

**DRAFT COLLECTIVE BARGAINING ORDINANCE FOR  
OCTOBER 5, 2021, PUBLIC HEARING**

An ORDINANCE to amend Chapter 3 of the Code of the County of Fairfax, Virginia, County Employees, by adding Article 10, Collective Bargaining, Sections 3-10-1 through 3-10-18, as follows:

**CHAPTER 3. – COUNTY EMPLOYEES**

**ARTICLE 10. - COLLECTIVE BARGAINING.**

**Section 3-10-1. - Statement of policy.**

It is the public policy of Fairfax County to promote a harmonious and cooperative relationship between the County government and its employees to ensure that the workforce is positioned to efficiently meet demands and deliver exceptional services to the community and stakeholders. Unresolved disputes in public service are harmful to employees and the public, and adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity 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.

**Section 3-10-2. - Definitions.**

As used in this Article, the following terms shall have the meanings ascribed to them in this section:

*Arbitration* means the procedure by which the County and an exclusive bargaining representative when involved in a labor-management dispute or impasse, as defined in this Article, submit their differences to a third party for a final and binding decision subject to the provisions of this Article.

*Benefits* means all forms of non-wage compensation.

*County* means the County of Fairfax acting through its County Executive or the County Executive's designee.

*Collective Bargaining* means to perform the mutual obligation of the County, by its representatives, and the exclusive bargaining representative of employees in an appropriate bargaining unit to meet and negotiate in good faith at reasonable times and places, with the good faith intention of reaching an agreement, subject to appropriation of funds by the County Board, regarding

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terms and conditions of employment, including wages, salaries, and all forms of monetary compensation; benefits; personnel policies and practices, working conditions, and hours and scheduling of work, provided that matters reserved as County management rights in Section 3-10-4 are subject to permissive collective bargaining as provided therein. [OPTION to strike “.provided that matters reserved as County management rights in Section 3-10-4 are subject to permissive collective bargaining as provided therein.” This, and a corresponding edit in 3-10-4, would make all items in Section 3-10-4(a) subject to mandatory collective bargaining.]<sup>1</sup> The County shall not negotiate as to matters controlled or preempted by any federal or state constitutional provision, law, rule, or regulation.

*Collective bargaining agreement* means the written legal contract between the County and an exclusive bargaining agent representing the employees in a bargaining unit authorized by this Article and resulting from collective bargaining as defined in this section. Any collective bargaining agreement negotiated under this Article shall continue in effect following the expiration of its term until such time as superseded by a later agreement.

*Confidential employee* means any employee who, as part of their job duties, assists and acts in a confidential capacity on labor relations matters to persons who formulate, determine, and effectuate management policies in the field of labor relations, including a County Board member, the County Executive or Assistant/Deputy County Executive, the County Attorney or Assistant/Deputy County Attorney, and a department head or Assistant/Deputy department head.

*Employee* means any employee of the County, except it does *not* include anyone who is:

- (1) a seasonal or temporary employee as defined in this section;

[OPTION to strike “or temporary,” along with the definition of “temporary employee” that follows below.]

- (2) a confidential employee, as defined in this section;
- (3) a managerial employee, as defined in this section;

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<sup>1</sup> Options are outlined in this draft for certain unresolved policy questions identified to date. Further edits to the ordinance may be made as a result of additional public input.

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- (4) a supervisor, as defined in this section;
- (5) an intern or volunteer;
- (6) a new employee for a period of sixty (60) days after such employee's first day of work for the County;
- (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; or
- (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.

*Employee organization* means an organization in which employees participate, and that exists for the purpose, in whole or in part, of representing employees in collective bargaining concerning labor disputes, wages, hours, and other terms and conditions of employment.

*Exclusive bargaining representative* and *exclusive bargaining agent* mean the employee organization recognized by the County as the only organization to bargain collectively for all employees in a bargaining unit (as defined in section 3-10-6).

*Impasse* means the failure of the County and an exclusive bargaining representative to reach agreement in the course of collective bargaining negotiations within the timeframes specified in this Article.

*Labor-management dispute* means a difference of position as between the County and an exclusive bargaining agent concerning administration or interpretation of the collective bargaining agreement between them; action challenged as a prohibited practice under Section 3-10-16; negotiability of subject matters under this Article; and questions of eligibility of disputes for resolution by mediation or arbitration. It shall not mean disciplinary or other adverse personnel actions within the meaning of Virginia Code Section 15.2-1506, *et*

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*seq.*, as implemented by the uniformly applicable County grievance procedure, and specialized state statutory procedures applicable to law enforcement officers and fire and emergency medical services employees.

