

ATTACHMENT 1: Model Ordinance #1-Traditional Collective Bargaining

CHAPTER 259

Labor Relations

259.01 SHORT TITLE.

This chapter shall be known and cited as the “Loudoun County Collective Bargaining Ordinance.”

259.02 POLICY AND PURPOSE.

The Loudoun County Board of Supervisors adopts this chapter to provide its employees the right to representation by an employee organization and to establish an orderly process that will allow eligible employees and their exclusive employee representatives to bargain with County management representatives concerning wages and benefits.

259.03 DEFINITIONS.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Benefits means, for the purposes of this chapter, all County benefits outlined in Chapter 6 of the County’s Human Resources Handbook for which the County has exclusive control over, and is solely responsible for, funding, plan design, administration, and governance. This term shall not include benefits provided or administered by the Commonwealth of Virginia through the Virginia Retirement System or otherwise, or benefits established and administered in accordance with the Code of Virginia.

Board means the Loudoun County Board of Supervisors.

Certification means the County’s recognition of an employee organization as the exclusive employee representative of an employee bargaining unit.

Collective bargaining means the process of negotiating an agreement in good faith concerning employment wages and benefits between an exclusive employee representative of an employee bargaining unit and the Labor Relations Administrator.

Collective bargaining agreement means a written agreement, subject to the approval of the Board, between the County and an exclusive employee representative concerning the wages and benefits of members of an employee bargaining unit.

Confidential employee means any employee of the County whose job duties require regular access to confidential or discretionary information regarding the formulation and/or implementation of County policies or procedures, labor relations, legal or financial strategy, or the County budget; or whose functional responsibilities or knowledge concerning employee relations makes the employee's membership in an employee organization incompatible with that employee's duties, or an employee working in any department of the County who, in the sole and final determination of the County Administrator, meets this definition of a confidential employee. Examples include, but are not limited to, employees who work in:

1. The Office of the County Administrator;
2. The Office of the County Attorney;
3. The Department of Human Resources or other department positions in which the employee has authorized access to confidential personnel files; or
4. The Department of Finance and Budget or any successor department.

County means the County of Loudoun, Virginia.

County Administrator means the County Administrator or designee.

Day means calendar day except as otherwise stated.

Decertification means a revocation of the County's recognition of an employee organization as the exclusive employee representative of an employee bargaining unit.

Eligible employee shall mean regular employees, whether full-time and part-time, employees of the County; but shall exclude contracted, temporary, seasonal, probationary, confidential, managerial or supervisory employees, or elected officials and the employees of elected officials, unless otherwise provided herein or in a collective bargaining agreement.

Employee bargaining unit means a subset of the County's workforce comprising one of the categories in section 259.05 below and consisting of eligible employees with the right to choose an exclusive employee representative pursuant to this chapter.

Employee organization means a labor union or organization that provides for employee representation in the decision-making process with the County over wages and other benefits.

Exclusive employee representative means the employee organization that the majority of eligible employees within an employee bargaining unit elect to represent them in accordance with this chapter.

Managerial or supervisory employee means any employee who, in the sole discretion and final determination of the County Administrator, meets the following criteria, any one of which shall be a sufficient basis for such determination:

1. is responsible for the direct supervision of one or more employees of the County;
2. has responsibility over the management of personnel for a department of the County or a unit or sub-unit thereof;
3. participates in human resources or personnel decisions, including, but not limited to, staffing, reductions-in-force/layoffs, reorganizations, hiring, discipline, performance appraisals, pay, assignments, transfers, adjustment of grievances, promotions, or demotions;
4. is responsible for the formulation of County or departmental personnel or operational policies;
5. is significantly engaged in executive or management functions;
6. is charged with the responsibility of directing the implementation of or administering management policies, procedures, or practices; or
7. is involved in administration of a collective bargaining agreement as defined in this chapter.

