



April 29, 2021

TO: Board of County Supervisors
FROM: Christopher E. Martino, County Executive
RE: Employee Certification Process

Collective bargaining is the process by which employees negotiate with their employers through a chosen representative to set various contractual terms and conditions of their employment. Prior to 2020, Virginia had expressly banned collective bargaining for public employees since 1977. During the 2020 Legislative Session, the General Assembly considered several bills seeking to repeal the Commonwealth's prohibition on collective bargaining for public employees. Ultimately, the General Assembly passed and the Governor signed a bill that gave localities the option to adopt a collective bargaining ordinance for public employees. The local option is codified in Virginia Code § 40.1-57.2 and has an effective date of May 1, 2021.

Section 40.1-57.2 provides that any collective bargaining ordinance must set forth procedures for the certification and decertification of exclusive bargaining representatives for employee units. However, it also states that no collective bargaining ordinance shall restrict a locality's governing body's ability to establish a budget or appropriate funds. Finally, the employees of local elected constitutional officers and state employees are entirely excluded from collective bargaining.

While the new state law does not mandate that a locality extend collective bargaining rights to its employees, it does require a locality that has not adopted such an ordinance to take a vote to adopt or not adopt an ordinance "within 120 days of receiving certification from a majority of public employees" in a self-identified bargaining unit. The Board of County Supervisors has not adopted a collective bargaining ordinance to date. Therefore, in preparation for May 1, 2021, I am providing employees with the attached process to guide any employee group that has an interest in self-identifying as a potential bargaining unit and submitting a petition for consideration. This process does not obligate the County to engage in collective bargaining; it simply provides a uniform, simple process.

If an employee group petition is received and validated, I will advise the BOCS that the 120-day trigger mandated by the new statute has been activated. The BOCS will then need to either vote not to adopt an ordinance at that time or provide policy direction to me and the County Attorney to develop a collective bargaining ordinance. The BOCS will need to take a vote to adopt or not adopt a collective

bargaining ordinance within 120 days of the original receipt date of a validated petition. It is possible that the BOCS would vote not to adopt an ordinance within the 120-day time limit for no other reason than the ordinance is not ready.

Please note that the certification process is only for County employees serving under the authority of the CXO (with some exceptions) and does not extend to employees of the School Board or Service Authority, among others.

The attached presentation on the certification process will be reviewed at the May 4, 2021, BOCS meeting. Thank you.

Attachments:

Section 40.1-57.2, VA Code Ann. - Collective bargaining statute

Section 40.1-55, VA Code Ann. - Employee cannot strike

Certification Procedure

Certification Petition

Employee Certification Presentation

Code of Virginia
Title 40.1. Labor and Employment
Chapter 4. Labor Unions, Strikes, Etc.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 40.1-57.2. (Effective until May 1, 2021) Prohibition against collective bargaining.

No state, county, municipal, or like governmental officer, agent or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service.

1993, cc. 868, 879.

§ 40.1-57.2. (Effective May 1, 2021) Collective bargaining.

A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall 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. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.

B. 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.

C. For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.

D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

1993, cc. 868, 879; 2020, cc. [1209](#), [1276](#).

Code of Virginia
Title 40.1. Labor and Employment
Chapter 4. Labor Unions, Strikes, Etc.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 40.1-55. (Effective until May 1, 2021) Employee striking terminates, and becomes temporarily ineligible for, public employment.

Any employee of the Commonwealth, or of any county, city, town or other political subdivision thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next twelve months by the Commonwealth, or any county, city, town or other political subdivision of the Commonwealth, or by any department or agency of any of them.

Code 1950, § 40-65; 1970, c. 321.

§ 40.1-55. (Effective May 1, 2021) Employee striking terminates, and becomes temporarily ineligible for, public employment.

A. Any employee of the Commonwealth, or of any county, city, town or other political subdivision thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by the Commonwealth, or any county, city, town or other political subdivision of the Commonwealth, or by any department or agency of any of them.