*Managerial employee* means any employee or appointee involved directly in the determination of labor relations or personnel policy or who is responsible for directing the implementation of labor relations or personnel policy at an executive level.

*Mediation* means an effort by a neutral, third-party factfinder chosen under the terms of this Article to assist confidentially in resolving an impasse, or other labor-management dispute as defined in this section, arising in the course of collective bargaining between the County and the exclusive bargaining agent of a bargaining unit.

*Seasonal employee* means an employee who is hired into a position for which the customary annual employment is four (4) months or less and for which the period of employment begins each calendar year in approximately the same part of the year, such as summer or winter, for reasons related to work demands that arise during those parts of the year.

*Supervisor* means all personnel who devote a majority of work time to the supervision of two or more employees and have authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, reward or discipline other employees, or adjust grievances. With respect to General County employees, “supervisor” excludes all employees who serve in a position at the levels S-32 and L-7 and below. With respect to the Fire Department, “supervisor” includes all positions above the rank of Deputy Chief. For personnel in Public Safety Communications, the term includes personnel who serve in a position at the level of P-23 and above. With respect to the Police Department, “supervisor” includes all personnel with the rank of Captain and above.

[OPTION to strike the last sentence and add the following: “With respect to the Police Department, ‘supervisor’ includes all personnel with the rank of Second Lieutenant and above” or “With respect to the Police Department, ‘supervisor’ includes all personnel with the rank of First Lieutenant and above.”]

*Strike* means, in concerted action with others, an employee's refusal to report to duty or willful absence from their position, or stoppage of work, for the

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purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.

*Temporary employee* means an individual who is employed for not more than 180 days in a 12-month period.

[OPTION to strike the definition of “temporary employee” if such employees are not excluded from collectively bargaining.]

**Section 3-10-3. - Employee Rights.**

- (a) Employees shall have the right to organize, form, join, assist, participate in, and pay dues or contributions to employee organizations, to bargain collectively through an exclusive bargaining representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection insofar as such activity is not inconsistent with this Article. Employees shall also have the right to refrain from any or all such activities.
- (b) A collective bargaining agreement provision that violates the rights of employees set forth in this section shall be void. A collective bargaining agreement provision that establishes a time period for the exercise of an employee right set forth in this section shall not violate this section.
- (c) The County and each employee organization will refrain from any intimidation or coercion of employees who choose to exercise their rights under this Article.

**Section 3-10-4. - County's Rights and Authority.**

- (a) This Article shall not be deemed in any way to limit or diminish the authority of the County to manage and direct the operations and activities of the County to the fullest extent authorized and permitted by law. Thus, unless the County elects to bargain regarding the following matters, the County retains exclusive rights:

[OPTION: If the Board wishes to make the following list subject to mandatory collective bargaining instead of permissive bargaining,

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strike the language in (a) and insert: “Subject to any applicable collective bargaining agreement and the obligation to bargain in good faith, the County retains the rights:”]

- (1) to determine the type and scope of work to be performed by County employees and the manner in which services are to be provided;
  - (2) to direct the work of employees and determine the number of employees to perform any work or service;
  - (3) to hire, promote, transfer, assign, retain, classify, and schedule all employees and to suspend, demote, discharge, or take other disciplinary action against employees;
  - (4) to relieve employees from duties by layoff or other reduction-in-force due to lack of work, budget limitations, changed working conditions/requirements or for other reasons in the County's reasonable business judgment and not prohibited by law, except that the implementation procedures to be followed shall be negotiable;
  - (5) to contract for, expand, reduce, sell, transfer, convey, or eliminate particular operations or services of general government, as well as any department, office, or part thereof; and
  - (6) to establish and change standards of behavior or performance, job qualifications, and job descriptions, except that performance evaluation procedures will be negotiable.
- (b) The County retains the right to take whatever actions may be necessary to carry out the County’s mission during emergencies. If a collective bargaining agreement includes procedures for how the County and its employees will respond to an emergency (such as snow or other inclement weather), then the terms of a binding collective bargaining agreement shall govern. Otherwise, the County shall meet with the exclusive bargaining representative at the earliest practical time following actions taken in response to an emergency to discuss the effects of such emergency actions on bargaining unit employees as

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they pertain to matters within the scope of bargaining under this Article and to bargain in good faith over any supplemental collective bargaining agreements that are proposed to address the effects of such emergency actions.

