

Public Sector Collective Bargaining: Virginia's “New Frontier”



Local Public Employee Collective Bargaining

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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.



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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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.*



So, What's Different Here?

Now:

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?

Now:

...employers may choose, purely in their discretion, 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.



So, What's Different Here?

May 2021:

Employees will have a 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. [That is, of course, if the body has not *already* adopted such an ordinance/resolution.]



So, What's Different Here?

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.



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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).

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Choosing Collective Bargaining



The status quo is already being redefined by the collective bargaining legislation, pre-effective date.

Requires wholesale assessment *now* of current employee relations climate.



Building a Collective Bargaining Framework



Ordinance/Resolution – Contents

Definitions of fundamental terms, e.g.

- Collective Bargaining
- Employee
- Employee organization
- Exclusive bargaining representative
- Confidential employee
- Supervisor
- Temporary employee



Ordinance/Resolution Content

Exemptions from collective bargaining rights, e.g.,

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



Ordinance/Resolution Content

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



Ordinance/Resolution 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/board 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/Resolution Content

- Scope of **collective bargaining subjects**: same as that enabled under state code – wages and benefits, or other terms and conditions of employment as well?



Ordinance/Resolution Content

- Language preserving certain **management rights**.



Ordinance/Resolution Content

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



Ordinance/Resolution Content

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



Ordinance/Resolution Content

- Specified "**prohibited conduct**" for employers and bargaining representatives (also commonly referred to as "unfair labor practices").



Ordinance/Resolution Content

Administration: Dedicated Employee Relations Officer/Office/Board?

An employee/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.



READY?



Questions?

Thank you for your time.

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