

City of Alexandria, Virginia

City of Alexandria: Proposed Collective Bargaining Ordinance

Legal Presentation by:

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Public Sector Collective Bargaining: A (Brief) History

Public Employee Bargaining History



- Public employee collective bargaining established in Wisconsin in 1950's
- In 1970's 19 Virginia localities had established collective bargaining under implicit authority
- In 1977 the Virginia Supreme Court struck down collective bargaining due the lack of explicit authority

2020 General Assembly provided explicit authority for local governments to choose

New State Law: Va. Code § 40.1-57.2, *et seq.*



Effective **May 1, 2021-**

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.



The law does not *require* the city or any Virginia locality to recognize any bargaining agent or permit bargaining at all. It is a local option.

So: What Will Be Different Under The Proposed Ordinance?



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.*

May 2021

Local government employees in Virginia will 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.*

What's Different Here?



Now:

City employees presently have the right to address with the city, through employee organizations, issues of public concern (which often coincide with their terms/conditions of employment) in forums the city makes available to other organizations (though the city is not legally required to respond with any action), and . . .

City Practice = Meet and Confer

So, What's Different Here?



Now:

...the city presently may choose, at its option and as a matter of practice, to "meet and confer" with employee associations, but may not legally grant them exclusive representative status or negotiate/bargain with them to create legally enforceable contract rights for employees.

City Practice = Meet and Confer

So, What's Different Here?



Under the New State Law...

If a locality chooses to adopt an ordinance, the new statute requires that the ordinance provide procedures for the recognition of a labor union or other employee association as the employees' *exclusive bargaining agent, authorized to enter into a legally binding bargaining contract* governing certain employment matters. This is a “game changer” in Virginia.

City of Alexandria's Approach: Proactive v. Reactive



The City of Alexandria has made the choice to act ahead of receipt of any such certification to consider whether and on what terms to extend collective bargaining rights to city employees.

The Proposed Ordinance

Overall Guiding Considerations:



- Preservation of City Council's Ultimate and Exclusive Budget Authority
- Other Policy Matters and Administrative Goals
- Interplay between contract provisions/obligations and other law (e.g., current grievance procedures versus negotiated procedures)
- Fundamental Provisions for Comprehensive Framework



Ordinance: Content Overview

Definitions of fundamental terms [Sec. 2-5-68]

- Collective Bargaining – [Including **scope**]
- Employee organization
- City “employee” -- [City Ordinance n/a to Schools]
- Exclusive bargaining representative
- Confidential employee
- Supervisor
- Temporary, intermittent, seasonal employees
- Labor-management dispute



Ordinance: Content Overview

Ineligible/Excluded:

[Sec. 2-5-68]

- Elected/appointed officials and members of boards, commissions, state employees working at local level
- Employees of “Constitutional Officers”
- Managerial employees
- Supervisory employees
- Confidential employees
- Temporary, Intermittent, Probationary employees
- Interns, Volunteers



Ordinance: Content Overview

Ineligible/Excluded: (cont.)

[Sec. 2-5-68]

Confidential Employees: Those who work directly for...

- City Council
- City Manager
- City Attorney
- Human Resources
- Office of Management & Budget, and

Employees w/ access to certain confidential management info



Ordinance: Content Overview

Ineligible/Excluded:

[Sec. 2-5-68]

Supervisors: ...customarily and regularly devotes a majority of work time to supervision of two or more employees and has authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, assign, evaluate, reward or discipline other employees, or adjust grievances, or effectively to recommend any such actions.

Police: Sergeant and above

Fire/EMS: Lieutenant and above

Ordinance: Content Overview



Identification of “Bargaining Units” (& Approx. #s):

- Police – (244)
- Fire and EMS – (206)
- Labor and Trades – (180)
- General Government – (948)

[1009 employees ineligible by definition and policy]

[Sec. 2-5-72]



Ordinance: Content Overview

A process for **certification and decertification** of exclusive bargaining representatives for individual bargaining units by specified election procedures, to give effect to the wishes of a majority of the bargaining unit.

[Secs. 2-5-74 through 2-5-76]



Ordinance: Content Overview

Responsibility of both sides to **negotiate (bargain) in good faith**: meet at reasonable times with due regard for the timetable for annual budget development and approval.

[Sec. 2-5-78]



Ordinance: Content Overview

**Scope of collective bargaining
(mandatory bargaining subjects):**

Wages and Benefits

[Sec. 2-5-68]



Ordinance: Content Overview

Preserved management rights, e.g.:

- Type and scope of work
- Hire, assign, promote, classify, schedule, discipline, etc.
- Direction of work and number of employees
- Layoffs and reductions-in-force
- And other matters

[Sec. 2-5-71]

Ordinance Content. . .



Impasse and Labor-Management Dispute Resolution:

Negotiation and bargaining **impasse** resolution procedures (**mediation**), and labor-management dispute resolution procedures (**mediation and arbitration**), as alternatives to prohibited strikes and lockouts.

[Sec. 2-5-80]

Ordinance Content:



Specified "prohibited conduct" for employers and bargaining representatives (aka "unfair labor practices")

[Sec. 2-5-82]

Ordinance: Content Overview



Administration of Ordinance Provisions

Choice: **Labor Relations Administrator** (Experienced Neutral)

Selection by **City Manager** from list of candidates **jointly prepared** by management representatives and employee representatives.

Candidate approved by **City Council**; engaged by contract

[Sec. 2-5-73]



Ordinance: Comparison

Regarding “Fundamentals”...

- Scope of Bargaining: Reflects overall recommendation to start with narrower focus (following State example)
- Bargaining Unit Determination: Range of choices evident from public sector bargaining units across the country; recommended choice consistent with approach to start with narrower focus
- Exclusion of Disciplinary/Personnel Grievances and
- Impasse Resolution by Mediation Only: Legal and policy constraints account for positions proposed



Fiscal Impact

- Material cost increase in wages and benefits likely
 - Example: each 1% for City = \$2.3M, 5% = \$11.5 M
Total
 - Adding ACPS would nearly double above numbers to \$22 M
- Impact on City's bond ratings
- Costs of administration = \$0.5M to \$1.0M @ year

Proposed Collective Bargaining Ordinance: Legal Briefing



Questions?

Thank you for your time.



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