

# Response to Questions on Collective Bargaining

**Request By: Supervisor Walkinshaw**

**Question 1: Which employees will be eligible under the current proposed ordinance?**

**Response:**

Under the current proposed ordinance, the following bargaining units for the purposes of collective bargaining, except those excluded by definition in Section 3-10-2:

- Police: The police employees' bargaining unit shall consist of all sworn uniformed employees of the police department, including uniformed officers of the Animal Control Unit
- Fire and Emergency Medical Services: The fire and emergency medical services employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals
- General Government: All other County employees

Those currently excluded are:

- (1) a person occupying an exempt service (non-merit) position as defined in Chapter 3, Article 1 of this Code;
- (2) a confidential employee, as defined in the ordinance;
- (3) a managerial employee, as defined in the ordinance;
- (4) a supervisor, as defined in the ordinance;
- (5) an intern or volunteer;
- (6) an employee in new employee probationary status;
- (7) a member of a board, commission, authority, or other appointee of any public body as defined in state law unless such member is an Employee who would otherwise be entitled to engage in collective bargaining under the terms of this ordinance; and
- (8) an employee of the courts or of any local constitutional officer as set forth in Article VII, Section 4 of the Virginia Constitution, whether or not the County provides personnel administrative services or supplements state or other funding provided for the personnel of such officers.

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Question 2: How many nonmerit employees are currently employed, by agency, seasonal/non-seasonal? Would appreciate a chart with this information.

Response:

Position Type	Appointed		Elected		General Merit		Non-Merit		Temporary	
	Position Count	Filled	Position Count	Filled	Position Count	Filled	Position Count	Filled	Position Count	Filled
Animal Sheltering	1	1		-	33	31	1	-		-
Board of Supervisors	80	55	10	10		-		-	20	5
Cable & Consumer Services	1	1		-	61	48		-	16	8
Circuit Court & Records	8	7	1	1	157	153	2	2	14	8
Civil Service Commission	1	1		-	3	3	1	-	14	-
Clerk Services	1	1		-	13	13		-	14	2
Code Compliance	1	1		-	47	46	4	2	5	3
Commonwealths Attorney		-	1	1	65	56		-	1	-
Community Services Board	1	1		-	1,136	1,013	134	75	160	45
County Executive	10	9		-	38	34	2	1	3	-
DPWES Capital Facilities		-		-	177	161	24	12		-
DPWES Directors Office	1	1		-	41	31	1	-		-
DPWES Solid Waste Management		-		-	307	245	51	14	5	-
DPWES Stormwater Management		-		-	196	171	14	11	5	5
DPWES Wastewater Management		-		-	343	289	32	14	2	-
Economic Initiatives	1	1		-	10	8	1	1	1	-
Emergency Management	1	1		-	19	15	2	-	1	1
Facilities Management	1	1		-	203	188		-		-
Family Services	1	1		-	1,134	1,010	59	24	35	10
Finance	1	1		-	74	65	5	2	9	-
Financial & Program Auditor	1	1		-	2	1		-	1	-
Fire & Rescue	1	1		-	1,677	1,513	6	1	218	90
General District Court		-		-	44	38	1	-	9	5
Health Department	1	1		-	868	748	188	81	295	89
Housing & Community Dev	1	1		-	251	168	20	7	26	7
Human Resources	1	1		-	83	68	11	5	26	4
Human Rights & Equity Programs	1	1		-	20	17		-		-
Independent Police Auditor	1	1		-	2	1		-		-
Information Technology	1	1		-	353	284	7	4	5	-
Juv & Domestic Relations Court	1	1		-	338	292	39	22	43	21
Land Development Svcs	1	1		-	304	263	12	8	28	6
Library	1	1		-	427	389	8	1	156	107
Management & Budget	1	1		-	56	46	2	1	35	1
McLean Community Center	1	1		-	32	31	15	8	78	17
Neighborhood & Community Svcs	1	1		-	1,086	992	343	192	971	286
Office of County Attorney	1	1		-	63	58	2	2	2	1
Office of Elections	5	3	1	1	30	21	44	35	6,749	509
Office of Public Affairs	1	1		-	21	19	2	-	2	-
Office of Strategy Mgt for HHS	1	1		-	28	20		-	3	1
Park Authority	1	1		-	600	415	392	277	2,700	1,138
Planning and Development	2	2		-	152	129	22	5	8	-
Police	1	1		-	1,947	1,758	16	14	8	3
Procurement & Material Mgmt	1	1		-	75	61	7	6	2	1
Public Safety Communications	2	2		-	239	209	2	2	6	1
Reston Community Center		-		-	53	48	13	6	315	112
Retirement Administration	4	4		-	26	26	5	2	11	-
Sheriff	3	3	1	1	644	553	6	6	10	4
Tax Administration	1	1		-	295	267	93	57		-
Transportation	1	1		-	186	156	8	6	8	1
Vehicle Services	1	1		-	263	234	2	1	12	3
<b>Total:</b>	<b>149</b>	<b>120</b>	<b>14</b>	<b>14</b>	<b>14,222</b>	<b>12,405</b>	<b>1,599</b>	<b>907</b>	<b>12,032</b>	<b>2,494</b>

