



VSBA

Virginia School Boards Association®

Leadership · Advocacy · Support

Collective Bargaining in Virginia

A Guide for School Boards and
School Administrators

PREPARED BY
THE VSBA TASK
FORCE ON
COLLECTIVE
BARGAINING

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ABOUT VSBA

The Virginia School Boards Association (VSBA) 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.

Founded in 1906, VSBA represents its member school boards, which, in turn, govern the schools attended by the public-school children in Virginia.

The mission of the VSBA is to promote excellence in public education through leadership, advocacy and services.

VSBA TASK FORCE ON COLLECTIVE BARGAINING MEMBERS

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Collective Bargaining

At its May 2025 meeting, the VSBA Board of Directors reinstated the Task Force on Collective Bargaining. The Board stated, “Given the upcoming transition in state leadership in January 2026 and the significant unknowns surrounding potential changes in policy or regulatory guidance, it is prudent for the Association to proactively reestablish the Collective Bargaining Task Force. The Task Force will monitor developments, assess implications for local school boards, and make recommendations to the Board of Directors as needed to ensure timely, informed responses to any proposed legislative or administrative changes related to collective bargaining.

During the 2020 session of the Virginia General Assembly, lawmakers passed and Governor Ralph S. Northam signed legislation to permit local governments to enter into collective bargaining agreements with their employees. Since the enactment, some local school divisions adopted resolutions and entered into collective bargaining agreements with division employees.

This 2026 report aims to provide VSBA members with a continuing set of Decision Points and recommendations along with lessons learned since the release of Task Force’s initial 2020 version.

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 2024, the percentage of wage and salary workers who were members of unions—the union membership rate—was 9.9 percent, down 0.4 percent since 2019. The number of wage and salary workers belonging to a union in 2024 is 14.3 million compared with 14.6 million in 2019. These data are as reported by the U.S. Bureau of Labor Statistics.

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 classifications 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. They include anything 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.

Types of Collective Bargaining

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 CAN POSITIONAL BARGAINING BE CHALLENGING?

Positional bargaining tends to be the first strategy people adopt when entering a negotiation. This is often problematic, because as negotiation advances, the negotiators become increasingly committed to their positions, continually restating and defending them. This results in a back-and-forth nature of bargaining – or “positional bargaining.”

A strong commitment to defending a position usually leads to a lack of attention to both parties' underlying interests. As a result, any agreement that is reached will often reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties.

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 resulting in 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 more extreme the opening positions are, the longer it will take to reach a compromise. Therefore, positional bargaining is often considered a less constructive and less efficient strategy for negotiation than integrative negotiation.

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 an issue stirs up dramatically opposing interests between the parties, a situation in which it would be very difficult to bring them into agreement. If this is the case, positional bargaining may sometimes be better to negotiate in terms of positions and to achieve 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 USED IN INTEREST-BASED BARGAINING

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 **reasons why** each party wants to solve a problem.

Options: The **possible solutions** to each problem.

Standards: 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

1. Preparation and Framing

In this phase, both the school board and the bargaining group examine their own situation 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.