Mandatory subject of bargaining means a subject related to County wages and benefits which shall, upon request, be discussed during collective bargaining negotiations pursuant to the procedures set forth in this chapter. Agreements on mandatory subjects of bargaining shall not be binding on the County unless agreed upon and included in a written bargaining agreement approved by the Board.

Permissive subject of bargaining shall mean a subject or condition of employment which may be discussed during negotiations only if both parties agree to do so. Neither party shall be required to agree to negotiate permissive subjects of bargaining and such subjects shall not be submitted to arbitration unless both parties agree to such submission. Agreements on permissive subjects of bargaining shall not be binding on the County unless agreed upon and included in a written bargaining agreement approved by the Board.

Petition means a form for signatures, as established by the County Administrator.

Prohibited subject of bargaining shall mean any subject other than wages and benefits. Specifically, prohibited subjects of bargaining include but are not limited to, terms and conditions that are unenforceable as a matter of law or in conflict with the provisions of this chapter and employee discipline and the grievance/arbitration procedures which are covered exclusively by the policies and procedures set forth in the County's Human Resources Handbook and Administrative Policies.

Wages shall mean hourly regular rate of pay, annualized salaries, and other monetary compensation included in the County's Supplemental Pay Plan as outlined in Chapter 6 of the County's Human Resources Handbook ;but shall exclude bonuses, other one-time cash payments, employer contributions to the Virginia Retirement System, payments to the employee pursuant to state laws governing Workers Compensation, Unemployment Compensation, or the Line of Duty Act, or payments related to the County's wellness program.

259.04 EMPLOYEE AND EMPLOYEE ORGANIZATION RIGHTS.

A. Eligible employee bargaining units shall have the right to be represented by an employee organization recognized as an exclusive employee representative under the provisions of this chapter and to collectively bargain regarding wages and benefits.

B. Employees have the right to participate in an employee organization or engage in activities on behalf of an employee organization. Employees shall also have the right to refrain from such activity. Employees shall be free from any interference, restraint, or coercion by any employee, supervisor, or manager in support of or against employee organizations.

C. Regardless of representation, individual employees, groups of employees, and employee organizations, whether recognized as exclusive employee representatives or not, shall have the right to communicate freely with County management, elected and appointed officials, and the Board concerning any matter, subject to any applicable County policies concerning same.

D. Eligible employees shall have the right to request in writing the initiation or termination of payroll deductions for dues to be made and remitted to the employee organization elected as the exclusive employee representative of the employee's bargaining unit. Requests to initiate or terminate payroll deductions for dues shall only be processed by the County upon receipt of written permission from the employee and shall take effect within full two pay-periods of receipt of the written request. An eligible employee in an employee group may not be required to pay dues.

E. Nothing in this chapter shall require any employee to become a member of or otherwise be affiliated with any employee organization or penalize in any manner any employee who chooses non-affiliation.

259.05 EMPLOYEE BARGAINING UNITS.

The collective bargaining process shall be limited to employee organizations who have been recognized as the exclusive employee representative of one of the employee bargaining units listed below. Eligible employees, as defined in this chapter, only include regular employees, full-time and part-time, in one of these employee units. The County's employee bargaining units are:

- A. general government eligible employees;
- B. uniformed fire and rescue eligible employees.

259.06 LABOR RELATIONS ADMINISTRATOR.

- A. A Labor Relations Administrator ("LRA") shall be hired by the County Administrator to administer this chapter.
- B. The LRA shall report to and be subject to the supervision of the County Administrator.

259.07 CERTIFICATION AND DECERTIFICATION PROCEDURES FOR EXCLUSIVE EMPLOYEE REPRESENTATIVE.

A. *Request for certification.* There can be only one exclusive employee representative for each employee bargaining unit.

1. An employee organization requesting to become the exclusive employee representative of a bargaining unit that has no existing representative may submit a request for certification to the Labor Relations Administrator that meets the requirements of this section at any time.

2. An employee organization requesting to become the exclusive employee representative of an employee bargaining unit that has an existing representative may submit a request for certification to the Labor Relations Administrator that meets the requirements of this section no less than three years after the date the existing representative was elected and recognized as the exclusive employee representative for the employee bargaining unit.

B. *Request for decertification.* Any member of an employee bargaining unit may initiate an election to revoke the County's recognition of an employee organization as its exclusive employee representative by submitting a petition to the Labor Relations Administrator meeting the requirements of this section in support of the request. Requests for decertification may be filed no less than one year after the date the existing representative was certified as the exclusive employee representative for the employee bargaining unit.

C. *Required information.* Each employee organization seeking certification as the exclusive employee representative of an employee bargaining unit shall submit to the Labor Relations Administrator the following:

1. The name and address of the organization.
2. A copy of its charter, constitution, and by-laws, if such documents exist.
3. The names, titles, addresses, and telephone numbers of its duly elected officers.
4. A statement that membership in such organization is not denied because of race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, gender identity, genetic information, other non-merit factors, or any other unlawful reason.
5. A “showing of interest” petition requesting certification as the exclusive employee representative of an employee bargaining unit signed by not less than 30 percent of the eligible employees in that unit.

D. *Petition requirements.* Each petition submitted to the Labor Relations Administrator in support of a request for certification or decertification, shall contain the name of the employee bargaining unit, the name of the employee organization, printed name, employee number, date of signature, and job title of each person signing the petition. If an eligible employee signs more than one petition, then the latest dated signature shall be the only one considered valid. Petitions requesting certification or decertification of an exclusive employee representative of an employee bargaining unit must be signed by not less than 30 percent of the eligible employees in that unit.

E. *List of employee bargaining unit members.* Upon receipt of a request, the County will provide a list of the members of an employee bargaining unit. The list will include all information required to be disclosed under the Virginia Freedom of Information Act and will be provided free of charge within the time frame required by that statute. Upon receipt of a request, the County will provide a list of the members of a bargaining unit within 10 business days. The list will include the following information: employee name, job title, department, work location, and mailing address.

F. *Notice of receipt of petition and election.* The Labor Relations Administrator shall, within 30 days from receiving a request for recognition or for revocation of recognition, verify the signatures of eligible employees contained in the petition and, if valid and otherwise in compliance with this section, shall post on the County’s website and the employee County Intranet notice of receipt of such petition and schedule an election to be held no earlier than 11 days and no later than 45 days after the notice is posted.

G. *Additional requests for recognition.* Once the notice has been posted, other employee organizations may, within 10 days, seek to be placed on the ballot. To do so an employee organization must meet all the requirements in support of a request for recognition described in this section.

H. *Secret ballot election.* The Labor Relations Administrator shall conduct a secret ballot election among the eligible employees in a bargaining unit, which shall be held at such times and places that will allow all eligible employees an opportunity to vote. In the alternative, and if agreed to by the County Administrator and the employee organizations participating in the election or runoff election, the election may be conducted by a neutral third party. Any agreement between the parties concerning the manner of conducting the election shall be reduced to writing and the costs of the election shall be shared equally among the parties and paid in advance of the election date(s).

I. *Employee choices.* Each employee eligible to vote shall be provided the opportunity to choose the employee organization he/she wishes to represent him/her from among those on the ballot, or to choose "None/No Representation."

J. *Majority vote required.* To be recognized as the exclusive employee representative of an employee bargaining unit, an employee organization must be selected by a majority (51%) of all the eligible voters in the bargaining unit. Employees who do not participate in the election ("non-voters") are considered "None/No Representation" votes. In an election involving three or more choices (including "None/No Representation"), where a 51% majority of eligible voters selects to be represented by one or more employee organizations, a runoff election shall be conducted including the two employee organizations that received the largest number of votes in the first election. The employee organization that receives the majority of eligible votes in the runoff election shall prevail.

K. *Recognition of representation.* Where a 51% majority of the eligible voters in a bargaining unit cast votes in favor of representation by an employee organization, the Labor Relations Administrator shall certify the organization as the exclusive representative for all employees in that bargaining unit.

L. *Election disputes.* The County Administrator shall have final authority to review and resolve election disputes.

259.08 GOOD FAITH BARGAINING; COLLECTIVE BARGAINING AGREEMENT.

A. The County and an exclusive employee representative shall have the duty to bargain in good faith with respect to wages and benefits for the purpose of entering into a collective bargaining agreement. It is the intent that all collective bargaining occurs only between the parties' respective designated representatives. Representatives of the employee bargaining unit must be County employees and members of the bargaining unit.

B. The County or the employee organization may initiate a request to bargain by submitting a written request to the other party, subject to the timeframes outlined in 259.08 (D) and (E) below. Within ten business days from the receipt of the request, the parties' designated representative(s) shall mutually agree upon and schedule

dates and times to meet. Requests from the employee organization to bargain shall be submitted to the Labor Relations Administrator.

C. *Wages*: An exclusive employee representative may request to bargain on wages, specifically merit increases, additions or revisions to the Supplemental Pay Plan, annual cost of living or market rate adjustments, each fiscal year unless otherwise agreed pursuant to a collective bargaining agreement between the parties. The exclusive representative must submit a written request to bargain on wages for the next fiscal year no later than August 1 of the current fiscal year. Within ten business days from the receipt of the representative's request, the parties' designated representative(s) shall mutually agree upon and schedule dates and times to meet prior to November 1 of the current fiscal year. The parties shall make a good faith attempt to reach consensus on wage matters to be included in the County Administrator's proposed annual fiscal year budget. If consensus cannot be reached by November 1 either party may declare an impasse. If an impasse is declared, the County Administrator shall update the Board on the most recent wage proposal from the bargaining unit prior to or in the proposed annual fiscal budget for the Board's consideration.

D. *Benefits*: Exclusive employee representatives may request to bargain on benefits, specifically employer/employee health plan premium cost sharing and changes to covered benefits and prescription medications, each plan (calendar) year unless otherwise agreed upon in a collective bargaining agreement. The exclusive representative must submit a written request to bargain on benefits for the next plan year no later than April 1 of the current plan year. Within ten business days from the receipt of the representative's request, the parties' designated representative(s) shall mutually agree upon and schedule dates and times to meet prior to July 1 of the current plan year. The parties shall make a good faith attempt to reach consensus on benefits matters to be included in the County Administrator's annual health plan update to the Board. If consensus cannot be reached by July 1 either party may declare an impasse. If an impasse is declared the County Administrator shall update the Board on the most recent benefit proposal from the employee bargaining unit prior to or in the health plan update to the Board for consideration.

E. Collective bargaining shall be conducted in accordance with the ground rules established by the parties' representatives at the commencement of the process. All discussions will be conducted in a professional and courteous manner. A violation of any of the ground rules agreed to by both parties may result in the suspension or termination of discussions. Prior to suspending or terminating the discussions, the Labor Relations Administrator will give written notice to both parties and provide an opportunity to discuss the violation(s) before suspending or terminating the discussions.

F. The County may enter into a collective bargaining agreement with an employee bargaining unit on the wages and benefits the County Administrator will propose to

the Board covering a period of up to 3 fiscal years (wages) and/or 3 plan years (benefits). The collective bargaining agreement may also include provisions on matters related to the implementation, administration, revision, or deletion of wages and benefits as agreed upon by the parties.

G. Any collective bargaining agreement resulting from collective bargaining process shall be provided to the Board for consideration. The Board may accept, reject, or modify any such agreement in whole or in part, or may take any action it deems appropriate consistent with applicable laws. No collective bargaining agreement shall have any force or effect until final action on the agreement is taken by the Board.

I. Once the collective bargaining agreement has been submitted to the Board for review, the Board or its members, the County Administrator, or the exclusive employee representative may request appropriate representatives from both County management and the employee organization to provide information and clarification.

J. The following items shall not be included in the collective bargaining process: terms and conditions of employment, the structure of the health plan, to include but not limited to co-pays, deductibles, and maximum out-of-pocket expenses, selection of benefit Third Party Administrators, personnel performance appraisals, discipline of employees or hiring, discharging, promotions, demotions, transfers, or suspensions. Additional non-negotiable items include any facet of the hiring, promotion, or transfer of employees, the types of discipline, the County's grievance procedure, or the grounds for demotion, discharge, suspension, or discipline.

K. The County shall provide the employee bargaining unit with a thirty (30) calendar day notice of any change impacting the terms of a Board approved agreement.

259.09 DISPUTE RESOLUTION.

A. At any time during collective bargaining, including if either party declares impasse, either party may request the assistance and participation of a neutral mediator appointed by the Federal Mediation and Conciliation Service, or some other neutral party mutually agreed upon by the parties. The costs of such assistance shall be shared equally between the County and the exclusive employee representative. The mediator's role shall be solely to facilitate discussions.

B. If mediation is unsuccessful in resolving the parties' impasse, the dispute shall be submitted to the or the Labor Relations Administrator who shall make a recommendation to the Board of Supervisors concerning the resolution of such impasse. Economic and funding issues directly impact the County's budgeting and the Board of Supervisors' appropriations, therefore, disputes over such issues shall be submitted to the Board of Supervisors for a final determination. Economic and/or funding issues shall not be subject to any form of binding arbitration. In the event the parties are unable to achieve agreement on disputed terms and conditions, the terms

and conditions set forth in the most recent collective bargaining agreement shall remain in effect.

259.10 COUNTY AND MANAGEMENT RIGHTS.

A. The County and Board's rights are not subjugated or diminished in any way by any expressed or implied duty or obligation to collectively bargain. These management rights are not subject to any grievance procedure, nor are they subject to any other appeal or complaint process. The Board's discretion and authority to establish its budget or appropriate funds may not be waived.

B. The County has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer, and manage its governmental services and work force performing those services. The authority of the County shall not be modified or limited by inference or implication.

C. The exclusive rights of the County shall include, but not be limited to, the right to determine the organization of County government, and the purpose and mission of its constituent agencies, to set standards of service to be offered to the public, and through its management officials to exercise control and discretion over its organization and operations, to establish rules and practices governing the conduct of employees, to direct and supervise its employees and their work, to take disciplinary action, to relieve its employees from duty because of lack of work or for other legitimate reasons, to determine the methods, means, and personnel by which the County's services are to be provided, including the right to schedule and assign work and overtime, to hire, transfer, and reassign employees, and to otherwise act in the interests of efficient service to the community. The County reserves the right to establish and revise work schedules and work locations; to establish, revise, and implement standards for hiring and promoting employees; to determine the need for additional positions and the qualifications of new employees, and to determine the qualifications for and/or the qualifications of employees considered for transfer and/or promotion; to evaluate and judge the skill, ability, efficiency, and general work performance of employees; provide for certain levels of service, to add, delete, modify, or suspend certain programs, functions, divisions, and departments as the Board determines to be necessary and appropriate.

D. Notwithstanding any provisions set forth in a collective bargaining agreement, the Board retains the executive and legislative authority to act unilaterally at any time whether such action is consistent with the agreement.

E. Notwithstanding the provisions set forth in a collective bargaining agreement, the County Administrator retains the right to unilaterally take whatever actions may be necessary to carry out the County's mission during emergencies, to include suspending the duty to bargain and the provisions of a collective bargaining agreement in whole or in part during the emergency.