- (c) Nothing in this ordinance or any collective bargaining agreement shall be construed or deemed to impair the Board of Supervisors' plenary authority to determine its tax levies, budgets, and appropriations, as provided in Virginia Code Section 40.1-57.2(B).

**Section 3-10-5. – Employee Use of Work Time for Employee Organization Matters**

- (a) Employees shall have the right to hold informal conversations and interactions with one another to discuss workplace and employee organization issues while on duty, provided that such conversations do not interfere with the employee's job duties. Employee organizations shall not hold formal meetings that interfere with the work time of employees, except as provided for in this Article or in a collective bargaining agreement.

[OPTION to add this sentence: "Employees shall also have the right to use County electronic communication systems to discuss employee organization business or activities, or employee organizing activity."]

- (b) Official time: Any employee representing an exclusive bargaining agent in the negotiation of an agreement under this Article, including in an impasse resolution proceeding, or in the representation of other employees in grievances shall be authorized to use time when the employee otherwise would be in a duty status to the extent and in a manner deemed reasonable in the mutual agreement of the County and the exclusive bargaining agent with due consideration for County operational and service demands at the time, or in accordance with negotiated terms of an existing collective bargaining agreement (if applicable).

**Section 3-10-6. - Bargaining units.**

The County shall recognize only the following bargaining units for the purposes of collective bargaining:

- (a) Police: The police employees' bargaining unit shall consist of all sworn uniformed employees of the police department, including uniformed officers of the Animal Protection Police, except those excluded by definition under Section 3-10-2;
- (b) Fire and Emergency Medical Services: The fire and emergency medical services employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals and emergency communications employees, except those excluded by definition under Section 3-10-2; and
- (c) General Government: All other County employees, except those excluded by definition in Section 3-10-2.

**Section 3-10-7. – Labor Relations Administrator.**

- (a) A labor relations administrator (LRA or the administrator) shall be appointed by the County Executive in the manner set forth in subsection (d) of this section to carry out the duties set out in subsection (j) below.
- (b) Notwithstanding the formal appointment of a Labor Relations Administrator to administer the terms of this Article, the County and the exclusive bargaining agent for each bargaining unit may provide, in a collective bargaining agreement, for regular informal meetings between them in the form of an informal labor relations committee or other similar group staffed by representatives of labor and management. This committee or similar group should endeavor to address problems and concerns before they require the formal attention of the LRA.
- (c) The administrator must be experienced as a neutral in the field of labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interest of the County or any employee organization, including an



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exclusive bargaining agent for a bargaining unit permitted under this Article.

- (d) Subject to confirmation by the County Board of Supervisors, the County Executive shall appoint the labor relations administrator for a 4-year term from no more than three (3) nominees jointly agreed upon and submitted by: (i) representatives of those employee organizations that have notified the County Executive or his designee of their interest in representing bargaining units permitted by this Article, if no exclusive bargaining agents have been recognized at the time the selection process begins, or (ii) by the exclusive bargaining agents of the bargaining units permitted by this Article, and (iii) an equal number of designees of the County Executive. If the Board does not confirm the appointment on the recommendation of the County Executive, an appointment must be made from a new agreed list of three (3) nominees compiled in the same manner.
- (e) Should LRA responsibilities, as set forth below, be required before an LRA is appointed, the County shall secure such services from any impartial agency provider, such as the American Arbitration Association, the Federal Mediation and Conciliation Service, or a similar provider. Such impartial agency provider shall have all of the powers and responsibilities of the LRA as set forth in this Article. The impartial agency provider shall be mutually selected by the County and the participating employee organization(s).
- (f) The administrator's services shall be subject to termination by mutual agreement of the County Executive and a majority of the exclusive bargaining agents of the bargaining units permitted by this Article, and with Board approval. If no exclusive bargaining agent has been certified, then the LRA's services shall be subject to termination by mutual agreement of the County Executive and a majority of those employee organizations that have notified the County Executive of their interest in representing bargaining units permitted by this Article, and with Board approval.
- (g) If the administrator dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve within six (6) months of the date of appointment, the County Executive must appoint a new

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administrator from the list from which that administrator was selected, subject to Board confirmation, to serve the remainder of the previous administrator's term. Otherwise, the administrator vacancy shall be filled as provided in subsection (d).