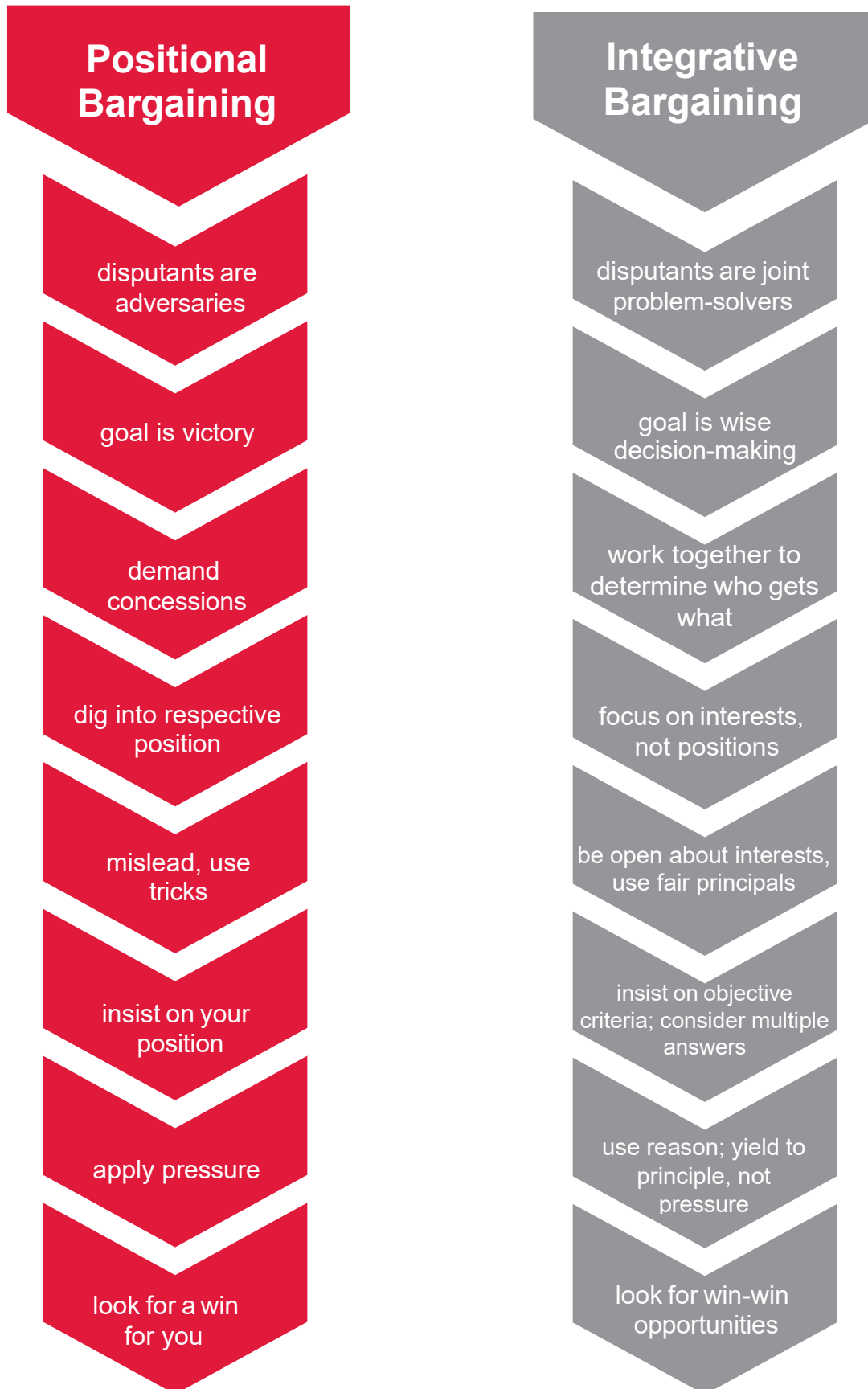
4. Focusing and Agreeing

This phase 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 should always keep students and student outcomes at the center of the process.
- Collective bargaining should encourage positive change.
- Collective Bargaining is dynamic and flexible.
- Collective bargaining requires courage and an openness to change.
- Collective bargaining in the public sector in the Commonwealth of Virginia has constraints. Among these constraints are: (1) school boards lack taxing authority; school divisions are fiscally dependent, and the financing of public education is fluid as it is dependent upon government tax revenues; (2) school board members are elected or appointed and are subject to political pressures; and (3) unions are prohibited from striking.
- Collective bargaining in school divisions is unique in that neither student needs nor the demand for teachers will diminish; schools are required by law to be open; and teachers maintain a special relationship with a community's children—and thus the voting public.
- Collective bargaining does not diminish a school board's responsibility, authority, and right to manage and direct on behalf of the public the operations and activities of the schools under its control. Accordingly, school boards should affirmatively set forth and preserve the rights of management in the collective bargaining process.
- Collective bargaining is 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 or facilitator can meet with both parties to discuss the process and train the participants. Once the parties are familiar with the process, facilitation may be conducted by a member of the group.
- Collective Bargaining is relatively 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.
- Section 22.1-79 of the Virginia Code enumerates the powers and duties of school board members and should remain central to all board business. Don't forget, students are why we do what we do; they are the touchstone and must be the foundation to guide all decisions.

