations and other laws, e.g. state-law-required grievance procedures.

So – you drafted and adopted an ordinance...

The Collective Bargaining Process

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Negotiating A First Contract: Basic Questions

Who will be on the County team?

Where will negotiations be conducted?

Will there be limits on the size of the teams?

Will employees be paid for time in negotiations?

Will there be Ground Rules?

Ground Rules

- Set time frame for conducting negotiations
- Define permissible uses of County email and other systems for union communications with membership
- Establish sequence for presentation of proposals and ability to introduce new proposals
- Define circumstance under which substance and progress of negotiations may be discussed with third parties (Board of Supervisors, bargaining unit members, media, public, etc.)

Basic Clauses for Union

- Recognition
 - Defines who is covered and what matters may be negotiated
- Union Security
 - Includes dues check off
 - Union membership (including agency shop) not permissible after Janus
- Time Off for Union Business

Basic Clauses for Management

- Management Rights
- No Strike/No Lockout
- Savings Clause

Economic Terms

- Wages
 - COLA's
 - Merit/Step Increases
 - Longevity Steps
- Wage Reopeners
- Health Insurance
- Retirement
 - Pension/403(b)
 - Retiree Medical and other OPEB
 - Deferred Retirement Option Program (“DROP”)

Additional Economic Terms

- Overtime
- Shift Premiums
- Weekend Premiums
- Annual Leave
- Sick Leave
- Holiday Pay
- Call Back Pay
- Holdover Pay

Additional Non-Economic Terms (Beyond the Basics)

- Hours of Work
- Seniority
- Layoffs
- Safety
- Union/Management Committees
- Discipline
 - Weingarten Rights
- Grievance and Arbitration

Questions?

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