- (h) An administrator appointed under this subsection may be reappointed in accordance with the provisions of subsection (d).
- (i) The terms of payment for the services of the administrator, as well as any administrative staffing arrangements for the LRA, shall be set as specified by contract with the County.
- (j) The administrator shall:
  - (1) hold and conduct elections for certification or decertification pursuant to the provisions of this Article and issue the certification or decertification, or cause these actions to occur;
  - (2) request from the County or an employee organization, and the County or such organization shall provide, any relevant assistance, service, and data that will enable the administrator to properly carry out duties under this Article;
  - (3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents, to the extent permitted by applicable law, in proceedings within the responsibility of the administrator under this Article;
  - (4) investigate and attempt to resolve or settle, as provided in Section 3-10-14 - Mediation and Arbitration, charges of either the County or an employee organization engaging in prohibited practices as defined in this Article. However, if the County and a certified representative have negotiated a labor-management dispute resolution procedure, the administrator must defer to that procedure to resolve any dispute that properly must be submitted to the procedure, absent a showing that the deferral results in the application of principles contrary to this Article. The administrator

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must defer to state procedures in any matter governed by the Law-Enforcement Officers' or Firefighters and Emergency Medical Technicians' Bill of Rights set forth in the Virginia Code;

- (5) determine disputed issues of employee inclusion in or exclusion from the bargaining units permitted under this Article;
- (6) obtain any necessary support services and make necessary expenditures in the performance of duties, subject to appropriation;
- (7) determine any issue regarding the negotiability of any collective bargaining proposal as a subject of bargaining permitted under this Article; and
- (8) exercise any other powers and perform any other duties and functions specified in this Article of an administrative nature.

**Section 3-10-8. - Recognition of exclusive bargaining agent.**

- (a) A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in Section 3-10-6 if the employee organization is selected by a majority of the employees voting in an appropriate bargaining unit in a secret ballot election conducted pursuant to Section 3-10-9, and rules and procedures adopted by the LRA, following a request for recognition. Elections shall be conducted by mail-in ballots unless all parties agree otherwise. Any cost of such election shall be shared equally by the parties involved.
- (b) "Administratively acceptable evidence" to support a petition for recognition or certification by election (see Section 3-10-9) or for decertification (see Section 3-10-10) may consist of a combination of membership cards or a membership roster, evidence of dues payment, or other evidence of bargaining unit employees' desire to be represented by an employee organization for collective bargaining purposes. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code Section 59.1-479 *et seq.*) shall be valid for employees' authorization for representation for purposes of a petition filed by an employee organization for exclusive

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representation. The determination by the LRA of the sufficiency of a showing of support for a representation election shall not be subject to challenge by any person or employee organization or by the County.

**Section 3-10-9. – Election of Exclusive Representative.**

- (a) An employee organization may request an election be held by submitting a petition for an election to the LRA who shall notify the County Executive in accordance with procedures established and published by the LRA, including but not limited to provisions for notice to bargaining unit employees and public notice of election. The petition must represent a showing of interest by at least thirty (30) percent of the employees in a bargaining unit permitted by this Article based upon administratively acceptable evidence.
- (b) Any additional interested employee organization must submit a petition of intervention to the LRA, which must be accompanied by a showing of interest by thirty (30) percent of the employees in the appropriate bargaining unit, based upon administratively acceptable evidence, within twenty-one (21) days of notice of the filing of the petition. A petition for intervention may not be supported by any employee who already supported the initial petition for an election.
- (c) If the LRA determines, after a tabulation of the submitted showing of interest forms, that the petitioning employee organization or any intervening employee organization has not met the required showing of interest, then the LRA must allow not less than fourteen (14) additional days for such employee organization to submit additional showing of interest forms. The 14-day period for submitting such forms commences on the date the LRA provides notice to the petitioning or intervening employee organization of the insufficiency of its forms.
- (d) An election under this Article shall be held within fifty-five (55) calendar days after written notice to all parties of the determination by the LRA of a valid petition for election in accordance with election procedures established by the LRA, which shall include, but not be limited to, provisions regarding employee organization receipt of bargaining unit employee contact information, ballot content, and

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procedures for mail-in voting. The County must furnish to the LRA and the petitioning and any intervening employee organizations, at least 30 days prior to the election, the name of every employee in the petitioned-for bargaining unit, as well as their department, job title, worksite address, work telephone number, and work email address. The election ballots must contain, as choices to be made by the voter, the name of the petitioning employee organization, the name(s) of any employee organization that has intervened in accordance with the provisions of this Article, and a choice of “no representation” by any of the named employee organizations.