Lessons Learned from Divisions That Have Adopted Collective Bargaining Agreements (CBAs)

Since state law authorized permissive collective bargaining, several school divisions voted to adopt it, while others voted specifically not to approve collective bargaining proposals. Below are some highlighted lessons learned from those processes and experiences.

- One of the greatest lessons we learned is that you will not capture everything in a single document. Although we engaged in a comprehensive and collaborative process with our teachers' union, we discovered after establishing a collective bargaining agreement for licensed personnel that there were minor areas needing adjustment. In practice, some provisions were not as clear as we initially believed. Take time during the negotiation process to critically analyze the wording to ensure it clearly articulates the agreement's vision and sentiment but give yourself some grace and know that it's impossible to think of 'everything.' The more important work of maintaining a strong, trusting relationship with the union has allowed us to return to the table and make necessary refinements.
- Before bargaining begins, it's important to build relationships with union leadership. Informal meetings can help foster understanding and trust between both sides. Joining committees together and participating in joint lobbying activities also encourage collaboration. Additionally, joint collective bargaining training—whether through FMCS or private vendors—can be beneficial. Such training not only provides an overview of the process but also helps build camaraderie among all participants.
- During initial contract negotiations, the Board Rights section often serves as a mechanism to prohibit certain topics from discussion, such as discipline, class size, and scheduling. This limitation is crucial, as some divisions further restrict the number of issues that may be raised at the outset, typically capping the negotiations to four to six subjects. These parameters shape the scope and direction of early bargaining sessions.
- Even though the natural tendency is to want to have union elections in person, most Virginia union elections have used electronic voting, which is efficient, cost effective and secure. Be prepared to talk to vendors during the process.
- Establishing ground rules proves to be another early hurdle, particularly when the resolution lacks specific guidance on the subject. The unions, keen on transparency, frequently challenge confidentiality provisions, sometimes advocating for open public bargaining sessions rather than closed-door negotiations. This push and pullover process can delay progress, making it even more important to secure union proposals as early as possible. Additionally, do not expect to have meaningful bargaining during the summer months.
- Limit the number of people on your bargaining team. This will be dictated in part by the size of the school division.
- When there are multiple bargaining units in a division, align the expiration dates of the collective bargaining agreements.
- Having a well-prepared communications strategy is essential. This approach allows both sides to anticipate and effectively address any public disclosure of bargaining positions, ensuring that messaging remains consistent and any potential misunderstandings are managed proactively. With clear boundaries already set by the Board Rights section and the ongoing

debate over ground rules, the ability to communicate intentions and responses swiftly can make a significant difference in shaping public perception and maintaining momentum at the bargaining table.

