

## Response to Questions on Collective Bargaining

**Request By: Supervisor Walkinshaw**

**Question 1: Binding arbitration is necessary. How can we set deadlines for arbitration decisions to be handed down for/relative to budget impact?**

**Response:**

The staff discussion draft has been revised to better insure coordination with budget preparation and approval deadlines. As discussed by the Board of Supervisors on June 29, 2021, binding arbitration needs to be included in the county's collective bargaining ordinance for instances when an impasse is declared, and arbitration is required. The timing of the deadline(s) for reaching a collective bargaining agreement and/or for completion of the arbitration process could adversely impact the county's budget process/budget timeline.

It was suggested that a deadline for arbitration (as well as for other process actions leading to or resulting from arbitration) be established based on the date by which the Department of Budget and Management (DMB) must receive information on the financial outcomes of any arbitration decisions in order to reflect the figures in the proposed budget. Using the deadline by which DMB is to receive financial information regarding arbitration decisions would guide/drive the determination of other related deadlines that need to be set to occur in advance of DMB's receipt deadline.

Time is needed for DMB to process, prepare and compile the budget documents. Lead time is also needed to incorporate any adjustments to the budget. Compensation and benefits adjustments, specifically, impact not only the general fund, but also other funds that have other revenue sources; this could potentially also impact the rate at which taxes are set.

An overview of the county's existing budget development timeline is below:

<b>Budget Timeline – Department of Management and Budget</b>	
<b>September</b>	Agencies finalize their proposed budgets.
<b>October</b>	Agencies submit their proposed budgets to Department of Management and Budget (DMB) for review.
<b>October – November</b>	DMB reviews agencies' proposed budget submissions; requests additional information from agencies, as needed; checks/cross-checks budget

	numbers in each agency submission; and vets information received/provided.
<b>Mid-December</b>	DMB meets with the County Executive to review the budget as proposed and make budget decisions.
<b>Late December</b>	DMB and the County Executive make <i>most</i> budget decisions for the Advertised Budget by the end of the calendar year.
<b>Early January</b>	Most budget decisions are completed by early January. Final decisions are made after final revenue information is received and reviewed.
<b>Late February</b>	Advertised Budget is released.

**Request By: Supervisor Herrity**

**Question 2: Current language appears to limit employee voluntary deductions to only certified bargaining agents. Will employees be able to continue making voluntary deductions to employee groups that are not bargaining agents? If not, why not? Please draft language that would allow such voluntary deductions to be made.**

**Response:**

Section 3-10-11 of the discussion draft ordinance addresses all of the rights that accompany an employee group's election as the exclusive representative of a bargaining unit. Paragraph (g) in this section states in relevant part: "To be the only labor organization eligible to receive from the County amounts deducted from the pay of employees as authorized by written assignment of the employees, for the payment of regular and periodic dues to the exclusive bargaining agent, unless two exclusive bargaining agents of County employees agree that they can both receive deductions from the same employee." It could be viewed as at odds with the notion of exclusivity for the County to carry out paycheck deductions for any other employee organization once an election is held and the employees have selected their exclusive bargaining representative. Ultimately, it is a policy choice as to whether or not to authorize paycheck deductions for employee organizations that have not been elected as the exclusive bargaining agent. If the Board wishes to amend the draft ordinance to include such an option, then the following language could be added at the end of paragraph (g): *"This paragraph does not prohibit employees from having voluntary membership dues payments deducted from their paychecks and forwarded by the County to a group other than an exclusive bargaining agent."*

**Request By: Supervisors Walkinshaw, Palchik, Foust and Storck**

**Question 3: Is staff's recommendation that non-merits should not be included?**

- **Can we create language that**
  - **a) includes Non-merit employees, or**
  - **b) includes only Benefit Eligible (status E) non-merit employees or**
  - **c) allows non-merit Benefits Eligible employees to choose to be in/represented by a union?**

**Response:**

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 exception relating to 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.