- (e) If an employee organization receives a majority of the valid ballots cast by the employees in a permitted bargaining unit, it shall be recognized by the County as the exclusive bargaining agent upon certification of the results. The LRA’s certification of results is final unless, within 14 days after service of the election report and the certification, any party serves on all other parties and files with the LRA objections to the election. Objections must be verified and must contain a concise statement of facts constituting the grounds for the objections. The LRA must investigate the objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the LRA may determine the matter without a hearing. The LRA may invite, either by rule or by invitation, written or oral argument to assist it in determining the merits of the objections. If the LRA finds that the election was not held in substantial conformity with this Article, or if the LRA determines that the outcome of the election was affected, even if by third party interference, it shall require corrective action and order a new election under this section. Otherwise, the LRA must confirm the certification initially issued. In any event, the LRA must make a determination as to whether or not to certify the election within 21 days of the filing of objections.
- (f) Nothing in this Article shall require or permit an election in any bargaining unit within twelve (12) months after a previous election has been held in such bargaining unit pursuant to this Article, notwithstanding the outcome of that election, except that this provision is inapplicable to any election that might be ordered by the LRA under (e).

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- (g) No party shall have an advantage over the other in gaining access to employees during organizational or representation campaign activity. Interested employee organizations will receive the same access to bargaining unit employees as is currently provided to outside organizations. Attendance at any meeting on County premises for bargaining unit representation campaign activity by any employee organization pursuant to a properly filed and valid petition for representation is voluntary for bargaining unit employees and shall be open to all bargaining unit employees.

**Section 3-10-10. - Decertification.**

- (a) If a petition for decertification of a recognized exclusive bargaining agent is presented to the LRA showing, by administratively acceptable evidence, that at least thirty (30) percent of the employees in the bargaining unit no longer want the employee organization to be their bargaining agent, then the LRA shall hold an election pursuant to Section 3-10-9 of this Article.
- (b) A petition for decertification of a recognized exclusive collective bargaining agent in an appropriate unit may be filed in the ninety (90)-day period between the one hundred eightieth (180<sup>th</sup>) and ninetieth (90<sup>th</sup>) day prior to expiration of any existing collective bargaining agreement for that bargaining unit.
- (c) For a period of one (1) year following recognition or certification of an exclusive bargaining agent, no decertification petitions may be filed.
- (d) If a majority of the employees in an appropriate bargaining unit vote in a secret ballot decertification election to no longer be represented by the employee organization, that organization no longer shall be recognized as the exclusive bargaining agent of the employees in the bargaining unit.

**Section 3-10-11. – Rights Accompanying Exclusive Representation.**

Any employee organization recognized as the exclusive bargaining agent for employees in an appropriate bargaining unit shall have the following rights:

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- (a) To speak on behalf of all members of the unit and shall be responsible for representing the interests of all members of the bargaining unit without discrimination and without regard to employee organization membership.
- (b) To meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this Article, may be the subject of collective bargaining, in an effort to reach an agreement, subject to the approval of the County Executive or his/her designee with responsibility for the employees in the bargaining unit.
- (c) To meet with bargaining unit employees on the premises of the County in non-secure areas during times when the employees are on break or in a non-duty status. Any other employee organization that has submitted a petition and established a valid question concerning representation of the bargaining unit shall also be permitted to meet with bargaining unit employees with the same limitations. This subsection shall not restrict an exclusive bargaining agent and the County from negotiating for greater access to employees by the exclusive bargaining agent as a provision of a collective bargaining agreement.
- (d) To receive quarterly regarding bargaining unit employees, and within ten (10) days of hire of new bargaining unit employees, the following information: name, job title, worksite location, work phone number, and work email address and, only with the County's consent or with the employee's written consent provided to the County, home address, mobile phone number, and personal email address.
- (e) To have such access to County electronic communications systems as may lawfully be provided in a collective bargaining agreement.

[OPTION for (e) to instead read: "To use County electronic mail systems to communicate employee organization business or activities, or employee organizing activity. Exclusive bargaining agents shall also have the right to use telephones, fax systems, bulletin boards, and other communications systems to communicate with employees regarding collective bargaining, the administration of collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues, and internal union matters involving the governance or business of the exclusive bargaining agent."]