# Response to Questions on Collective Bargaining

**Request By: Chairman McKay**

**Question 3: Who is considered a supervisor under the proposed ordinance and why?**

**Response:**

Supervisors, by the nature of their work, generally are considered management under the National Labor Relations Act (NLRA) and thus excluded from any bargaining unit or from the collective bargaining rights granted under the act. Specifically, the NLRA defines a supervisor as "Someone using independent judgment to assign and direct the work of other employees in the interest of the employer". The general policy reason underlying the definition of supervisor in the Fairfax County ordinance is that supervisors are an extension of management and are responsible to some degree for implementing management policy and collective bargaining policy in particular.

The proposed ordinance specifically defines a supervisor as follows:

*Supervisor*, other than for Police and Fire and Emergency Medical Services, means all personnel who serve in a managerial position at the level of S-25 and above and/or any individual who 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. 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 with the rank of captain or above.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Storck**

**Question 4: Regarding the section on “employee use of work time”, what is eligible and permissible now?**

**Response:**

Currently, officers of the EAC and recognized employee groups are authorized the use of administrative leave to attend conventions and/or conferences and trainings related to employee relations. Administrative leave for this purpose is limited to 240 hours per year per employee organization. This leave is available for usage by the officers or official representatives of each employee organization and resets at the beginning of each calendar year.

Officers or representatives of the bargaining unit are permitted to use administrative leave for time associated with assisting employees who have filed grievances when designated as their representative.

<b>Administrative Leave - Employee Organization Activities</b>			
<b>Year</b>	<b>Total EEs Utilizing</b>	<b>Total Hours Used</b>	<b>Total Dollars</b>
2020	29	289.6	\$ 11,477.94
2021	11	75	\$ 3,374.36
		364.6	\$ 14,852.30

# Response to Questions on Collective Bargaining

**Request By: Supervisor Alcorn**

**Question 5: What are we doing to engage employees more broadly?**

**Response:**

The Department of Human Resources (DHR) has created a central communication strategy for the purpose of having a central clearinghouse that will coordinate with the many stakeholders involved, and keep messages consistent. Using available software tools we can share information and make assignments from questions or concerns that come in from employees or the public through the email address we've set up dedicated to these efforts:

[collectivebargaining@fairfaxcounty.gov](mailto:collectivebargaining@fairfaxcounty.gov). We have also created a rapidly evolving website on our public DHR website where we will continue to add information as we create it:

<https://www.fairfaxcounty.gov/hr/collective-bargaining>. Several times we have discussed collective bargaining in a general sense on our bi-weekly meeting with HR managers and employee groups, a summary of which is sent out through agency HR staff to all employees.

This is just the beginning. We are developing a frequently asked question (FAQ) section to post on the website. We are planning to have a town hall meeting that will be educational in nature and cover the basics of what collective bargaining is and what employees can expect through this process.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Alcorn**

**Question 6: Regarding “telework and working conditions”—telework issue will evolve over the coming years. How do we ensure this is going to be coordinated with the budget, planning and IT processes?**

**Response:**

Aligning technology initiatives with the future of the mobile workforce and the agency direction, is a top priority for the Department of Information Technology (DIT). Moving to a mobile workforce that needs access to County systems, applications, and data in a secure and flexible manner will improve efficiencies and allow the County to respond to future disasters. These initiatives also improve employee work/life balance. DIT works with agencies, the Department of Human Resources and the County Executive to align the technology needs with this County Strategic direction.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Lusk**

**Question 7: Why are non-merits excluded from collective bargaining?**

**Response:**

Non-merit employees, also known as exempt employees, are those positions that are not included in the competitive service as defined in the Merit System Ordinance (hence “non-merit”). Fairfax County Code 3-1-1(e)(3). Both the Merit System Ordinance and the Personnel Regulations define which employees are in the exempt service. Fairfax County Code 3-1-2(b), Fairfax County Personnel Regulations, Chapter 2 Definitions. As such, these positions, both Temporary (no more than 900 hours worked per calendar year) and Non-Merit Benefits Eligible (no more than 1,560 hours worked per calendar year) are not filled by competitive selection procedures. By law in Virginia, appointments to the merit system must be made based on a competitive basis. Only those provisions of the Merit System Ordinance and of the Personnel Regulations which specifically state that they are applicable to exempt employees, or are made applicable to the exempt service through procedural directives issued by the County Executive and approved by the Board of Supervisors apply to the exempt service. Fairfax County Code 3-1-2(c). The County Executive has issued, and the Board of Supervisors has approved, Procedural Memorandum 11-01 which governs the exempt service. These exempt positions are governed by Va. Code § 15.2-808, and are structured for temporary employment, not continuous employment.