- Transitioning to a workplace governed by a Collective Bargaining Agreement (CBA) brings about a significant cultural shift for both leadership and staff. It is important to recognize that the adoption of a CBA introduces new processes, expectations, and responsibilities that may be unfamiliar to many within the organization. To support a smooth implementation, it is advisable to allow ample time—several months, if possible—between the conclusion of bargaining and the official start of the agreement. This window provides an opportunity to train administrators and supervisors thoroughly on the specific terms and conditions set forth in the CBA, ensuring that they are well-equipped to lead their teams within this new framework. Additionally, it is essential not to underestimate the general lack of familiarity that may exist regarding collective bargaining environments. Staff and administrators alike may require orientation and education to understand the implications and practical applications of the agreement. Careful consideration should also be given to potential conflicts between provisions in the CBA and existing organizational policies or regulations. Identifying and addressing these discrepancies early will help prevent confusion, ensure compliance, and foster a more cohesive workplace as the new collective bargaining structure takes effect.
- It is essential to ensure that grievances are clearly addressed both in the Resolution and in the CBA. Be well prepared as to how you will handle grievances, which could arise within days of the CBA becoming effective. Do not get caught off guard. These early challenges highlight the importance of having a dedicated labor relations team in place from the very beginning of the CBA. Establishing this support structure early on helps organizations respond promptly and effectively to disputes, facilitating smoother negotiations and reducing the risk of unresolved issues escalating.
- Ensure that the School Board gives clear direction to the Board's attorney with respect to the Board's decisions and preferences about collective bargaining. If bargaining or other specific tasks related to the collective bargaining process are delegated to the School Board attorney, other staff or even an outside negotiator, the School Board should clearly articulate its collective decisions and preferences related to collective bargaining so that they are implemented with fidelity. While a bargaining team may need flexibility to conduct negotiations, the bargaining

Decision Points for Recognition of Collective Bargaining Units, Exclusive Bargaining Unit Representatives, and Collective Bargaining Process

A. Introduction to Legal Basis of Collective Bargaining in Virginia. In 1935, the Supreme Court of Virginia first addressed 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 prohibiting collective bargaining, 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. However, the Resolution permitted 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 unsuccessful efforts to pass “meet and confer” legislation, Virginia remained largely without legal clarity until 1977.³ In that year, when 19 localities had collective bargaining agreements with some public employees,⁴ the Supreme Court of Virginia held that the General Assembly had not expressly or implicitly authorized localities and school boards to engage in collective bargaining. In the absence of statutory authorization, the agreements were invalid. The Court emphasized the long history of legislative refusal to authorize public employee collective bargaining including the 1946 Senate Joint Resolution declaring such negotiations contrary to public policy.⁵

In *School Board of the City of Richmond v. Parham*, a case addressing the limits of school board authority in the context of grievance procedures, the Court specifically stated:

In *Commonwealth v. Arlington County Board*...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.”⁶

During the 2020 legislative session, the Virginia General Assembly amended Virginia Code § 40.1-57.2, which had previously imposed a blanket prohibition on collective bargaining. The 2020

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 *Supra*, 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 Bd. of City of Richmond v. Parham*, 218 Va. 950 (1978) that addressed binding arbitration for teacher grievances.

⁶ *School Bd. of City of Richmond v. Parham*, 218 Va. 950 at 957, 243 S.E.2d 468 (1978).

amendment expressly authorizes school boards to adopt a resolution permitting collective bargaining with an exclusive bargaining unit representative of a designated bargaining unit. Nevertheless, the Supreme Court of Virginia has not yet addressed whether collective bargaining agreements represent an unlawful delegation of the school board's constitutional authority. While the recent statutory changes appear to provide some explicit basis for collective bargaining by school boards, the issue of potential unconstitutional delegation of authority remains largely unresolved.

If a school board chooses to proceed with collective bargaining, 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 the Task Force believes the school board has the implied constitutional authority to designate the scope of the bargaining unit in its sole discretion.

As of March 2026, nothing in the current law requires the school board to adopt a resolution authorizing collective bargaining.

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

B. Overview of School Board Policy for Collective Bargaining. School boards desiring to authorize collective bargaining units, designate exclusive representatives, and enter into collective bargaining agreements will find below suggested decision points that may be used to bring clarity to the process and to comply with Virginia Code § 40.1-57.2. School Boards have some flexibility under the law to tailor the process and definitions in a manner that maintains local control, preserves the school board retaining decision-making authority, and avoids an unlawful delegation of power.