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- (f) To meet with newly hired employees, without charge to the pay or leave time of any of the employees, for a period of 30 minutes, within thirty (30) calendar days from the date of hire during new employee orientations, or if the employer does not conduct new employee orientations, at individual or group meetings. The County shall give the exclusive bargaining agent at least ten (10) days' written notice in advance of such an orientation, except a shorter notice may be provided in any instances where there is an urgent need critical to the employer's operations that was not reasonably foreseeable to the County. The County shall provide the exclusive bargaining agent with an electronic list of expected participants at least forty-eight (48) hours in advance of the orientation.
- (g) To be the only employee 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. Any such authorization may be revoked in accordance with the terms of the authorization which shall provide a period of irrevocability of not more than one year. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code Section 59.1-479 et seq.), including, without limitation, electronic authorizations and voice authorizations, shall be valid for employees' authorizations for payroll deductions and authorization for representation for purposes of a petition filed by an employee organization for exclusive representation. 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, provided such employees are advised that their payments are not being transmitted to the exclusive bargaining agent for their bargaining unit.
- (h) To be represented at any formal discussion between one or more representatives of the County and one or more employees in the bargaining unit or their representatives concerning (1) any matter that is within the scope of collective bargaining as set forth in the definition of collective bargaining (see Section 3-10-2); or (2) any examination of bargaining unit employees by a representative of the County in connection with an investigation if the employee reasonably believes



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that the examination involves matters covered by any collective bargaining agreement then in effect, and the employee requests representation. An individual employee may present a personal complaint or question at any time to the County without the intervention of an employee organization, provided that any such organization that is recognized by the County as the exclusive bargaining agent for the bargaining unit in which the employee is a member is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the matter and that any adjustment made shall not be inconsistent with the terms of any applicable collective bargaining agreement. Such employee or employees who utilize this avenue of presenting personal complaints to the County shall not do so under the name, or by representation, of an employee organization.

[OPTION to add to (h), after the first sentence: “The County shall inform the employee that the employee has a right to union representation prior to any such discussion or interview, and the employee shall have a right to request union representation before proceeding with the discussion or interview.”]

[OPTION to add a new subparagraph: “To meet with individual employees on the premises of the employer during the work day to investigate and discuss grievances, workplace-related complaints, and other workplace issues, provided such meetings do not interfere with the work of the County.”]

**Sec. 3-10-12 – Good Faith Bargaining.**

- (a) A written request for bargaining must be submitted by the exclusive bargaining agent to the County Executive and negotiations must begin no later than July 1 and conclude (including any required mediation or impasse procedures) by October 15 of any year where an agreement is sought to be effective at the beginning of the next fiscal year, in order to accommodate the County budget process. Failure of the parties to reach agreement by September 1, or at such earlier time as the parties may agree in writing, shall constitute an impasse and trigger impasse resolution procedures under this Article.
- (b) Nothing in this Article requires either party to make any concessions or agree to the other party's proposals.

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- (c) Good faith bargaining shall not include submission of or a response to a proposal that:
- (1) violates the rights of employees as set forth in this Article, or
  - (2) impairs, restricts, or delegates the authority of the County as set forth in Section 3-10-4, other than as the County may expressly allow as a matter of permissive bargaining.

[Alternative OPTIONS: “impairs, restricts, or delegates the authority of the County as set forth in Section 3-10-4(b) and (c)” or strike (2).]

**Section 3-10-13. - Approval of tentative agreement.**

- (a) When an exclusive bargaining agent and the County Executive’s bargaining representative reach a tentative agreement, they shall reduce it to writing and execute it, signifying the approval of the bargaining agent and the County Executive. No agreement, whether voluntarily negotiated or the result of final, binding arbitration as set forth in this Article, shall be effective or enforceable:
- (1) until a fiscal impact study of the tentative agreement, prepared as bargaining proceeds, has been finalized by the County Department of Management and Budget;
  - (2) the fiscal impact study of the tentative agreement is submitted to the County Board, and a public hearing held by the last day of December on the fiscal impact of the tentative agreement;
  - (3) the County Board specifies by resolution no later than the last day of December its good faith commitment to appropriate funding necessary for the County to meet obligations under the tentative agreement as set forth in the fiscal impact study provided for in this section, with the understanding that any such resolution remains subject to actual appropriation. If the Board does not resolve to fund any provision(s) of the tentative agreement requiring appropriation, the County Executive and the exclusive bargaining agent may re-open negotiations, which shall be

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scheduled as promptly as possible with the good faith objective to negotiate provisions that may be acceptable to the Board for its consideration within the County's budget preparation and approval schedule. Upon presentation to the Board of any tentative agreement re-negotiated under this subsection before the end of the calendar year, the Board shall consider and may specify by resolution as soon as practicable its good faith commitment to appropriate funding necessary for the County to meet obligations under the tentative agreement, with the understanding that any such resolution remains subject to actual appropriation; and

- (4) the tentative agreement is approved by the exclusive bargaining agent by ratification of the tentative agreement in accordance with the bargaining agent's governing procedures and evidenced by the signature of an authorized agent, which may be an electronic signature made in accordance with applicable state law.
- (b) A written agreement shall be contrary to public policy and therefore shall not bind the parties or be enforceable by either party to the extent that it is not the result of good faith bargaining as defined in this Article.

