

Collective Bargaining Frequently Asked Questions - #2
August 6, 2021

- 1. Q: Where can I find information on Fairfax County's work on collective bargaining?**
A: Please visit the Fairfax County website for detailed information on collective bargaining at <https://www.fairfaxcounty.gov/hr/collective-bargaining>.
- 2. Q: Please explain the impact of collective bargaining in relation to current employees and salaries?**
A: This is unknown until a collective bargaining agreement is negotiated. Potentially, a bargaining unit agent could negotiate a contract that specifies terms regarding base pay increases for its bargaining unit members. Note that the staff discussion draft ordinance requires the county and an elected bargaining agent to negotiate. The parties may not necessarily reach final agreement on all matters, including salary changes.
- 3. Q: Other jurisdictions have annual employee raises built into their budgets, and we do not. How will employee raises be affected going forward if/when a collective bargaining agreement is approved?**
A: This is unknown until a collective bargaining ordinance is adopted and a collective bargaining agreement is negotiated. Potentially, a bargaining unit agent could negotiate a contract that specifies terms regarding base pay increases for its bargaining unit members.
- 4. Q: Will collective bargaining impact the way the county budgets for employee compensation increases? Will the county be able to forgo employee raises in difficult budget years?**
A: In general, the terms of collective bargaining agreements approved by the Board of Supervisors are legally binding and enforceable contracts, but note that the law passed by the General Assembly allowing jurisdictions to engage in collective bargaining (Section 40.1-57.2 B) states, "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."
- 5. Q: Is collective bargaining going to make a difference in how the county funds employee raises?**
A: Funding the compensation plan is always dependent upon fiscal constraints. The law passed by the General Assembly allowing jurisdictions to engage in collective bargaining requires that the terms of collective bargaining agreements must remain subject to fiscal/budget limitations.
- 6. Q: Could you speak more about a collective bargaining agreement being 'subject to appropriation,' which was referred to earlier in collective bargaining town hall presentation?**
A: Under the Virginia Code provision authorizing collective bargaining, Section 40.1-57.2, a collective bargaining agreement cannot override the Board of Supervisors' ultimate authority to appropriate money and fund financial commitments. The process for collective bargaining agreement approvals will be aligned with the county budget timeline to meet county budget

preparation deadlines for consideration along with all of the County's funding choices and obligations.

7. Q: If Fairfax County already includes groups in the decision-making process, why is collective bargaining needed?

A: It is Fairfax County Government's policy to promote a cooperative relationship between the county government and its employees; to ensure that the workforce is positioned to efficiently meet demands; and to deliver exceptional service to the community and stakeholders. It is in the public interest that employees be able to bargain collectively in good faith, without interference with the orderly processes of government and subject to the limitations of the county's annual budget and appropriations.

8. Q: 1a. The Union has successfully worked with the Board of Supervisors for years; groups of people, not officially an association, can address governing bodies. Please explain how collective bargaining will be different (outside of being legally recognized). What is the advantage of collective bargaining, especially for those not associated with a union or employee association? 1b. If the ordinance is passed, how will individuals who are not associated with a union or employee association successfully address a governing body?

A: As it does now, the county will continue to have avenues for employees who are not members of a union or members of a bargaining unit represented by a union to share their concerns. Further details around this question will become available as discussions concerning the draft ordinance continue. Employees will be updated as decisions are finalized.

9. Q: It appears employees at the S-25 level and above/supervisors may be excluded from collective bargaining. How will employees at the S-25 level and above/supervisors be treated if they are not covered by collective bargaining?

A: Employees not in a bargaining unit will continue to be covered by existing personnel regulations and policies (as amended or modified from time to time). Please refer to the definition of supervisor in the latest version of the draft ordinance for the most current definition.

10. Q: Why aren't non-merit employees included in a collective bargaining agreement?

A: The distinction between merit and non-merit employees is set out in Procedural Memorandum 11-01. Non-merit employees are not governed by the Merit System Ordinance. Non-merit benefits eligible means an exempt employee who serves in an exempt benefits eligible position, a position with scheduled work hours between 1,040 and 1,560 per calendar year. (Approximately 20 – 30 hours per week).

Non-merit benefits eligible employees are eligible for the following County benefits: health, dental and vision insurance, and flexible spending accounts; call back pay, on-call and consecutive shift pay in accordance with Chapter 4 of the Personnel Regulations, and administrative leave when serving as an election worker and at the discretion of his or her appointing authority. However, they do not receive retirement benefits and they do not receive annual leave, sick leave, or holiday leave. Employees who are classified as non-merit

differ from merit employees in substantial ways. Compliant with Virginia and County Codes, merit staff must be filled through a competitive hiring process that includes a stringent review of the applicant's qualifications and a structured interviewing and selection process. Conversely, candidates are not required to compete for non-merit positions, and there is no central review of qualifications or the selection process for which the agency has sole responsibility.