B. The provisions of subsection A shall apply to any employee of any county, city, or town or local school board without regard to any local ordinance or resolution adopted pursuant to § [40.1-57.2](#) by such county, city, or town or school board that authorizes its employees to engage in collective bargaining.

Code 1950, § 40-65; 1970, c. 321; 2020, c. [1276](#).

Procedure for Submission of Employee Certification
(§40.1-57.2 (C), VA Code Ann.)

Virginia Code § 40.1-57.2 authorizes the Board of County Supervisors (“Board”) to adopt an ordinance to provide for collective bargaining (“ordinance”). To date, the Board has not adopted an ordinance, and the Virginia Code does not require the Board to adopt an ordinance. As long as the Board has not adopted an ordinance, employees (who deems themselves part of an “appropriate unit”) may submit an employee certification as described in this procedure which will trigger a 120 day time period within which the Board will be required to vote to adopt or not adopt an ordinance providing for collective bargaining. Any determination by the Board not to adopt an ordinance does not preclude the Board from adopting an ordinance at any time in the future, nor does it preclude other employees from submitting additional employee certifications pursuant to this process.

A. Definitions

As used in this procedure:

"Appropriate Unit" means a group of employees who, by self-determination, is deemed a group of employees similarly situated in such ways as to make it reasonable for a single representative to represent or negotiate on their behalf, taking into consideration a commonality of interests across the group as demonstrated by similarity of work and work duties, training and qualifications, hours of work, and working conditions, as well as other relevant factors such as the desires of the employees and administrative structure of the County, and the County departments, offices, and agencies to be affected.

"Board" means the Board of County Supervisors of Prince William County, Virginia.

"Employee Certification" means a petition or other document similar to the form attached to this procedure (“petition”), submitted pursuant to this procedure to trigger a vote by the Board on whether or not to adopt an ordinance providing for collective bargaining. The petition must be signed by a number of County employees constituting a majority of the total number of the described group of County employees deemed by them to constitute an appropriate unit for collective bargaining under this procedure. The petition shall include the individual employees' printed names, current County position/job classification, hire date, signature, and signature date. Each signature date and the date of the petition shall be within the 60 days preceding the date of filing of the employee certification.

The petition shall be submitted on behalf of the unit by one or more current County employees who represent, by notarized signature(s), that he/she is a member of the unit described and that the content of the petition is true and correct to the best of the employee's knowledge and belief. If at any time during the 120 day period it is determined by the County that majority support does not or no longer exists, the employee certification may be determined insufficient.

"Clerk" means the Clerk to the Board or their designee.

"Collective bargaining" means the legally assumed mutual obligation of an employer, by its management representatives, and the exclusive bargaining representative or agent of employees in an appropriate unit to meet and negotiate in good faith regarding terms and conditions of employment, with one option including the good faith intention to reach a legally binding and enforceable agreement (i.e., a collective bargaining contract).

"Confidential employee" means any employee who works in or directly for:

- (1) the office of the Board;
- (2) the office of the County Executive;
- (3) the office of the County Attorney;
- (4) the Office of Human Resources or other department, office, agency or position in which an employee has authorized access to confidential County personnel files;
- (5) the Office of Management and Budget; or
- (6) holds any administrative or clerical position in direct support of managerial employees or any position, wherever assigned and however titles may be changed from time-to-time, with authorized access to confidential information pertaining to County budgetary, fiscal, and other information and data materially relevant to collective bargaining.

"County employee" means any employee in the competitive service of the County, as defined in Prince William County Code Chapter 19, except it does *not* include anyone who is:

- (1) a confidential employee, as defined herein;
- (2) a managerial employee, as defined herein;
- (3) a supervisor, as defined herein; and
- (4) an employee in new employee probationary status pursuant to the County's Personnel Policy.

"County Executive" means the County Executive of Prince William County or their designee.

"Current Employee" means one who is employed by the County at the time of signing an employee certification, as defined herein, through the time of the employee certification's submission to initiate of this procedure.