**Section 3-10-14. – Mediation and Arbitration.**

(a) Mediation.

- (1) Labor-Management Disputes: The County and an exclusive bargaining agent shall first attempt to resolve labor-management disputes informally by discussion between the parties' designees. In the event that the County and the bargaining agent are unable to informally resolve a labor-management dispute, either party or the parties jointly may submit the dispute to the LRA for mediation pursuant to procedures instituted by the LRA.
- (2) Impasse: In the event that the County and the bargaining agent are unable to reach a collective bargaining agreement by September 1, or at such earlier time as they may mutually agree, an impasse may be called by either party and resolution may be sought by submission of those unresolved issues for mediation by the LRA or a mediator selected through procedures established by

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the LRA. The parties shall jointly request mediation within five (5) days of such a declared impasse. Whether impasse is declared as set forth herein or triggered by operation of Section 3-10-12 due to failure to reach agreement by September 1, the LRA or other mediator shall set reasonable deadlines for all steps of the mediation process. Negotiations on other matters may continue throughout impasse mediation procedures.

- (3) The mediation process is advisory only, and the LRA or other mediator shall have no authority to bind either party.
  - (4) The mediation process and any comments, statements, or suggestions from the LRA or other mediator or the parties and any documents evidencing the same made or created during the mediation process shall not be disclosed except as required by law.
  - (5) The parties shall share the costs of mediation equally.
- (b) Arbitration: If the County and exclusive bargaining agent are unable to reach agreement resolving any labor-management dispute or impasse submitted to mediation as provided for in this Article by any deadline set forth in procedures provided in this Article or adopted by the LRA, the mediator shall render findings of fact and require the parties to submit their statements of their final position on the issue(s) about which they continue to disagree. Thereafter, the labor-management dispute or impasse shall be submitted to final and binding arbitration, subject to the plenary authority of the Board of Supervisors to determine whether to appropriate funding for the tentative agreement. Such arbitration shall be conducted pursuant to procedures adopted by the LRA which shall, at a minimum, require the parties' joint selection of an arbitrator and shall provide for timing requirements that ensure the conclusion of impasse proceedings on a schedule that complies with Section 3-10-13. The parties shall share the costs of arbitration equally. In making a determination under this subsection, the arbitrator shall consider the following factors:

- (1) Stipulations of the parties;

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- (2) The interests and welfare of the public;
  - (3) The financial ability of the employer to meet the financial obligations in the proposed collective bargaining agreement;
  - (4) The overall compensation presently received by the employees involved in the arbitration;
  - (5) Comparison of wages, benefits, and working conditions of the employees involved in the arbitration proceedings with the wages, benefits, and working conditions of other persons performing similar services in the public and private sectors, if applicable;
  - (6) Past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, benefits, and working conditions;
  - (7) Comparison of working conditions of other Fairfax County personnel; and
  - (8) Such other factors that are normally or traditionally taken into consideration in the determination of wages, benefits, and working conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public sector.
- (c) Any grievance, mediation, arbitration, or other resolution procedure negotiated by the parties and available to challenge disciplinary or other personnel actions set forth in Virginia Code Section 15.2-1506, et seq., shall comply with the minimum requirements set forth in the statute(s), as well as any other statutory grievance rights of law enforcement officers and fire and emergency medical employees.

**Section 3-10-15. - Strikes and other job actions.**

- (a) Pursuant to Virginia Code Section 40.1-55, any employee of the County or of any agency or authority of the County who, in concert with two or more other such employees, strikes or willfully refuses to

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perform the duties of their employment shall be deemed by that action to have terminated their employment and shall be ineligible for employment in any position or capacity during the next 12 months by the County. If an employee is terminated under this provision, such employment action shall be noted in the employee's personnel file in the agency and in the central Human Resources Department. The County agrees that no lockout shall take place.

- (b) Following notice and an opportunity to be heard, any employee organization determined to have violated this section shall cease to be accorded recognition under this Article, shall cease to receive any dues or fees collected by paycheck withholding, and shall not be accorded recognition or receive any dues or fees collected by paycheck withholding for a period of one (1) year.

[OPTION to strike (b). Not required by Virginia law but serves as a further deterrent to strikes.]