Additionally, merit employees are given formal annual evaluations of their performance while non-merit employees are not. Another important distinction between the two types of employees is merit employees are covered under the Merit Service Ordinance and have certain grievance rights while non-merit employees do not. Both merit and non-merit employees can work side by side in program areas, though non-merit employees are not intended to be permanent resources for programs. Accordingly, the Department of Management and Budget and the Department of Human Resources have worked with agencies for the last three years to convert hundreds of non-merit positions that have become permanent resources for programs to merit positions.

Because of the many significant differences in the nature of the relationship between non-merit employees and the county, the staff discussion draft Collective Bargaining Ordinance does not extend collective bargaining rights to non-merit employees. .

This is comparable to Alexandria and Arlington, which have both excluded similar types of employees (temporary employees and seasonal employees) from coverage by their collective bargaining ordinances.

11. Q: Will there be a Town Hall on Collective Bargaining for supervisors and managers detailing their responsibilities relative to collective bargaining and the collective bargaining process?

A: There will be training and other informational events for managers, supervisors, and line employees regarding collective bargaining if an ordinance is adopted.

12. Q: Is the adoption of a collective bargaining ordinance going to happen whether we like it or not? Do we have a choice about having a union and/or collective bargaining?

A: Whether an ordinance is passed depends upon the Board of Supervisors. The current draft ordinance provides for an election process by which employees vote by secret ballot to choose an exclusive bargaining agent (union) to represent them. A ballot option of "no representation" for employees during the election was provided as an option in the latest discussion draft ordinance.

13. Q: There is already a union for Fairfax County employees that does not really have any power. How would the Collective Bargaining Unit be any different?

A: With collective bargaining, employees in a bargaining unit legally may negotiate enforceable contractual agreements with the county through their elected union representative. This right does not currently exist.

14. Q: Are collective bargaining and unions the same? Do we have to be part of a union to participate in collective bargaining?

A: No. Collective bargaining is a *process* by which an employer negotiates the terms and conditions of employment with a group of employees (a bargaining unit) who are represented in the negotiations by a bargaining agent (a union). It is voluntary for an employee to choose whether to be a member of the union. An employee who chooses not to be a member of a union will still be covered by any agreement for the bargaining unit to which s/he belongs. Bargaining unit membership is based on the type of job an employee has with the county. It is not based on membership in a union that represents the bargaining unit.

15. Q: Can Wastewater and Stormwater and Collections have their own units?

A: If an ordinance is approved, the ordinance will define the bargaining units. Currently, the discussion draft ordinance identifies three bargaining units—police, fire and emergency medical services, and general government. The Wastewater, Stormwater and Collections divisions would be in the general government employee bargaining unit.

16. Q: How will the selection of a union be made? What county employee information will be given to the unions? What are the requirements for a union vote to be successful—greater than 50% of all employees in the unit or 50% of those who voted?

A: Please refer to Sections 3-10-8, 3-10-9, and 3-10-10 of the [July 20 version of the revised Staff Discussion Draft](#), which discuss the process for electing a bargaining representative/agent (union). Please note that the draft ordinance has been revised several times to date. You should check to be sure you are reviewing the most recent draft. Visit Fairfax County's [collective bargaining web page](#) to stay up to date and access the latest draft ordinance and additional information.

17. Q: Can I get materials from the Collective Bargaining Town Hall meeting?

A: Please visit the [DHR public Collective Bargaining web page](#) where information is available and includes the following:

- Employee Town Hall Materials (see link on left under "Related Resources")
- Videos - Bd. of Supervisors Personnel Committee Meetings & related resource materials,
- County Staff Discussion Drafts of the proposed ordinance,
- Board of Supervisors Questions & Answers documents, and
- Frequently Asked Questions (FAQs) documents.

18. Q: Please explain collective bargaining.

A: Collective bargaining is a process by which an employer negotiates the terms and conditions of employment with a group of employees (a bargaining unit) who are represented in the negotiations by the employees' chosen bargaining agent (a union), with the intent to reach an enforceable contract regarding those terms and conditions of employment which may include compensation, some benefits, and various working conditions.

19. Q: Why are representatives with the Service Employees International Union (SEIU) at this employee Collective Bargaining Town Hall?