Department Directors have the delegated authority to fill exempt positions based on operational and business needs or allow exempt positions to remain vacant for budgeting purposes. A large majority of exempt positions are based on seasonal and fluctuating programmatic necessity, so they are not filled on a continuous twelve month cycle. If non-merit employees were included as part of a collective bargaining ordinance which eventually led to a collective bargaining agreement, Departments could lose the flexibility and discretion of managing their non-merit workforce based on business, financial or operational needs. Departments would need to specify exact position counts of redundant job classifications, based on a collective bargaining agreement’s definition for job titles. Non-merit employees would also not have the ability to work flexible schedules as they currently do today, rather their work schedules and the work they would perform would be defined by the terms of the collective bargaining agreement. A large majority of the non-merit workforce is dependent upon the needs of the agency, and therefore are not necessarily employed in the same positions for all 26 pay periods throughout a calendar year. Were they to be covered under a collective bargaining agreement, this fluidity for the employees would no longer exist.

# Response to Questions on Collective Bargaining

**Request By:** Supervisor Herrity

**Question 8:** Were any nonemployee taxpayers or residents included in the working group?

**Response:**

The working group was formed based on the direction provided by the Board of Supervisors on September 29, 2020 and did not include any nonemployee taxpayers or residents.



# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 9: Is it true that any collective bargaining agreements reached with employee groups would still be subject to appropriation like the current compensation agreement?**

**Response:**

Yes. Virginia Code Section 40.1-57.2(B) provides: "No ordinance or resolution adopted pursuant to subsection A [enabling collective bargaining by localities] shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds."

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 10: Will the Board of Supervisors as the county's elected body retain authority over non-budgetary items in collective bargaining agreements? Will the Board be able to vote on the entire agreement or just fiscal items? Will the Board be able to reject non-fiscal items in a tentative collective bargaining agreement? Does this change if the agreement goes to binding arbitration? Will an arbitrator be able to set terms and conditions of employment for county employees that neither the Board of Supervisors, the County Executive or another representative of the County have approved?**

**Response:**

While the enabling legislation does not expressly address the specific questions of governing body authority raised in this question, a reasonable inference from the authority granted is that the Board of Supervisors may adopt an ordinance that provides for Board approval of collective bargaining agreements in their entirety and it may decide as well whether any matter subject to bargaining is subject to binding arbitration. It is within the Board's discretion to decide whether to permit any matter to be submitted for binding arbitration.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 11: Why can a union certify with a majority of votes from employees voting in a unionization election, but it requires a majority of the all the employees in a unit to remove a union? In other words, if there is a unit of 100 employees and 49 vote, the union would only need 25 votes to certify. In the same scenario employees could not remove the union, they would need 51 votes.**

**Response:**

The staff discussion draft ordinance does not provide for such a differential. For both certification and decertification a vote of a majority of bargaining unit members would be required.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 12: In the terms that can be bargained over, what does the ordinance mean by “matters affecting employee health and safety (including physical working conditions and personal protective equipment)” and what limits would that put on us providing essential services, especially through Public Safety, the Department of Health, and FCPS? Can the ordinance include a section that more clearly defines health or working conditions that could be bargained over, as well as a process that would need to happen before such issues come to the bargaining table – like assessment by the health department/relevant agency with evaluation and recommendations?**

**Response:**

The draft ordinance does not impose any limitations on the County in this regard. For further details, see the response below to the question about whether this draft ordinance would supersede the authority of the Board and/or the County Executive. However, if the Board wishes, further definitions and any pre-conditions for bargaining over such matters can certainly be added to the draft ordinance. [Note that the state enabling legislation vests in the School Board alone the authority to determine collective bargaining rights, if any, of FCPS employees.]

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 13: Does the ordinance prohibit the county from telling employees they have a right to not join, pay, or vote for a union? See 3-10-16 a3 on p. 18. Will outside groups be allowed equal access to unions to tell employees about their rights?**

**Response:**

County representatives may share verifiable facts, opinions arising from personal beliefs and experiences and provide comparative examples, provided that none of the facts, opinions or examples constitute (directly or by reasonable implication) threats or intimidation of employees in the exercise of their legal rights related to organization or bargaining. Section 3-10-9e of the staff discussion draft ordinance ensures application of current county policies and practices governing any third party's access to employees via county facilities and during county work time.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 14: Can collective bargaining agreements supersede the authority of the Board of Supervisors, and the County Executive? In the event of an emergency does this ordinance give flexibility to respond rapidly to situations such as COVID or will changes need to go through the union?**