**Request By: Chairman McKay**

**Question 4: Portions of the draft appear to be an ordinance, but others seem to be like more of an agreement. How can it be kept broad enough to prevent conflicts with contract? How does this draft compare to other jurisdictions' ordinances?**

**Response:**

There are many different approaches to collective bargaining ordinances at the municipal level. Some ordinances are brief (i.e., 5 pages) while others are longer. The approach taken in the staff discussion draft ordinance seeks to leave [much of] the procedural detail to other processes—whether it be the collective bargaining agreement process itself or whether it is, for example, leaving it to the labor relations administrator of the ordinance to have the role of developing, articulating and having approved processes. Some areas of the staff draft discussion draft ordinance are very high-level while others are more detailed. A rubric set by municipalities regionally is being followed with various provisions modeled after several localities in the region (northern Virginia-southern Maryland). Most are roughly the same length with as much detail.

As a general rule, ordinance provisions would prevail in a conflict with contract language unless the Board chooses to expressly provide otherwise in select areas.

**Request By: Chairman McKay**

**Question 5: What happens to the Civil Service Commission? How does this mesh/not mesh with Personnel Regulations?**

**Response:**

The Civil Service Commission (CSC) will still be needed to fulfill its existing mission/duties for non-bargaining unit employees. The CSC's role with regard to bargaining-unit employees would be determined by the collective bargaining agreement(s) negotiated with the various exclusive bargaining agents – the CSC might continue to have a similar role as now or something entirely different for one or all of the units.

The Personnel Regulations will need to be amended if an ordinance is enacted. The extent of amendment needed is dependent upon the language of the enacted ordinance and may potentially need further amendment depending upon the language of the various collective bargaining agreements.

**Request By: Supervisor Herrity**

**Question 6: Please provide an estimated fiscal impact on the current draft broken out by administrative leave cost (funded provided to employee groups), internal administrative costs, consultant costs and other costs. Please identify any eliminated costs.**

**Response:**

The FY 2022 Adopted Budget Plan includes \$1.0 million and 6/6.0 FTE positions to support collective bargaining for public employees. This includes the addition of \$0.5 million and 5/5.0 FTE positions in the Department of Human Resources and \$0.1 million and 1/1.0 FTE position in the Office of the County Attorney. In addition, \$0.3 million in Fringe Benefits funding is included in Agency 89, Employee Benefits. These positions are necessary to begin to address the new workload associated with labor relations, including legal support, policy administration, contract compliance and system administration. Additional positions and funding are anticipated to be recommended as part of the FY 2021 Carryover Review, and in future budget processes as additional requirements are identified.



**Request By: Supervisor Foust**

**Question 7: What is the count of the number of county employees who would be excluded from collective bargaining under the definition of “confidential employee”?**

**Response:**

The number of merit employees in the agencies designated as confidential employees in the original draft ordinance is 314 positions. The chart below includes both filled and vacant authorized positions. Positions that may be excluded for being an elected position or a manager or supervisor are shown in a separate column.

<b>Position Count</b>	<b>Position Type</b>					
<b>Agency</b>	<b>Appointed</b>	<b>Elected</b>	<b>General Merit</b>	<b>Non-Merit Ben Elig</b>	<b>Temporary</b>	<b>Grand Total</b>
Board of Supervisors	80	10			20	<b>110</b>
County Executive	10		38	2	3	<b>53</b>
Finance	1		74	5	9	<b>89</b>
Human Resources	1		83	11	26	<b>121</b>
Management & Budget	1		56	2	35	<b>94</b>
Office of County Attorney	1		63	2	2	<b>68</b>
<b>Grand Total</b>	<b>94</b>	<b>10</b>	<b>314</b>	<b>22</b>	<b>95</b>	<b>535</b>

The number of “confidential employees” under the substitute language of the draft ordinance for the July 20 Personnel and Reorganization Committee Meeting would be less than the total in the chart above but is unknown at this time.