**Section 3-10-16. – Prohibited Practices**

Neither the County nor any exclusive bargaining agent shall refuse to negotiate in good faith with respect to matters within the scope of collective bargaining as defined in Section 3-10-2.

- (a) The County and its agents shall not:
  - (1) Interfere with, restrain, or coerce employees in the exercise of rights granted by this Article;
  - (2) Dominate or interfere in the administration of any employee organization;
  - (3) Deter or discourage employees or applicants for County positions from becoming or remaining members of an employee organization, or from authorizing dues deductions, or voting to authorize union representation, or exercising any of their rights under this Article.
  - (4) Encourage or discourage membership in any employee organization, committee, or association including by

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discrimination in hiring, tenure, or other terms and conditions of employment, provided that use of County property and time for meetings and the County's communication system for employee organization business, as may be permitted by this Article or a collective bargaining agreement, shall not be deemed encouragement prohibited by this subsection;

- (5) Discharge or discriminate against any employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this Article or because the employee has formed, joined, or chosen to be represented by any exclusive bargaining agent;
  - (6) Deny the rights accompanying certification as the exclusive bargaining agent as conferred by this Article;
  - (7) Refuse to bargain collectively with the exclusive bargaining agent as provided in this Article;
  - (8) Refuse to participate in good faith in any agreed-upon impasse resolution procedures or those set forth in this Article;
  - (9) Refuse to reduce a collective bargaining agreement to writing and sign such agreement provided all conditions for an enforceable agreement, as set forth in this Article, have been met; or
  - (10) Enforce any rule or regulation which is plainly in direct conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.
- (b) No employee organization or its agents shall:
- (1) Interfere with, restrain, or coerce any employee with respect to rights granted in this Article or with respect to selecting an exclusive representative;
  - (2) Fail to represent an employee who is in a bargaining unit exclusively represented by the employee organization fairly and

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without discrimination provided such failure is willful or deliberate;

- (3) Refuse to bargain collectively with the County as provided in this Article;
  - (4) Refuse to participate in good faith in or violate any agreed-upon impasse resolution procedures or those set forth in this Article; or
  - (5) Engage in conduct which is plainly in direct conflict with any applicable collective bargaining agreement.
- (c) Prohibited practice charge procedures.
- (1) Proceedings against a party alleging a violation of this Section shall be commenced by filing a charge with the LRA within 120 days of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in the manner of an original notice as provided in Section 3-10-18. The accused party shall have ten (10) days within which to file a written answer to the charge. The LRA may conduct a preliminary investigation of the alleged violation, and if the LRA determines that the charge has no legal or factual basis, the LRA may dismiss the charge. If the charge is not dismissed, the LRA shall promptly thereafter set a time and place for a hearing. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the LRA to subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.
  - (2) The LRA may designate a hearing officer to conduct any hearing. The hearing officer shall have such powers as may be exercised by the LRA for conducting the hearing and shall follow procedures adopted by the LRA for conducting the hearing. The decision of the hearing officer may be appealed to the LRA and the LRA may hear the case de novo or upon the record as submitted before the hearing officer.



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- (3) The LRA shall provide for an official written transcript to report the proceedings, the costs of which shall be borne equally by the parties.
- (4) The LRA shall file its findings of fact and conclusions. If the LRA finds that the party accused has violated any provision of this Section, the LRA may issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation. Under the provisions for court review of arbitration awards set forth in the Uniform Arbitration Act (Virginia Code Sections 8.01-581.01, et seq.), the LRA may petition the circuit court for enforcement of an order made under this Section.
- (5) Findings of the LRA shall be considered as a final award of an arbitrator in accordance with the Virginia Uniform Arbitration Act, Virginia Code Sections 8.01-581.01, et seq. Any party aggrieved by any decision or order of the LRA may, within twenty-one (21) days from the date such decision or order is filed, appeal to the circuit court to obtain judicial review pursuant to the provisions for judicial review set forth in the Uniform Arbitration Act (Virginia Code Sections 8.01-581.01, et seq.).

**Section 3-10-17. - Time limits.**

Any time limits in this Article may be extended by written agreement of the County, the employee organization, and any other appropriate parties.

**Section 3-10-18 – Notices.**

Any notice required under the provisions of this Article shall be in writing, but service of any such notice shall be sufficient if mailed by certified mail, return receipt requested, addressed to the last-known address of the parties, unless otherwise provided in this Article or by the rules of the LRA, which rules shall provide for the electronic service of documents. Refusal of certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice.