



**VSBA**

Virginia School Boards Association

Leadership · Advocacy · Support

# Collective Bargaining in Virginia

A Guide for School Boards and  
School Administrators

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PREPARED BY  
THE VSBA TASK  
FORCE ON  
COLLECTIVE  
BARGAINING

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The Virginia School Boards Association is a private, voluntary, nonpartisan, self-supporting organization whose primary mission is the advancement of education through the unique American tradition of local citizen control of, and accountability for, the Commonwealth's public schools. In this way, education policy is decided by local school boards that are directly accountable to the community. VSBA promotes the quality of education through services to local school boards. It represents school boards' interests before the legislature, state agencies, Congress, and other state and national regulatory bodies.

Membership of the VSBA includes all local school boards of Virginia. Founded in 1906, VSBA represents the Commonwealth's school boards which, in turn, govern the schools attended by 100% of the public school children in Virginia.

The mission of the VSBA is to provide member boards with services, training and advocacy so that they may exercise effective leadership in public school governance on behalf of public education for all the children of the Commonwealth.

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## VSBA TASK FORCE ON COLLECTIVE BARGAINING MEMBERS

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# VSBA TASK FORCE ON COLLECTIVE BARGAINING

During the 2020 session of the Virginia General Assembly, lawmakers passed Senate Bill 939/ House Bill 582 which permits local governments to enter into collective bargaining agreements with their employees. Due to the economic effects brought upon by the COVID-19/ Coronavirus Pandemic, Virginia Governor Ralph S. Northam recommended changes to the inactment date of SB939/ HB 582 from July 1, 2020 to May 1, 2021. This significant shift in labor relations will impact the governance structures of local school boards that adopt resolutions to enter into collective bargaining agreements with division employees.

**At the March 2020 meeting of the Virginia School Boards Association Board of Directors, Board members voted to establish the VSBA Task Force on Collective Bargaining. This task force was charged with studying and submitting recommendations to the VSBA Board of Directors for best practices and guidance for school boards when deciding to enter into collective bargaining agreements.**

# DESCRIPTION OF THE COLLECTIVE BARGAINING PROCESS

Collective bargaining is the process in which employees, through their unions, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more. The result of collective bargaining is called a collective bargaining agreement, and it establishes rules of employment for a set number of years.

In the United States, approximately three-quarters (3/4) of private-sector workers and two-thirds (2/3) of public employees have the right to collective bargaining.

In 2019, the percent of wage and salary workers who were members of unions--the union membership rate--was 10.3%, down by 0.2 percentage point from 2018, as reported by the U.S. Bureau of Labor Statistics in January. The number of wage and salary workers belonging to unions, at 14.6 million in 2019, was little changed from 2018.

In a collective bargaining process, both parties are legally bound to bargain in good faith. This means they have a mutual obligation to participate actively in the deliberations and indicate a desire to find a basis for agreement. There are three main classification of bargaining topics: mandatory, permissive, and illegal.

Wages, health and safety, and work conditions generally fall into the mandatory category. Permissive topics are those that are not required but may be brought up during the process. An example of a permissive topic might include the requirement of drug testing for candidates or the required tools that must be provided to the employee to perform the job, such as a cellphone or computer. There are also illegal topics, which obviously cannot be discussed. These types of illegal issues may be of a discriminatory nature (such as asking employees whether they or their partners plan on becoming pregnant or adopting children) or anything that would be considered illegal outside the agreement. The time frame for the collective bargaining process may vary.

# TYPES OF COLLECTIVE BARGAINING

## **GENERALLY TWO TYPES – POSITIONAL (ADVERSARIAL) & INTEGRATIVE (INTEREST-BASED)**

### WHAT IS POSITIONAL BARGAINING?

Positional bargaining is a negotiation strategy that involves holding on to a fixed idea, or position, of what you want and arguing for it and it alone, regardless of any underlying interests.

### WHY IS POSITIONAL BARGAINING IMPORTANT?

Positional bargaining tends to be the first strategy people adopt when entering a negotiation. This is often problematic, because as the negotiation advances, the negotiators become more and more committed to their positions, continually restating and defending them. A strong commitment to defending a position usually leads to a lack of attention to both parties' underlying interests. Therefore, any agreement that is reached will probably reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties.

Therefore, positional bargaining is often considered a less constructive and less efficient strategy for negotiation than integrative negotiation. Positional bargaining is less likely to result in a win-win outcome and may also result in bad feelings between the parties, possibly arising out of the adversarial, "you vs. me" approach or simply a result of one side not being truly satisfied with their end of the outcome. Positional bargaining is inefficient in terms of the number of decisions that must be made. The example above demonstrates the back-and-forth nature of positional bargaining. The more extreme the opening positions are, the longer it will take to reach a compromise.

### CAN POSITIONAL BARGAINING BE GOOD?

Despite criticism of positional bargaining, supporters of this negotiation strategy do exist. It has been argued that consideration of all underlying interests in a negotiation process is unnecessary. In fact, it may sometimes be counterproductive. This is because of the distinction and relationship between issues and interests.

Issues are universal; they are shared between each party in a conflict. Interests, on the other hand, are specific to each party: what the buyer of the rug in the market wants is a bargain, what the seller wants is profit. This relationship is quite simple

The problem arises when the issue at hand stirs up dramatically opposing interests between the parties, a situation in which it would be very difficult to bring them into the agreement. If this is the case, it may sometimes be better to negotiate in terms of positions and go for a compromise.

## WHAT IS INTEREST-BASED (INTEGRATIVE) BARGAINING?

The interest-based bargaining approach is centered on jointly identifying issues and exploring the different possible solutions. The parties present problems to be solved and work together to seek solutions.

### DEFINITION OF TERMS

**Issues.** The fundamental focus of interest-based bargaining is the issues, that is, **the problems to be solved** by the parties. The issues are presented as questions rather than answers. The questions are refined to represent the root cause of the problem.

**Interests.** The interests of interest-based bargaining are **the reasons why** each party wants to solve a problem.

**Options.** Options are the **possible solutions** to each problem.

**Standards.** Standards are the **rules for measuring the acceptability** of each option. The option that satisfies most of the standards is accepted. Standards must be as objective as possible.