C. Definitions. A resolution or policy should provide clear definitions of important terms such as:

- 1. Bargaining Unit.** A bargaining unit is a group of employees deemed appropriate for collective bargaining that is organized and designated by the school board. The school board decides the positions of a bargaining unit and identifies the scope in its authorizing resolution. The designation should clearly state which positions are included and which are excluded from the bargaining unit. The school board may consider the following in determining the scope of the bargaining unit:
 - a. Desires of employees.
 - b. Community or commonality of interest.
 - c. The similarity of wages, working 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.

[School boards will need to decide whether to clarify or add 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 that school board deems relevant.]

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, 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.

[School boards will need to decide whether to clarify or add to various definitions]

[OPTION A: ADD: Management level employees include, but are not limited to, the 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.]

[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).]

[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.]

[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.]

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. **Chief Negotiator.** The chief negotiator is the primary individual responsible for leading a specific side's negotiation team. Representing the school board for a school division, the chief negotiator might be the superintendent, a designated representative or an appointed attorney.
4. **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, as of March 2026 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].

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

[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.)

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

5. 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, processes, 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; and
- i. Take actions to carry out the mission of the public employer as a governmental unit.

[Negotiations are not to be required on permissive subjects, but nearly all management decisions can 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.⁷]

[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

⁷ See *Cincinnati v. Ohio Council 8, American Federation of State, City, and Municipal Employees, AFL-CIO*, (1991) 61 Ohio St. 3d 658.

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. Nonetheless, a 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.⁸]

- 6. Decertification.** Decertification is the process by which a majority of employees in a bargaining unit no longer wish to be represented by the incumbent exclusive bargaining unit representative and seek to remove that representative. Decertification is effectuated through a school board resolution. Virginia law does not specify the percentage of employees in the bargaining unit required to decertify an exclusive agent, but it is recommended to use the same threshold percentage as is required to submit a petition for the initial certification.
- 7. Picketing.** Picketing is permitted solely for informational purposes and only on public property not owned or leased by the school board. A written notice must be provided to the school board ten (10) days in advance, specifying the time, place, and manner of the picketing. Picketing must not block safe ingress or egress to any school board owned or leased property.
- 8. Strike.** A strike is a concerted action, including but not limited to 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 strictly 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 will by such action, be deemed to have voluntarily terminated their employment and will 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. Additionally, employee sick-outs or walk-outs are also prohibited and individual employees participating in such activities will be subject to automatic termination.

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.

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.

- 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;

⁸ In re SERB v. Youngstown City School Dist. Bd. SERB 95-010 (6-30-95)

- 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 that the employee requests to be represented by the labor union or employee organization submitting the petition, include a dues deduction authorization or a dues deduction list showing the name of the employee that shows the employee has paid membership dues effective as of the payroll period immediately preceding the filing of the petition, the employee's original signature, and must not be dated more 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 that certifies 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 for certification, it must post a public notice for thirty (30) days on its website and in the work locations where it is likely to be seen by employees in the proposed bargaining unit. The notice must: (1) state that a petition for certification of a proposed bargaining unit has been filed; (2) provide a copy of the petition; and (3) inform the public that petitions, along with signed Statements of Interest, from other labor organizations will be accepted during the 30-day notice period, and provide the email address to which written public comments, including comments in support or objection to representation, may be submitted 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 regulate 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 following procedures are recommended for a school board:

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 and should include:
 - a. Originally 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. A statement from the petitioner confirming the filing is 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, certifying that the information contained in the petition is true and accurate to the best of their knowledge and belief.
2. A petition for decertification not may be filed within 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 do 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 for decertification, 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 who may voluntarily attend.

G. Bargaining Process. Collective bargaining typically takes one of two forms: (1) 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 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 various forms of binding arbitration, it is the Task Force's view that a school board is prohibited from such unlawful delegation

of authority.⁹ 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, 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.

J. Traditional or Positional Negotiation. Groups strive to reach a mutual agreement on a set of issues.

K. Interest-Based Bargaining. All groups understand that there are various sides and competing interests, so parties strive for “win-win” resolutions.