A: Only employees were invited to the collective bargaining town hall. However, some union representatives may have been in attendance because they are also Fairfax County employees or may have been given the link to the meeting by a Fairfax County employee.

20. Q: Some of my staff have said they have been contacted via text message on their personal phones by someone saying they were unionizing. How did they get employee phone numbers?

A: The county has not given out employee personal cell phone numbers. Fairfax County's Department of Human Resources is required to respond to FOIA requests for information which can include employee names. No other personal information is provided by the county. Some of the groups of the requestors may have requested employee name lists and matched them with contact information from elsewhere, as telemarketers are able to do.

21. Q: Can you address the topic of county allocation of funds, i.e., if a set percent for raises is put in the legal contract, is the county bound to pay this?

A: Under the Virginia code, a collective bargaining agreement is subject to the Board of Supervisors' authority to appropriate money and fund financial commitments. The process for collective bargaining agreement approvals will be aligned with the county budget timeline to meet county budget preparation deadlines.

22. Q: Can employees speak at the public hearing?

A: Yes, employees will have the opportunity to speak at the public hearing. The date for the public hearing will be noted on the [collective bargaining web page](#). Employees can visit the [county Clerk Services website](#) to find out more about how to sign up to speak at the hearing.

23. Q: Can employees write in comments for the public hearing?

A: Yes, instructions on how to submit questions/send comments are available on the [county Clerk Services website](#)

24. Q: Are all non-merit (E- status and G-status) and merit employees included in collective bargaining? (E-status indicates 1560 hours/year non-merit)(G-status indicates 900 hours/year temporary.)

A: The distinction between merit and non-merit employees is set out in Procedural Memorandum 11-01. Non-merit employees are not governed by the Merit System Ordinance. Non-merit benefits eligible means an exempt employee who serves in an exempt benefits eligible position, a position with scheduled work hours between 1,040 and 1,560 per calendar year. (Approximately 20 – 30 hours per week). Non-merit benefits eligible employees are eligible for the following County benefits: health, dental and vision insurance, and flexible spending accounts; overtime or compensatory time, call back pay, on-call and consecutive shift pay in accordance with Chapter 4 of the Personnel Regulations, and administrative leave when serving as an election worker and at the discretion of his or her appointing authority. They do

not receive retirement benefits and they do not receive annual leave, sick leave, or holiday leave.

Employees who are classified as non-merit differ from merit employees in substantial ways. Compliant with Virginia and County Codes, merit staff must be filled through a competitive hiring process that includes a stringent review of the applicant's qualifications and a structured interviewing and selection process. Conversely, candidates are not required to compete for non-merit positions, and there is no central review of qualifications or the selection process for which the agency has sole responsibility. Additionally, merit employees are given formal annual evaluations of their performance while non-merit employees are not. Another important distinction between the two types of employees is merit employees are covered under the Merit Service Ordinance and have certain grievance rights while non-merit employees do not. Both merit and non-merit employees can work side by side in program areas, though non-merit employees are not designed to be permanent resources for programs. For this reason, the Department of Management and Budget and the Department of Human Resources have worked with agencies for the last three years to convert hundreds of non-merit positions that have become permanent resources for programs to merit positions.

Therefore, it is not staff's recommendation that all non-merit, benefits eligible employees be included in the Collective Bargaining Ordinance. Similarly, Alexandria and Arlington have both excluded temporary employees and seasonal employees based on their definitions of those categories of employees.

However, the revised draft posted for the July 20 Personnel Committee meeting contains a variety of options for the Board's consideration. The options include allowing non-merit benefits eligible employees to bargain. Alternatively, the Board could allow all non-merit employees, except for temporary or seasonal employees, to engage in collective bargaining. Definitions of "temporary" and "seasonal" employment are set out in the revised draft ordinance. Finally, if the Board eliminated the exclusion for non-merit employees, employees who were not otherwise excluded from collectively bargaining under the definition of "employee" in the draft ordinance would be permitted to bargain.

25. Q: We received collective bargaining information from the Fairfax Worker Coalition. Where should we be putting this info? What should we do with this information? The information was brought to a work site.

A: If an employee receives materials from an employee group(s), they may keep the materials, discard them, or do nothing with them. It is a personal choice. DHR does not need to know or receive a copy.

26. Q: If supervisors and managers are not participants in collective bargaining, what determines a supervisor? Is it determined by S-level and job description or by chief in FOCUS?

A: Please refer to the definition of supervisor in the latest version of the draft ordinance.