### PRINCIPLES OF INTEREST-BASED BARGAINING

- Share relevant information critical for effective solutions.
- Focus on issues, not personalities.
- Focus on the present and future, not the past.
- Focus on the interests underlying the issues.
- Focus on mutual interests and help to satisfy the other party's interests as well as your own.
- Develop options to satisfy those interests and evaluate them using objective criteria

### INTEREST-BASED BARGAINING

#### The Process Steps

#### 1. Preparation and Framing

In this phase both the school board and the bargaining group examine their own situation in order to develop the issues that they believe will be most important. This includes assessing your interests as well as the interests of the other side.

#### 2. Bargaining Over How to Bargain

In this phase, the parties decide the ground rules that will guide the negotiations. This is where the logistics are determined, such as the rules for confidentiality and the frequency of negotiating meetings.

#### 3. Opening and Exploring

This phase involves the initial opening statements and the possible options that exist to resolve them. This phase could be described as 'brainstorming' or placing all ideas on the table.

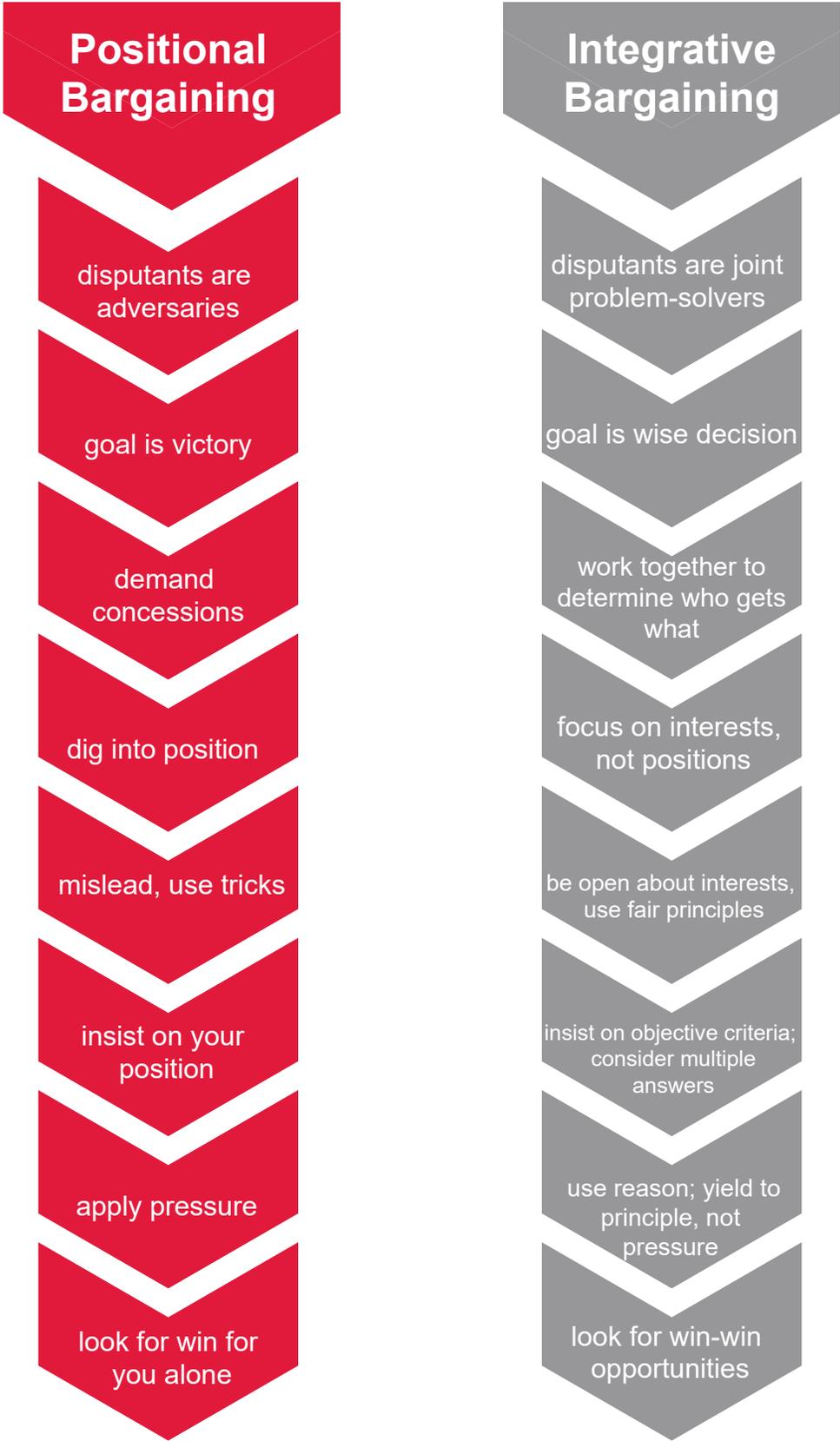
#### 4. Focusing and Agreeing

This phrase comprises the time when 'what ifs' and 'supposals' are set forth and the drafting of agreements take place.

#### 5. Implementation and Administration

This phase consists of effective joint implementation through shared visions, planning and negotiated change.

**Figure 1: Types of Bargaining**



# IMPORTANT FACTS FOR SCHOOL BOARD MEMBERS

- Collective bargaining can be a deterrent to educational quality if the needs of students are not kept at the center of the process.
- Collective bargaining should not thwart positive change.
- Collective bargaining requires courage and an openness to change.
- Collective bargaining in the public sector in the Commonwealth of Virginia has constraints: (a) School Boards do NOT have taxing authority; School divisions are fiscally dependent and the financing of public education is dependent upon government tax revenues; (b) School Board members are elected or appointed and are subject to political pressures; and (c) unions are prohibited from striking.
- Collective bargaining in school divisions is unique in that neither the students nor the demand for teachers will go away; the law requires schools to be open; and teachers have a special relationship with a community's children, the voting public.
- Collective bargaining does not take away the fact that a public-school employee has the responsibility, authority and right to manage and direct on behalf of the public the operations and activities of schools under its control. Therefore, School Boards should affirmatively set forth the rights of management in the collective bargaining process.
- Collective bargaining will be more impactful if participants are trained to identify issues, understand the process, and develop the data and statistics essential for the discussion.
- Collective bargaining may be led by a facilitator or mediator to prepare, advise, and keep the process on task. A trained mediator/facilitator can meet with both parties, discuss the process and train the participants. Once familiar with the process, the facilitation could be done by someone in the group
- Collective Bargaining is dynamic and flexible, it's not static.
- Collective Bargaining is new to Virginia School Boards, so understanding the process, developing a baseline for the process, and establishing goals is extremely important for School Board members.
- § 22.1-79 of the Virginia Code enumerates the powers and duties of School Board members – this should not be forgotten -> Don't forget, Students are why we do what we do, they are the touchstone and the basis from which decisions should be made.

# BEST PRACTICES FOR RECOGNITION OF COLLECTIVE BARGAINING UNITS, EXCLUSIVE BARGAINING UNIT REPRESENTATIVES AND COLLECTIVE BARGAINING PROCESS

A. Introduction. In 1935, the Supreme Court of Virginia first confronted public employee collective bargaining in Virginia denying City of Norfolk firefighters the right to join unions[1]. In 1946, the General Assembly, although not explicitly making collective bargaining illegal, adopted Senate Joint Resolution 12 declaring it against the public policy of Virginia for any public employer to recognize or negotiate with a labor union but did allow for public employees to form organizations not affiliated with a labor union to discuss employment conditions[2].

Despite a series of General Assembly commissions to study public employee collective bargaining and efforts to pass “meet and confer” legislation, Virginia remained largely without legal clarity until 1977[3]. In that year, while 19 localities had collective bargaining agreements with some public employees[4], the Supreme Court of Virginia held that the legislature did not expressly or implicitly grant the power to bargain collectively to localities and school boards because it had never authorized it and the 1946 Senate Joint Resolution declared it against public policy[5].

House Bill 582 and Senate Bill 939, effective May 1, 2021, provide express authority permitting school boards to enact a resolution authorizing collective bargaining with an exclusive bargaining unit representative of a designated bargaining unit. Nevertheless, the Supreme Court of Virginia has apparently not yet addressed whether collective bargaining agreements represent an unlawful delegation of the School Board’s constitutional authority.

The Parham Court specifically stated:

“In *Commonwealth v. Arlington County Board*, 217 Va. 558, 232 S.E.2d 30 (1977), we held, inter alia, that, because the power to enter into collective bargaining agreements was not indispensable to the discharge of the functions of a local school board, we could not imply such authority from the power of supervision vested by § 7 of Article VIII of the Constitution. Having determined, in the final analysis, that the local board possessed neither constitutional nor statutory authority to enter into the agreements, we stated specifically that we did not reach the question whether the agreements produced an unlawful delegation of power.”

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[1] *Carter v. Thompson*, 164 Va. 312, 180 S.E. 410 (1935)

[2] *Public Employee Collective Bargaining in Virginia: Perspectives and Direction*, University of Richmond L.R., Frederick R. Kozak, Vol. 11, Issue 2, Comment at p. 431, 434 (1977)

[3] *The Sheathed Sword: Public-Sector Union Efficacy in Non-Bargaining States*, ABA Journal of Labor & Employment Law, Hodges and Warwick, 27 ABA J. Lab. & Emp. L. 275 (Winter 2012)

[4] *Surpa*. Kozak at 436.

[5] *Supra*, Hodges and Warwick at 277; *Commonwealth v. County Board of Arlington County*, 217 Va. 558, 232 S.E.2d 30 (1977)(Absent express statutory authority, neither county board nor county school board could recognize labor organization as exclusive representative of a group of public employees or negotiate and enter into binding contracts with organization concerning terms and conditions of employment of employees.) Interestingly, the Arlington cases were further expounded upon by the Supreme Court of Virginia a year later when, in another case, it indicated generally that Arlington did not address whether collective bargaining agreements by school boards represented an unlawful delegation of authority. See: *School Board of the City of Richmond v. Parham*, 218 Va. 950 (1978) that addressed binding arbitration for teacher grievances.

While the recent statutory changes noted above seem to provide some explicit basis for collective bargaining by school boards, the issue of the school board's unlawful delegation of constitutional authority remains largely unresolved.

For a school board choosing to proceed, however, its resolution must provide procedures for certification and decertification of the exclusive bargaining unit representative and reasonable public notice and an opportunity for labor organizations to intervene in the process of designating an exclusive bargaining unit representative. We believe the best practice is to adopt a School Board policy that delineates the relevant procedures before authorizing any specific negotiation.

The law appears to permit a school board, on its own initiative, by resolution to solicit a petition for certification from labor unions or employee organizations for its consideration; or, within 120 days of receipt of a certification from a majority of the employees in a unit considered by such employees to be appropriate for collective bargaining, the School Board shall vote to adopt or not adopt a resolution to provide for collective bargaining by such employees and any other employees deemed appropriate by the School Board. The law is silent on whether it can change the scope of positions covered by a proposed bargaining unit, but we believe the School Board has the implied constitutional authority to designate the scope of the bargaining unit in its sole discretion.

Nothing requires the school board to adopt a resolution authorizing collective bargaining.

If the School Board desires to consider a resolution authorizing collective bargaining on its own initiative, or by a petition on behalf of a majority of the employees in a proposed bargaining unit, then the procedures similar to those set forth in our model policy should be adopted and incorporated into any resolution.

**B. Overview.** School Boards desiring to authorize collective bargaining units, exclusive representatives and collective bargaining agreements will find below suggested best practices that may be used to bring clarity to the process and to comply with House Bill 582 and Senate Bill 939. School Boards have some flexibility under the law to tailor the process and definitions in a manner that provides for local control, retains decision-making authority with the School Board and does not involve an unlawful delegation of authority.

**C. Definitions.** A resolution or policy should provide clear definitions of important terms such as those provided below.

**1. Bargaining Unit.** A bargaining unit is an appropriate group of employees organized and designated for collective bargaining as determined by the School Board. The School Board will decide the positions of a bargaining unit and identify the scope in its authorizing resolution. The designation should state which positions are included and which are excluded from the bargaining unit. The following factors may be considered in determining the scope of the bargaining unit:

- a. Desires of employees.
- b. Community or commonality of interest.
- c. The similarity of wages, hours and working conditions and locations.
- d. Unnecessary bargaining unit fragmentation.
- e. Efficiency of School Board, schools and administrative operations.
- f. School Board administrative structure and burden due to the size, scope or complexity of the proposed bargaining unit.

\*\*\*\*\*

[These options are available to clarify or add to various definitions.]

[OPTION A: ADD:

A single bargaining unit shall not include professional and non-professional employees unless both groups, by a majority, explicitly request inclusion in one unit and the School Board agrees. Professional employees are engaged in predominately intellectual work, involving consistent exercise of discretion and judgment and requiring training in a prolonged course in an institution of higher education or hospital, or completing specialized instruction and performing related work under a professional, including continuing contract teachers and other full-time positions for which a license is required by the Virginia Board of Education.]

[OPTION B: ADD:

Any other factor deemed relevant by the School Board.]

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The following public employees and public officers are prohibited from organizing or being part of any bargaining unit or being subject to any collective bargaining agreement:

Elected school board members, persons appointed to fill vacancies in elected offices, and appointed school board members.

Confidential employees, who are school board employees working in any human resources or personnel department of the school division. Confidential employees also include any employee who deals with collective bargaining information with the School Board or its representative or who works in a close continuing relationship with public officials or employees directly participating, advising or providing recommendations or other input in collective bargaining for the school division. Confidential employees also include any employee assigned to work closely with any school board member, the Superintendent, or any management level employee or the school division's attorney.

Management level employees who formulate and direct implementation of policy, assist in preparation of or administer collective bargaining agreements, or have a major role in personnel administration.

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[These options are available to clarify or add to various definitions.]

[OPTION A: ADD: Management level employees includes, but are not limited to, Division Superintendent and all assistant superintendents, all principals, assistant principals, deans, department chairmen, and all levels of employee supervisors including supervisors who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, direct, evaluate, adjust grievances or recommend such action to other school division employees.]

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[OPTION B: ADD: Any student on an educational internship (including student teachers) or other students working part-time in the bargaining unit (which includes all interns and part-time students).]

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[OPTION C: ADD: Seasonal, temporary, part-time, substitute or casual employees. This category includes any employee who is not in a regular full-time position.]

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[OPTION D: ADD: Any employee in a probationary status.]

[OPTION E: ADD: Participants in a work activity, development activity, or alternate work activity under the Department of Family Services or other governmental work program.]

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2. Certification. Certification is the designation of a bargaining unit and its exclusive bargaining unit representative in accordance with this policy for the purpose of collective bargaining by School Board resolution.

3. Collective Bargaining. Collective bargaining is a mutual good faith obligation to negotiate with the intention of reaching an agreement between the school board and exclusive bargaining unit representative. The good faith bargaining obligation generally lasts until an agreement is reached or the parties reach impasse.

[While other states typically mandate collective bargaining on wages, hours and other terms and conditions of employment, Virginia law does not mandate any collective bargaining by school boards. Subjects for collective bargaining are often divided between

mandatory, permissive and illegal subjects of bargaining. Mandatory subjects are subject to the obligation of good faith bargaining while permissive subjects are optional for the parties. School boards desiring to engage in bargaining may define the scope of mandatory bargaining as below.] Subjects may be bargained as determined by the School Board's authorizing resolution and at reasonable times and places are as follows:

\*\*\*\*\*

[CHOICES:]

[OPTION A: ADD:

Wages and fringe benefits].

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[OPTION B: ADD:

Hours, terms and other conditions of employment, and the continuation, modification or deletion of an existing provision of a contract.]

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[OPTION C: ADD:

[Any matter relating to the bargaining unit employees, their employment or service.][Language taken directly from Section 40.1-57.2 of the Code of Virginia.]

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There is no compulsion for either party to agree or make any concession as part of collective bargaining.

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4. Management Rights. Unless a School Board agrees otherwise in a collective bargaining agreement, nothing should impair the right and responsibility of a School Board to:

- a. Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the school board, standards of services, its overall budget, utilization of technology, and organizational structure;
- b. Direct, supervise, evaluate, or hire employees;

- c. Maintain and improve the efficiency and effectiveness of governmental operations;
- d. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- e. Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- f. Determine the adequacy of the work force;
- g. Determine the overall mission of the employer as a unit of government;
- h. Effectively manage the work force;
- i. Take actions to carry out the mission of the public employer as a governmental unit.

[Negotiations are not be required on permissive subjects, but virtually all management decisions can be said in some way to affect the "terms and conditions" of employment. Bargaining over the "effects of a decision" on employment and not the decision itself draws a narrow and fine line between mandatory and permissive subjects. The management rights exclusion in other states has been viewed very narrowly.[6] ]

[If a given subject is alleged to affect and is determined to have a material influence upon wages, hours, or terms and other conditions of employment and involves the exercise of inherent management discretion, the following factors have been balanced in other jurisdictions to determine whether it is a mandatory or permissive subject of bargaining:

- (i) The extent to which the subject is logically and reasonably related to wages, hours, terms and conditions of employment;
- (ii) The extent to which the employer's obligations to negotiate may significantly abridge its freedom to exercise those managerial prerogatives including an examination of the type of employer involved and whether inherent discretion on the subject matter in issue is necessary to achieve the employer's essential mission and its obligations to the general public; and,
- (iii) The extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter.

[Management decisions found, on balance, to be permissive subjects, can generally be implemented without bargaining the decision, Notwithstanding, a

[6] See: Cincinnati v. Ohio Council 8, American Federation of State, City, and Municipal Employees, AFL- CIO, (1991) 61 Ohio St. 3d 658).

contract provision that would conflict with it and any reasonably foreseeable changes in wages, hours, or terms and other conditions of employment affected by those decisions must generally be bargained as soon as practicable and, whenever reasonably practicable, before the announced implementation date if the employee organization makes a timely request to bargain.[7] ]

5. Decertification. Decertification is the process by which a majority of the bargaining employees in a bargaining unit no longer wish to be represented by the incumbent exclusive bargaining unit representative and wish to dismiss the incumbent exclusive representative. The decertification occurs by School Board resolution. The Virginia law does not specify the percentage of the bargaining unit needed to decertify an exclusive agent, but we have recommended using the same percentage as is needed to submit a petition for certification.

6. Picketing. Picketing is permitted only for information purposes on public property not owned or leased by the school board and only after a written notice of the intent to picket is provide to the school board ten (10) days in advance identifying the time, place and manner of the picketing. At no time may picketing block safe ingress or egress to any school board owned or leased property.

7. Strike. A Strike is a concerted action such as failing to report for work, willful absence, work stoppage or slowdown to influence change of wages, hours, terms and other conditions of employment. Strikes are prohibited. Any employee in concert with two or more other employees, for the purposes of obstructing, impeding or suspending any activity or operation of their employer shall, by such action, be deemed to have terminated their employment and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by the School Board or by the Commonwealth, or any county, city , town or other school board or political subdivision of the Commonwealth or by any department or agency of any of them. In addition, employee sick outs or walk outs are also prohibited and individual employees will be automatically terminated.

D. Certification Process. The certification process involves designating the positions that are included and excluded from the bargaining unit and designating the exclusive bargaining unit representative. A majority of the bargaining unit members must support the request. See below.

A labor union or other employee organization becomes the “exclusive bargaining unit representative” of the employees in a proposed bargaining unit by beginning the process with a petition for certification to the School Board.

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[7] In re SERB v. Youngstown City School Dist. Bd. SERB 95-010 (6-30-95).

1. The petition shall be on a form provided by the School Board and state the following:
  - a. Name, address, telephone number and email address for the labor union or employee organization and parent organization affiliation if any;
  - b. Every job title, position and classification proposed to be in the bargaining unit, the current number of filled and vacant positions (the School Board will provide a list of job titles, positions or classifications requested by a labor union or employee organization for its description of those proposed to be included in the bargaining unit);
  - c. A description of the positions to be excluded from the bargaining unit;
  - d. The approximate number of employees to be in the bargaining unit;
  - e. If the School Board has not solicited a petition for certification, then the petition must certify that a majority of the employees of the proposed bargaining unit request certification of the labor union or employee organization and of the proposed bargaining unit and signed original employees' Statements of Support cards shall be submitted with the petition from a majority of employees in the proposed bargaining unit employed on the date the petition is submitted;
  - f. The Statement of Support must clearly indicate the employee requests to be represented by the labor union or employee organization submitting the petition, a dues deduction authorization or a dues deduction list showing the name employee have paid membership dues effective as of the payroll period immediately preceding the filing of the petition must be attached and the employee's original signature must not be dated longer than 6 months prior to the filing of the petition; and,
  - g. An original signature on the petition by the authorized representative of the labor union or employee organization shall certify that the information contained in the petition is true and accurate to the best of their knowledge and belief.
2. Before the School Board may consider a validly filed petition, the School Board shall post for 30 days on its webpage, and in the work locations where it is likely to be seen by employees in the proposed bargaining unit, a public notice that a petition for certification of a proposed bargaining unit has been filed, a copy of the petition, provide notice that petitions (along with signed Statements of Interest) from other labor organizations will be accepted during the 30-day period and provide the email address to which written public comments, comments in support or objections to representation may be directed during the 30-day period.
3. Upon the expiration of the 30-day period, the School Board will determine whether to certify any labor union or employee organization as the exclusive bargaining representative. The School Board may consider compliance with this policy and regulation

the validity of the petition and the Statements of Support and any other factors it deems relevant including, but not limited to, the appropriateness of the proposed bargaining unit. In any event, the School Board is not obligated to certify any labor union or employee organization as the exclusive bargaining unit representative of the bargaining unit.

4. The School Board must make its decision within 120 days of receiving a validly filed petition along with the original Statements of Support. All decisions of the School Board are final.

E. Decertification Process. If most of the members of a bargaining unit no longer wish to be represented by their exclusive bargaining unit representative or wish to be represented by a different bargaining unit representative, then the School Board follow these procedures:

1. A petition for decertification may be filed by a bargaining unit employee or by another labor union or employee organization on behalf of a majority of the bargaining unit members on a form provided by the School Board that includes:

a. Original signed statements from a majority of the bargaining unit employees stating they no longer wish to be represented by their exclusive bargaining unit representative, or, that they wish to be represented by a different bargaining unit representative;

b. That states the petitioner is filing on behalf of a majority of the bargaining unit members; and,

c. An original signature on the petition by the employee or the authorized representative of the labor union or employee organization shall certify that the information contained in the petition is true and accurate to the best of their knowledge and belief.

2. No petition for decertification may be filed less than one year after an exclusive bargaining unit representative has been certified and shall not be filed later than 120 days prior to the expiration of the existing collective bargaining agreement. Extensions of the agreement shall not count for these purposes. For any collective bargaining agreement of one year or less, the earliest that a decertification petition may be filed is during the succeeding collective bargaining agreement following the first one-year agreement.

3. Before the School Board may consider a validly filed petition, the School Board shall post for 30 days on its webpage, and in the work locations where it is likely to be seen by employees in the bargaining unit, a public notice that a petition for decertification of an exclusive bargaining unit representative has been filed, a copy of the petition,

provide notice that petitions (along with signed Statements of Interest) from other labor organizations will be accepted during the 30-day period and provide the email address to which written public comments, comments in support or objections to decertification may be directed during the 30-day period.

4. Upon the expiration of the 30-day period, the School Board will determine whether to decertify any labor union or employee organization as the exclusive bargaining representative and whether to certify a different exclusive bargaining unit representative. All decisions of the School Board are final.

F. Access. No party shall have an advantage over another in gaining access to employees during organizational or campaign activity. Interested labor unions and employee organizations will receive the same access to proposed bargaining unit employees as is currently provided to other outside organizations under the School Board policies and practices for facility use. Attendance at any meeting is voluntary and open to all bargaining unit employees. The public employer and the employee organizations may hold meetings to discuss representation that is open to all bargaining unit employees with attendance voluntary.

G. Bargaining Process. Collective bargaining typically takes one of two forms: 1) traditional positional bargaining in which each side advances its own interests with proposals and demands and 2) Interest-based bargaining in which both parties try to understand the interests that motivate each side in the hopes of developing solutions that are mutually acceptable.

H. Impasse Procedures. Parties may find that after compromising and reaching tentative agreements on most issues, one or two issues remain unresolvable. In these instances, a procedure established in advance to address impasse should be considered. While other jurisdictions provide for various forms of binding arbitration, we believe a school board is prohibited from such an unlawful delegation of authority.[8] The School Board must in all circumstances retain the final decision-making authority.

Therefore, the most that could be considered to address an impasse would be non-binding mediation with or without a report and recommendation to the School Board.

I. Precedence. In some states, a collective bargaining takes priority over conflicting state laws except in certain situations. We recommend that all collective bargaining agreements clearly state that all local, state and federal laws and regulations take precedence over conflicting collective bargaining provisions.

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[8] School Board of the City of Richmond v. Parham, 218 Va. 950 (1978).

## J. Other Factors

1. Virginia Freedom of Information Act (VFOIA). Divisions should consider whether one or more exemptions would protect from disclosure pre-negotiation strategy plans, draft proposals, personal notes, incremental tentative agreements on each portion of a collective bargaining agreement, legal reviews; and, if one or more exemptions applied during negotiations, would the exemption(s) continue to apply after conclusion of the negotiations? If not, would tentative agreements need to be disclosed prior to School Board and bargaining unit membership vote under VFOIA?
2. Pre-Negotiations Agreements. Depending on the impact of VFOIA, should the School Board have a pre-negotiation agreement on the non-disclosures of draft documents to the other side? Should there be an agreement not to make public comments without the consent of the other side during negotiations?
3. What style of negotiation should be used? Traditional or Interest-based bargaining? Has the School Board considered that the other side may have professional negotiators on their behalf? Has the School Board considered retaining an experienced professional labor negotiator?
4. What are the School Board's goals and can they be achieved with or without collective bargaining?
5. What will be the time burden on the Board's negotiating team and on the other work of the Division?
6. School Boards should consult with their legal counsel concerning any of the issues raised by this guidance.

# PRE-COLLECTIVE BARGAINING SUGGESTIONS FOR SCHOOL BOARDS AND SCHOOL DIVISIONS

## **Include employee associations in strategic planning and operational decisions:**

- Invite membership on the superintendent/leadership advisory teams, school based leadership teams, strategic planning teams, salary study committees, professional development teams, calendar committees, etc.
- Conduct annual special called school board meetings to hear concerns and issues from various classifications of employees. (This could be a 2-member representation of the school board if there is a wish to not these meetings open to the public.)
- Conduct regular meetings between local association leadership, the superintendent, and a school board representative.
- Administer feedback surveys, be transparent with results, and include employee association representatives to develop goals for improving areas where problems are noted.
- Include input from employee organizations in the budget planning process.
- Follow up any employee association requests with a conversation (Communication is essential, especially when it will not be possible to act on a request.)
- Superintendent and/or other leadership positions meet regularly with local membership of associations.

## **Understand your starting point:**

- Internal Audit- Plan to audit every aspect of your school division's operations to look for areas where improvement might be requested.
  - i. Facility/working conditions
  - ii. Resources & tools provided to enhance an employee's ability to perform her/his job
  - iii. Salary & benefits comparisons to others in your region
  - iv. Initiatives to develop and support employees- mentoring programs, professional development assistance, and performance improvement process.
  - v. Personnel-hiring practices, evaluation system, employee turnover rates by job classification, RIF/Transfer policies, employee discipline practices, and grievance policies.
  - vi. Student data to include poverty rates, discipline, students with disabilities, and achievement levels.
- External Audit- examine factors outside of the school division that might influence bargaining positions.
  - i. Projected revenue (local, state, & federal) & funding comparisons to other school divisions in the region
  - ii. Regional & state employment data
  - iii. Consumer price index
  - iv. Local cost of living compared to the region and state
  - v. Availability of qualified replacements for various positions
  - vi. Community investments in education (school resource officers, local scholarships, community-school partnerships, etc.)
  - vii. Average commute times
  - viii. Collective bargaining practices in other industries or localities

# INITIAL STEPS ONCE COLLECTIVE BARGAINING BECOMES A REALITY

## **Step 1- Include Local Governments During the Collective Bargaining Process:**

Understanding that most school divisions in the state rely heavily on funding from their local governments, it is important to keep local officials (i.e. City Council, Board of Supervisors) informed of any new developments that are on the horizon, such as the development of a collective bargaining process.

- **Start The Conversation Early-** If collective bargaining is not a subject that has been previously broached by either body, then it is imperative that the local school board keep the local governing body informed about the issue. This could be accomplished several ways:
  - i. Host a retreat that would include members of both bodies. Since this is officially considered a meeting, an announcement regarding the meeting would need to be made, with the realization that the media representative may be in attendance as well.
  - ii. Enter into the initial discussions prior to the school division's budget development process. This can prove highly beneficial, as most governing bodies prefer on-going dialogue with school boards throughout the school year, as opposed to a mid-year meeting to discuss funding only.
  - iii. Hold two-on-two meetings to discuss collective bargaining. This would involve individual meetings with two Board members, two members of the local governing body and the Superintendent. By holding a meeting to discuss collective bargaining in this manner, eliminates the meeting requiring a formal announcement. It also makes for frank and open discussion, as it is a more intimate setting.
- **Develop Trusting Relationships:**
  - i. Consider establishing a "Buddy" System. The board chair or representative would match a "buddy" from the school board with a "buddy" from the governing body. Oftentimes groups work better by having someone they can call personally with their questions. This allows for open, dialogue in a one-to-one setting, which can lead to establishing mutual trust. The Buddy System also eliminates the need for the board chair to respond to a bevy of calls for clarifications, as each board member now serves as a personal resource for governing board members.
  - ii. Provide the governing body with an easy-to-navigate written presentation surrounding the division's collective bargaining plan.
  - iii. "Be prepared to answer the question before it is asked." Prior to meeting with the governing body to discuss collective bargaining and all components associated with it, make an attempt to determine, via a "role-playing" process, the concerns and questions that may arise. This will also allow for not only a concise presentation but also for any considerations that may not have been previously discussed.

## Step 2- Develop the School Division's Bargaining Team:

(Suggestions based on the Michigan School Board Association's Bargaining Toolkit.)

- Gather input into the selection of the team. Ask the superintendent, central office administration, principals, other supervisory staff and the community.
- Select the chief negotiator: A chief negotiator from within will be more familiar to the employee associations' team(s) and will have a more thorough knowledge of the division while an "outside" chief negotiator may be more skilled in the bargaining process and may help preserve good relationships between those within the division. Look for a chief negotiator with certain knowledge, experience, skills (communications, organization/listening/problem analysis, problem solving, power of persuasion), and personal characteristics (honesty, integrity, patience, tolerance, consistency, and sense of humor). They should have experience in employee relations, bargaining, mediation and fact finding.
- Selecting the bargaining team members: The factors to consider with selection to the bargaining team include familiarity, trust, balance, knowledge of issues, skills and character.
- Team members should have the ability and desire to make time commitment needed to see the process through to completion.
- In the instance of a teachers' bargaining unity, representation by principals would be essential for their expertise regarding day-to-day operations within the building.
- The Human Resources Director, whose area of expertise includes everything from staffing to compensation & benefits, should be a key player as these are areas often ignite collective bargaining discussions.
- The value of the superintendent participating in this process should be weighed against the value of her/his role of remaining neutral.
- School board member participation is not recommended during active bargaining process but input can be sought on specific issues.

## Step 3- Utilize known facts & data to develop the School Division's bargaining objectives, overall goals, and expected time-frame for concluding negotiations.

- Bargaining negotiations typically take 3-18 months.
- Goals and objectives should be clearly defined and expressed in terms that are easily understood by all parties.
- Non-bargaining team members can be used to help set goals and objectives.

## Step 4- Communicate the School Division's objectives, goals, and expectations.

(Suggestions based on the Michigan School Board Association's Bargaining Toolkit.) The fundamental purpose of communication plan as a tool in negotiations is to keep employee associations in check by building a credible base upon which support can be maintained by the board. Building public trust requires open and accurate communication. The board that ignores the power of public persuasion in the negotiations process may do so to its own detriment. Establishing a negotiations communications plan is huge.

- The basic communications plan:
  - a. Bargaining process: Announce the board goals, explain the bargaining process, communication vehicles to use: administrator meetings, key communicators' letter,

building newsletter, local newspapers, radio stations, TV stations, staff newsletter, division website, consider making regular negotiation reports a part of board meetings.

b. Mediation Process: Announce the request for mediation, explain the process, share the offer that the division gives to the mediator with: administrators, key communications, union members, and the news media

c. Time-period after fact-finding report issued: Key communications should help with number control, outline main issues, give economic information, make division/board spokesperson(s) available to answer questions, discuss key issues, provide economic information and comparisons.

d. Implementation of final offer/strike: Communicate accurate and timely information.

e. When a settlement is reached: Notify the key audience members- administrators, news media, employee association members, communicators, parents, other staff.

f. News Releases: The primary source of external communication is the news release. Other sources include cable television, letters to employees updating them on the board's positions, newspaper advertisements, blogs, websites, and telephone hotlines. News releases reach many audiences including volunteers, businesses, various media sources, and employees of the division.

News Releases should:

i. Originate from a single source (superintendent or another individual close to the negotiations process, who is a recognized leader and credible source within the community).

ii. The spokesperson should identify media sources with broad-based distribution most favorably disposed historically to the division's programs and efforts as well know the media sources' deadlines.

iii. Be issued in writing and are best when limited to one page. The written release should identify the designated spokesperson by name, title and phone number for further contact.

iv. Phrased in a positive tone. Simply state the key issues in dispute and the describe the operational, educational and economic implications of the proposals so the community can fully understand the importance of each issue. Refrain from openly criticizing the employee association's positions in a confrontational fashion. Build the division's case with facts that will lead the reader to logical conclusions concerning the board's and union's respective positions.

v. Finally, remember that news releases can be disseminated to the community in a variety of ways. While newspapers, email and websites tend to be a primary target, don't underestimate the influence of television or radio news. Consider utilizing the division's cable television station, establishing a telephone hotline, or posting on the division's home page.

## **Step 5- Determine the method of negotiation to be utilized.**

*Some common models include:*

- Traditional Negotiation- groups strive to reach a mutual agreement on a set of issues.
- Interest Based Bargaining- all groups understand that there are various sides and competing interests so parties strive for “win-win” resolutions.
- Bargaining for the Common Good- seeks to align all interests around common goals.

## **Step 6- Develop a framework for negotiation and define the principles that will guide the process.**

- Open communication from beginning to end
- Transparency from both parties
- Maintain a professional environment
- Be prepared and start the process as early as possible
- Fully develop appropriate comparable options
- Determine whether to use percentage or straight dollar pay increases
- Determine what will resolve dispute for senior members as they are often key to successful negotiations
- Include benefits as a large part of the conversation
- Involve appropriating body as necessary
- Follow through with integrity and continue to have good communication
- Professionalism at all times (it's not personal)
- Keep a focus on what is best for students

# SCHOOL DIVISIONS AND COLLECTIVE BARGAINING

## **The role of the board in collective bargaining**

The role of the school board is to focus on student success and the importance of working with our employees to realize this goal. The Virginia Collective Bargaining Law is permissive, allowing each local governing body (including school boards) to decide whether to recognize employee bargaining units. If a board decides to adopt a resolution to enter into collective bargaining agreements with bargaining units, the board should develop their objectives for the bargaining process focusing on the needs of students and all school division employees. During each phase of the collective bargaining process, it is important that school boards represent the interests of the school division and its strategic plan.

It should be noted that Virginia is a Right-to-Work state, meaning that school board employees do not have to join the employee classification bargaining unit recognized by the board. However, any contract negotiated with the bargaining unit must be extended to all board employees within a classification regardless of bargaining unit membership.

## **Building understanding and developing consensus on issues brought by bargaining units**

School boards represent the interests of the school division which is to enhance student achievement by advancing teaching and learning. Prior to entering the bargaining process, school boards should create their objectives based on data and facts in support of their objectives during negotiations. The bargaining process can be either adversarial or cooperative depending on the tactics employed by the school board and/or bargaining unit. Please see the Description of Collective Bargaining section of this document for further guidance.

## **Certifying bargaining units for different classes of employees**

Prior to a school board adopting a resolution allowing school division employees to collectively bargain, the board and school division administration should consult with their board attorney and/or legal counsel with expertise in labor relations law. The collective bargaining law in Virginia does not include regulations governing the process for recognizing individual bargaining units. The lack of a regulatory framework is a legal minefield for school boards to navigate. Having experienced legal counsel during this process will protect boards from potential litigation from bargaining units. Please see the Collective Bargaining Best Practices section of this document for further guidance.