"Managerial employee" means any County employee who:

- (1) has responsibility for a County division, department, office, or agency, or a unit or sub-unit of a County division, department, office or agency;

- (2) participates in the formulation of management policy;
- (3) is significantly engaged in executive or management function or charged with the responsibility of directing the implementation of management policies, procedures, or practices; or
- (4) is materially involved as a decision maker in personnel decisions, including, but not limited to, staffing, reductions-in-force/layoffs, reorganizations, hiring, discipline, evaluations, pay, assignments, transfers, promotions, or demotions.

"Supervisor" means any County employee who customarily and regularly devotes a majority of work time to supervision of two or more County employees and has authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, assign, evaluate, reward, or discipline other County employees, or adjust grievances, or effectively to recommend any such actions. With respect to the Fire Department, "supervisor" includes all personnel at the rank of Battalion Chief or above. With respect to the Police Department, "supervisor" includes all personnel at the rank of Captain or above.

B. Procedure

(1) Filing of Employee Certification:

Effective May 1, 2021, County employees, acting individually or as a group may at any time file with the Clerk an employee certification, as defined in this procedure, that a majority of County employees constituting an appropriate unit, as defined herein, seek a vote by the Board on an ordinance permitting collective bargaining for that unit. Any such employee certification shall be filed by certified mail – return receipt requested, hand delivery with signature of receipt required, or other means by which date of actual receipt may be confirmed and documented by signature of the Clerk. The Clerk shall provide to the filing individual or group representative written confirmation of the date of receipt with simultaneous notice to the Board, County Executive, and County Attorney. The 120 days prescribed by Virginia Code § 40.1-57.2(C) within which Board action is required in response to presentation of the employee certification ("the 120-day Period") shall run from the date of receipt by the Clerk.

(2) Determination of Sufficiency of Employee Certification:

- (a) The County Executive shall within no more than 30 days from date of notice from the Clerk of the receipt of an employee certification submitted under this procedure and applicable law, take reasonable steps to verify whether the employee certification complies in all material respects to the requirements set forth in this procedure for employee certification, and shall provide to the Clerk, the filing party and the Board, a statement of the findings of the verification process no later than the end of that 30-day period. Verification efforts shall extend only to verification that (1) any party purporting to file an employee certification on behalf of the employee group (unit) has provided notice to the employee group and files the employee certification with their consent; (2) that the signatures are only those of current County employees who

are within the described group (unit) of employees; and (3) that the employee group (unit) described in the employee certification petition constitutes an appropriate unit under this procedure.

- (b) Administratively acceptable evidence for verification of support of an employee certification petition for the purposes described here may include, but are not limited to, authorizations that satisfy the Uniform Electronic Transactions Act (§ 59.1-479 *et seq.*, VA Code Ann.) such as electronic signatures.
- (c) If the employee certification is deemed sufficient, the County Executive's statement of findings shall so provide, and the 120-day Period shall continue to run.
- (d) In the event the employee certification is found insufficient, i.e., fails to conform to the substantive definition of employee certification set forth in this procedure in any material respect that indicates less than majority support for Board action within the unit described, the statement shall so indicate and state the reasons with particularity.

(3) Effect of Insufficient Employee Certification:

- (a) A determination of insufficiency of the employee certification filed shall toll the 120-day Period for action initiated by the particular employee certification petition, and the filing party shall have 15 days from the date of issuance of the statement of findings in which to submit a written response and/or objections to the statement to the Clerk and the County Executive. The filing party shall state the basis for any objections made to the findings with particularity and shall include any additional information or documents supporting the objection(s). The County Executive shall within 15 days of the filer's response to the statement of findings, if any, issue a re-determination of sufficiency or insufficiency of the employee certification. If deemed sufficient, the 120-day Period for Board action on collective bargaining for the unit shall resume from the date the re-determination is issued.
- (b) If the employee certification is again determined to be insufficient in any respect that shows less than majority support, the Board shall have no obligation, by operation of law, to vote on a collective bargaining ordinance based on the particular employee certification filed for the described group. The filing party or another party may file a new employee certification at any time thereafter, and this procedure shall apply as adopted with reference to a new 120-day Period.
- (c) Failure of the filing party to timely respond to a finding of insufficiency meeting the requirements set forth in this procedure shall conclude this process and the 120-day Period arising from that filing shall end. The filing party or another eligible party may file a new employee certification at any time thereafter on behalf of the same or similar described group of County employees. The requirements of this procedure shall apply in the same manner, except that no employee certification identical in all material respects to one filed in the preceding 60 days and determined during that

time to be insufficient shall be considered to trigger a new 120-day Period under applicable Virginia law and this procedure, and the filing party shall be so notified.

C. Vote by the Board

At any time following the County Executive's determination of sufficiency of an employee certification, the Board may vote to adopt or not adopt an ordinance providing for collective bargaining, subject to the requirements of the Virginia Code, but in any event, the Board must vote to adopt or not adopt an ordinance within 120 days of the filing of the employee certification in accordance with this procedure.



PRINCE WILLIAM
COUNTY

Employee Certification Process

Michelle Casciato, Deputy County Executive

May 4, 2021

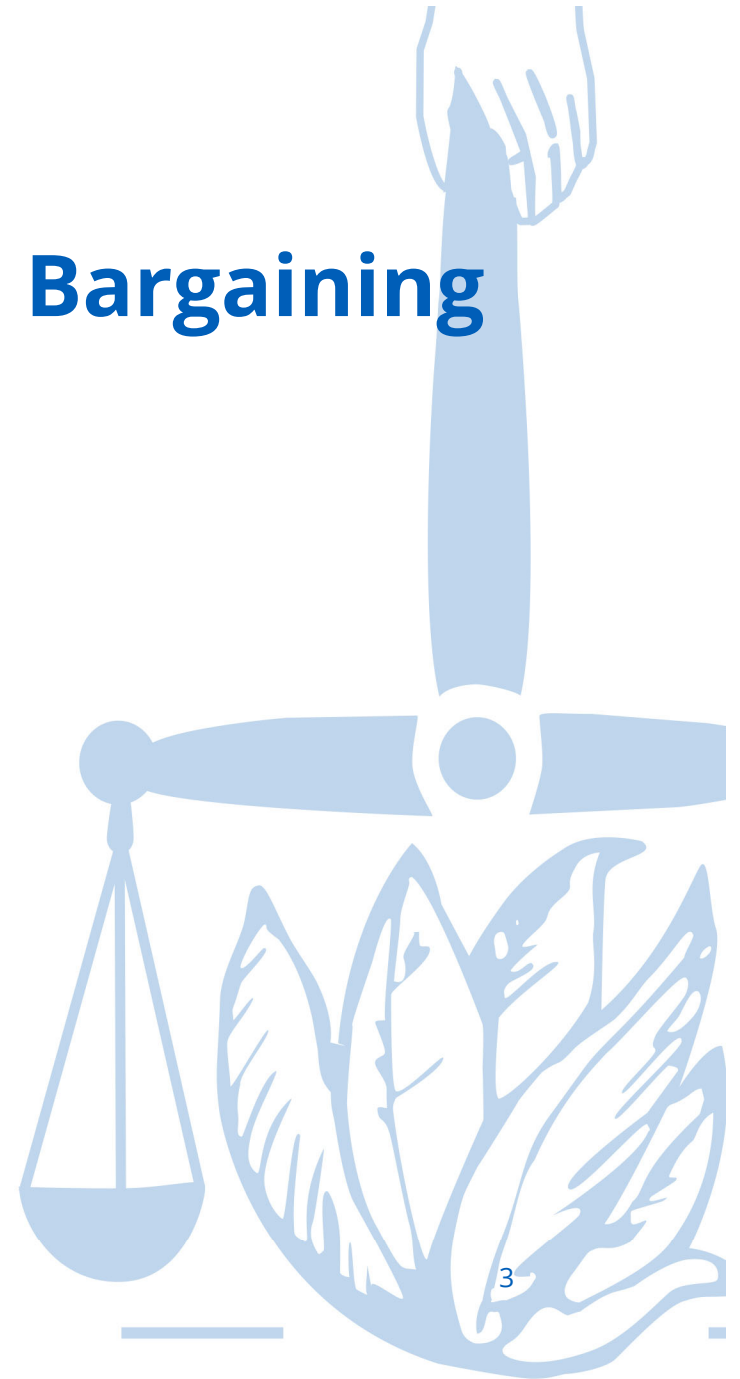
Public Employee Bargaining History



- 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

Background on Collective Bargaining

- BOCS issued directive for information on 1/25/2021
- Staff responded with general information on 4/9/2021
- BOCS has not adopted ordinance
- Today's informational update on a new state code provision that permits an employee certification process to begin May 1, 2021



Current PWC Employee Group Status

- 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.
 - Existing employee groups in PWC
 - Employee Advisory Committee - created by county code
 - Mid Atlantic Chapter of the American Public Works Association
 - Prince William County Professional Firefighters Local 2598 of the International Association of Firefighters
 - Southern States Police Benevolence Association
 - Police Association
- For decades, Board members and County Executives in Prince William have practiced an informal "meet and confer" model with the existing employee groups
 - Typically occurs during the annual budget process
 - This informal practice does not recognize exclusive representative status for employee groups, or create legally enforceable contract rights for employees

New State Law Effective May 1, 2021

Va. Code §40.1-57.2, et seq.



PRINCE WILLIAM
COUNTY

- **Permits** local governing bodies (counties, cities, towns, school boards) 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 adopting an ordinance in the case of a County.
- **The law does not require the County to adopt an ordinance providing collective bargaining rights to employees. It is completely within the discretion of the Board of County Supervisors.**

Employee Certification Provision (as of May 1, 2021)

- Per §40.1-57.2 VA Code Ann.,
 - At any time before the BOCS adopts a collective bargaining ordinance,
 - Employee groups may self-identify as a UNIT, and
 - Present an EMPLOYEE CERTIFICATION petition to the BOCS that triggers a 120 day clock within which the BOCS must vote to adopt an ordinance or vote not to adopt an ordinance to provide for collective bargaining for the petitioning employee unit and any others the BOCS wishes to recognize

Section 40.1-57.2 provides no procedural framework or substantive guidance on how the above process can/should work



Certification Process



- **County Executive has put this procedure in place administratively to assist employees who would like to go forward with this process**
- Employee groups with similar work and work duties seeking recognition as a bargaining unit can sign a petition and submit to Clerk to BOCS
 - County employees of Constitutional officers, state agencies not eligible
 - Confidential employees not eligible
 - Does not include employees of School Board or Service Authority
- This process will:
 - Provides uniform structure and process to manage employee expectations and petition validation
 - Ensures inclusive process accessible to employees
 - Does not commit the BOCS to collective bargaining
- County Executive determines if petition is sufficient to trigger the state requirement for a BOCS vote
 - If petition is deemed sufficient, CXO will advise BOCS to schedule a vote on whether to enact a collective bargaining ordinance within 120 days of receipt of the petition

Next Steps



- Employees have been notified of the new process
 - Internal email mailbox established for employee questions
- We are developing a public Q&A app for collective bargaining similar to the proposed budget Q&A app
- BOCS work session scheduled for May 11

CB Actions in Other Jurisdictions



| Locality | Governing Body Action | Current Status | FY22 Budget Change |
|------------|--|--|---------------------------------|
| Alexandria | Council requested ordinance in May 2020 | Ordinance adopted April 2021 | \$850,000 HR, Legal |
| Arlington | Board to authorize development of CB structure with FY22 budget adoption | Expect to implement CB ordinance no later than July 2023 | \$325,000 HR, Legal |
| Fairfax | Board established joint workgroup with FCPS in Sept 2020 | Stakeholder outreach underway | \$650,000 HR, Legal |
| Loudoun | Board identified CB as strategic priority in 2020. Authorized \$300,000 new staffing for CB function in Dec 2020 | Reviewed options in April 2021; plan to vote on CB ordinance in May 2021 | \$967,000 HR, Legal, Payroll |