**Response:**

The Board of Supervisors and County Executive retain all the authority they presently possess, subject to decisions voluntarily reached in the bargaining process, with respect to matters that are mandatory or permissible subjects of bargaining. The draft ordinance makes clear at Section 3-10-12b that "[n]othing in this article requires either party to make any concessions or agree to the other party's proposals" in bargaining. The commitment undertaken in collective bargaining is to negotiate in good faith. The draft ordinance provides for the County to retain exclusive decision-making regarding emergency response measures/needs at 3-10-4b.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 15: Is this ordinance limiting the rights of public employees? Section 3-10-3 on Page 5 says that collective bargaining agreement can establish time periods for employees to exercise their rights. Additionally, Section 3-10-11e on Page 13 says that dues authorizations can be irrevocable for up to a year and can even be given by voice. Are there any safeguards to ensure employees know they have the right not to pay union dues and to safeguard against fraud? The United States Supreme Court in Janus v. AFSCME said that public employees have a right to not pay union dues and in order to collect dues employees need to give “clear and compelling” evidence of “affirmative consent.” Is this standard provided for in this ordinance?**

**Response:**

The ordinance is drafted with the intent and objective to comply with and respect the rights of all employees as set forth in state statutory law and established by applicable case law, including the case law cited here. The draft ordinance states those rights at Section 3-10-3(a), among others.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 16: Does this ordinance comply with Virginia's Secret Ballot Protection Act § 40.1-54.3? Are employees ensured a secret ballot when voting in a union certification election, rather than a union being certified as an exclusive representative by administratively acceptable evidence also known as card check? Since administratively acceptable evidence can be a voice authorization are there any protections against fraud or to inform county employees of their rights? Further because of the potential for fraud or deception why are administratively acceptable evidence determinations of the LRA not challengeable?**

**Response:**

The staff discussion draft ordinance provides for certification by ballot election which, by operation of the cited law, shall be a secret ballot election. Nevertheless, the draft may be revised to expressly state that the balloting is secret.

There is no provision in the current draft for recognition of a bargaining agent by card check (i.e., administratively acceptable evidence of majority support) alone. The draft contemplates that the Labor Relations Administrator will establish procedural rules to implement elections (3-10-8a) in keeping with applicable law. If the Board wishes to detail all of these requirements in the ordinance itself, that can certainly be done, but it will lead to an even more lengthy ordinance.



# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 17: Will employees be forced to sit through a union sales pitch? Can they opt-out of the meeting and also of receiving union solicitations?**

**Response:**

The staff discussion draft ordinance provides that union or employee association organizing or campaign activity be conducted outside work time (3-10-5a), that employee attendance at any organizing or campaign meetings is entirely voluntary, and that the county is prohibited from coercing employees in the exercise of their rights in this regard. See Section 3-10-16(a)(1) and (3).

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 18: Are subjects such as last in, first out prohibitions and discipline procedures now left up to collective bargaining because of this ordinance or are there state laws which curtail what can be bargained over?**

**Response:**

Under the staff discussion draft ordinance layoffs, reductions-in-force and discipline decisions and procedures are not mandatory bargaining subjects.

# Response to Questions on Collective Bargaining

**Request By: Supervisor Herrity**

**Question 19: Does the ordinance allow for “release time” or county employees doing union work while receiving their taxpayer salary? Has there be any fiscal estimates on how much this will cost the county?**

**Response:**

Yes, the ordinance allows employees representing an exclusive bargaining agent in periodic negotiations to use time that would otherwise be duty time "to the extent consistent with County operations and service demands" in Section 3-10-5b. There are no fiscal estimates or projections available yet, but we will report them when available.

## Response to Questions on Collective Bargaining

Request By: Supervisor Palchik

Question 20: Can we get summary information about gender and race?

Response:

Position Types	Average Age	Gender		Ethnicity							Grand Total
		Female	Male	Hispanic/Latino	American Indian or Alaskan Native	Asian	Black or African American	Native Hawaiian or Other Pacific Islander	White	Two or More Races	
Appointed	48.75	55	65	11	1	7	18		83		120
Elected	56.64	4	10	1			1		12		14
General Merit	44.57	6,174	6,230	1,380	55	1,288	2,579	16	6,981	105	12,404
Non-Merit	40.13	539	361	143	3	93	194	8	432	27	900
Temporary	52.06	1,490	1,012	202	12	252	329	8	1,643	56	2,502
	<b>Total Count:</b>	<b>8,262</b>	<b>7,678</b>	<b>1,737</b>	<b>71</b>	<b>1,640</b>	<b>3,121</b>	<b>32</b>	<b>9,151</b>	<b>188</b>	<b>15,940</b>