259.11 PROHIBITED ACTIVITY.

A. An employee, employee organizations, or their representative(s) shall not:

1. Discriminate against an employee regarding employee organization membership because of race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, gender identity, genetic information, other non-merit factors, or any other unlawful reason.
2. Discriminate against an employee because the employee has chosen not to form, join, or assist an employee organization.
3. Use County time, property, or equipment for employee organization business, except as specified in a collective bargaining agreement.
4. Obstruct, restrain, or coerce any employee or elected or appointed County official in the exercise of any right provided by the provisions of this chapter.
5. Obstruct, restrain, threaten, or coerce any elected or appointed official, representative of the employer, or County employee for the purpose of gaining a concession.
6. Disclose or discuss any confidential matters not generally known to the public and discussed during the meet and confer negotiations with the news media or on social media, or with anyone other than the County's and the employee organization's negotiating team members, from the date the bargaining commences until the date and time of the public meeting before the Board on the mutually agreed upon proposed collective bargaining agreement or until the date and time of a public meeting before the Board on the areas of dispute;
7. Refuse to bargain in good faith with the County.
8. Refuse or fail to comply with any provision of this section.
9. Coerce the County in the selection of its representatives for bargaining or resolving grievances.
10. Strike or organize a strike in violation of Virginia Code § 40.1-55. Any employee that acts in violation of § 40.1-55 shall be subject to the termination of employment provisions therein.

B. County management and its representatives shall not:

1. Discriminate against an employee regarding terms and conditions of employment because of the employee's membership in an employee organization. In addition, the County's confidential, managerial, and supervisory employees, in their employment dealings with eligible employees, shall remain neutral on the issue of whether employees are to be represented by an employee organization

or, if so, which of any potential employee organizations should be the representative of such employees.

2. Obstruct, restrain, or coerce any employee in the exercise of any right provided under this chapter;

3. Dominate or obstruct the formation, existence, or administration of any employee organization;

4. Discriminate regarding hiring or any term or condition of employment to encourage or discourage membership in an employee organization.

5. Discharge or otherwise discriminate against an employee because the employee has signed or filed a petition, grievance, or complaint or because an employee is forming, joining, or choosing to be represented by an employee organization;

6. Obstruct, restrain, or coerce any employee, elected or appointed County official, or representative of the employee organization for the purpose of gaining a concession;

7. Disclose or discuss any confidential matters discussed during bargaining with the news media or on social media from the date negotiations commence until the date and time of the public meeting before the Board on the mutually agreed upon proposed collective bargaining agreement or until the date and time of a public meeting before the Board on the areas of dispute;

8. Refuse to bargain in good faith with the exclusive representative;

9. Refuse or fail to comply with any provisions of this section;

10. Coerce the employee organization in the selection of its representative for bargaining or adjustment of grievances.

259.12 SOLICITATIONS AND DISTRIBUTIONS.

A. The solicitation of members, dues, and other internal employee organization business shall be conducted only during non-working hours and shall not interfere with the work of County employees.

B. The use of working areas or spaces not generally available to the public or use of County equipment and information systems for the solicitation of members or dues and distribution of other employee organization business shall be prohibited unless specifically authorized and included in the County's Facilities Use Policy or a collective bargaining agreement.

259.13 CONFLICTS; GOVERNING LAW.

A. In the event of conflict with other County ordinances, the provisions of this chapter shall govern. In the event of a conflict with any state or federal law applicable to the County and the subject matter of this chapter, state or federal law shall prevail unless such law provides otherwise.

B. The County's and its departments' policies and procedures, administrative directives, and workplace practices shall govern employee relations unless there is a specific conflict with a collective bargaining agreement approved by the Board pursuant to this chapter. Where a specific conflict exists, the collective bargaining agreement shall govern.

C. Any collective bargaining agreement approved by the Board pursuant to this chapter shall be governed and interpreted exclusively in accordance with the laws of the Commonwealth of Virginia and this chapter.