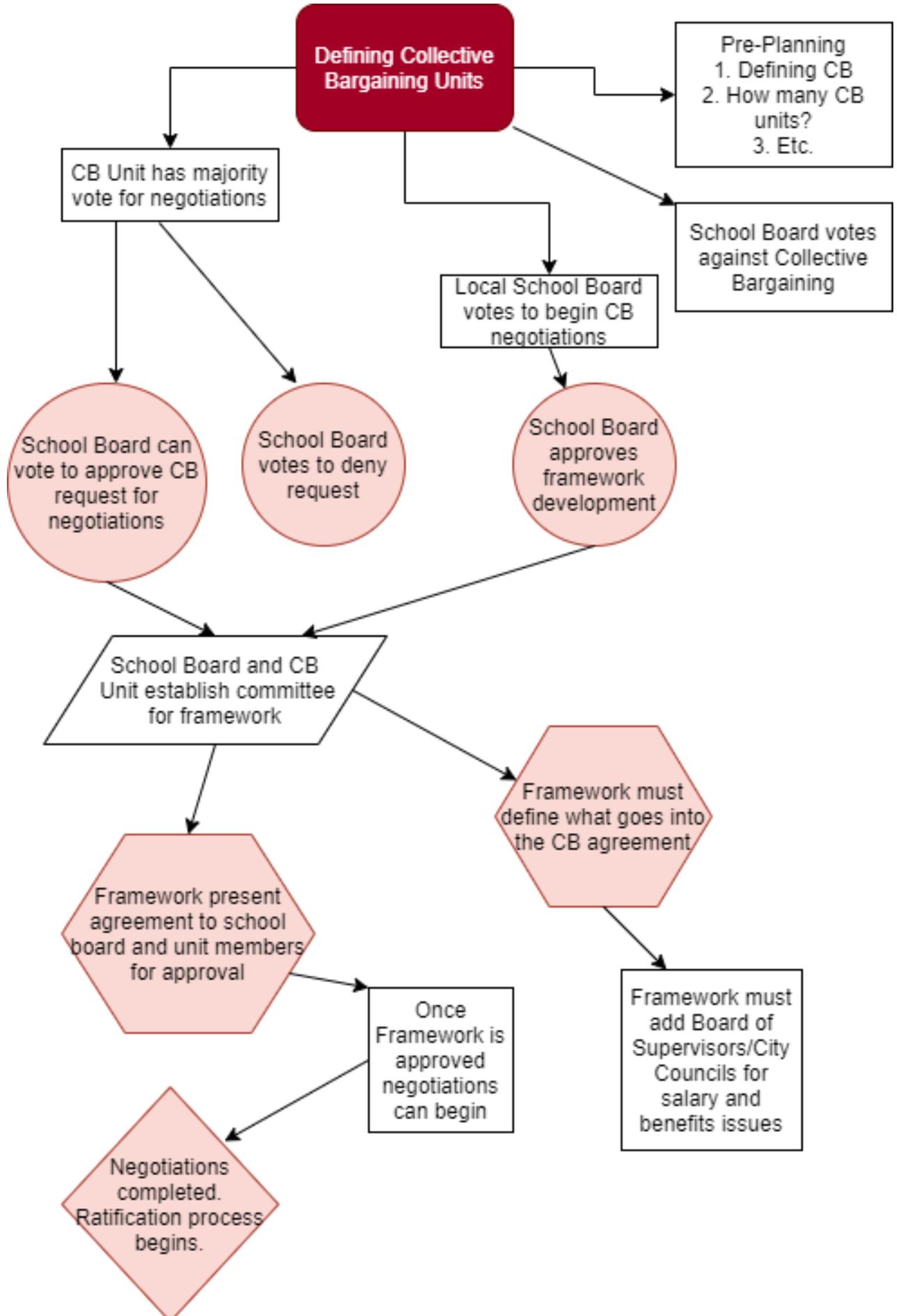
## **Process should Boards of Supervisors/City Councils and School Board differ on entering into collective bargaining agreements**

Local political subdivisions have specific areas of responsibility defined by the Code of Virginia. Like other matters within the locality, school boards and the local governing authority do not always arrive at the same conclusion on governing decisions. We encourage school boards to inform the local governing body about its decision and goals for recognizing bargaining units within the school division and address the impact collective bargaining may have on the budget process of the locality.

### **Impact neighboring divisions choosing different paths (Collective vs. non-collective)**

The Virginia Collective Bargaining Law is permissive, allowing each local governing body (including school boards) to decide whether to recognize employee bargaining units. School boards will have to weigh many factors when deciding whether to adopt collective bargaining resolutions. Each school board faces a unique set of circumstances within their divisions which influence board policy on multiple issues. It is important to objectively communicate the school board's decision on collective bargaining to division employees, the community, and other stakeholders. Please reference the Alternatives to Collective Bargaining and Communication sections of this document for further guidance.

**Figure 2: Collective Bargaining Flow Chart**



## **VSBA TASK FORCE ON COLLECTIVE BARGAINING MEMBERS**

Chair Janet Turner-Giles, Board Member  
Nelson County

Dr. Melinda Boone, Superintendent  
Virginia Department of Juvenile Justice

Ann Cherry, Board Member  
Hampton City

Dr. James Coleman, Board Member  
Lynchburg City

Karen Corbett-Sanders, Board Member  
Fairfax County

Dr. Mervin Daugherty, Superintendent  
Chesterfield County

Stephen DeVita, Attorney  
Loudoun County

Stacy Haney, Chief Lobbyist  
VSBA

Dr. Olwen Herron, Superintendent  
Williamsburg/James City County

Chris Johnson, Board Member  
Prince George County

Jennifer McKeever, Board Member  
Charlottesville City

Dr. Keith Perrigan, Superintendent  
Bristol City

Dr. Kevin Siers, Superintendent  
Pulaski County

Sanford Williams, Board Member  
Manassas City

David Woodard, Board Member  
Tazewell County

Rodney Jordan, Board Member  
Norfolk City

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