L. Bargaining for the Common Good. Seeks to align all interests around the common good.

M. Other Consideration

1. Virginia Freedom of Information Act (VFOIA). Divisions should consider whether one or more exemptions protect from disclosure pre-negotiation strategy plans, draft proposals, personal notes, incremental tentative agreements on each portion of a collective bargaining agreement, and 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-disclosure 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? Positional 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 are the school board’s goals and can they be achieved with or without collective bargaining?
6. School boards should consult with their legal counsel concerning any of the issues raised by this guidance.

⁹ *School Bd. of City of Richmond v. Parham*, 218 Va. 950, 243 S.E.2d 468 (1978).

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.
- Annually conduct special-called school board meetings to hear concerns and issues from various classifications of employees. (This could be a two-member representation of the school board if there is a wish not to hold an open meeting.)
- 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 their job.
 - iii Salary and 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 including 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, and federal) and funding comparisons to other school divisions in the region.
 - ii Regional and 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.

A Starting Point: Suggestions 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 in several ways:
 - i Host a retreat, perhaps facilitated, that would include members of both bodies. Since this is officially considered a meeting, an announcement regarding the meeting must be made, with the realization that media representatives may be in attendance as well.
 - ii Enter 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, it eliminates the requirement to have an announcement as it is not a meeting under FOIA. 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, try 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: Develop a framework for negotiation and define the principles and qualifications of personnel that will guide the process.

These are some principles to consider:

- Open communication from beginning to end.
- Transparency from both parties.
- Always maintain professionalism (it's not personal).
- Prepare to start the process as early as possible.
- Fully develop appropriate comparable options.
- Determine whether to use percentage or straight dollar pay increases, if applicable.
- Identify what will resolve disputes for senior members as they are often key to successful negotiations.
- Identify which benefits may be a large part of the conversation.
- Follow through with integrity and continue to have good communication.
- Keep focus on what is best for students.
- Involve appropriating body as necessary

Building the team:

- Gather input into the selection of the team. Seek recommendations from 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, etc.), 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. Factors to consider when selecting team members 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. Team members should have the ability and desire to make the 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 that 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 processes, but input can be sought on specific issues.

Step 3 – Identify and utilize known facts & data to develop the School Division’s bargaining objectives, overall goals, and expected timeframe 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.

A thoughtful communication plan is a critical tool in the negotiation process to ensure the board can maintain credibility, transparency, public confidence, and support. 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 proactive communication plan is essential to an effective and efficient negotiation process.

- The basic communications plan:
 - a. Bargaining process:** Announce board goals, explain the bargaining process, and provide information on future communication vehicles such as: administrator meetings, key communicators’ letter building newsletter, local newspapers, radio stations, television stations, staff newsletter, division website, and social media. 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.
 - c. Time-period after fact-finding report issued:** Key communications should outline main issues, give economic information, make division/board spokesperson(s) available to answer questions, discuss key issues, and provide economic information and comparisons.
 - d. Implementation of final offer:** Communicate accurate and timely information.
 - e. When a settlement is reached:** Notify the key audience members—administrators, news media, employee association members, communicators, parents, and 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, social media, 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. It is also important to 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 and title and provide a phone number for further contact.
- iv. Be phrased in a positive tone. Simply state the key issues in dispute and 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 respective positions of both the board and the union.
- v. Finally, while social media, email, websites, and newspapers tend to be primary targets, 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.

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 statute is permissive; it permits 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, the board should first 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 an employee classification bargaining unit recognized by the board. However, any contract negotiated with the bargaining unit must be extended to all school 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 identify their objectives based on data and facts to be used as their framework 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 “Types 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 possibly legal counsel with expertise in labor relations law. Currently, there is no regulatory framework in Virginia governing the process for recognizing individual bargaining units, which creates a legal minefield for school boards to navigate. Consulting with experienced legal counsel during this process may protect boards from potential litigation. Please see the Collective Bargaining Decision Points section of this document for further guidance.

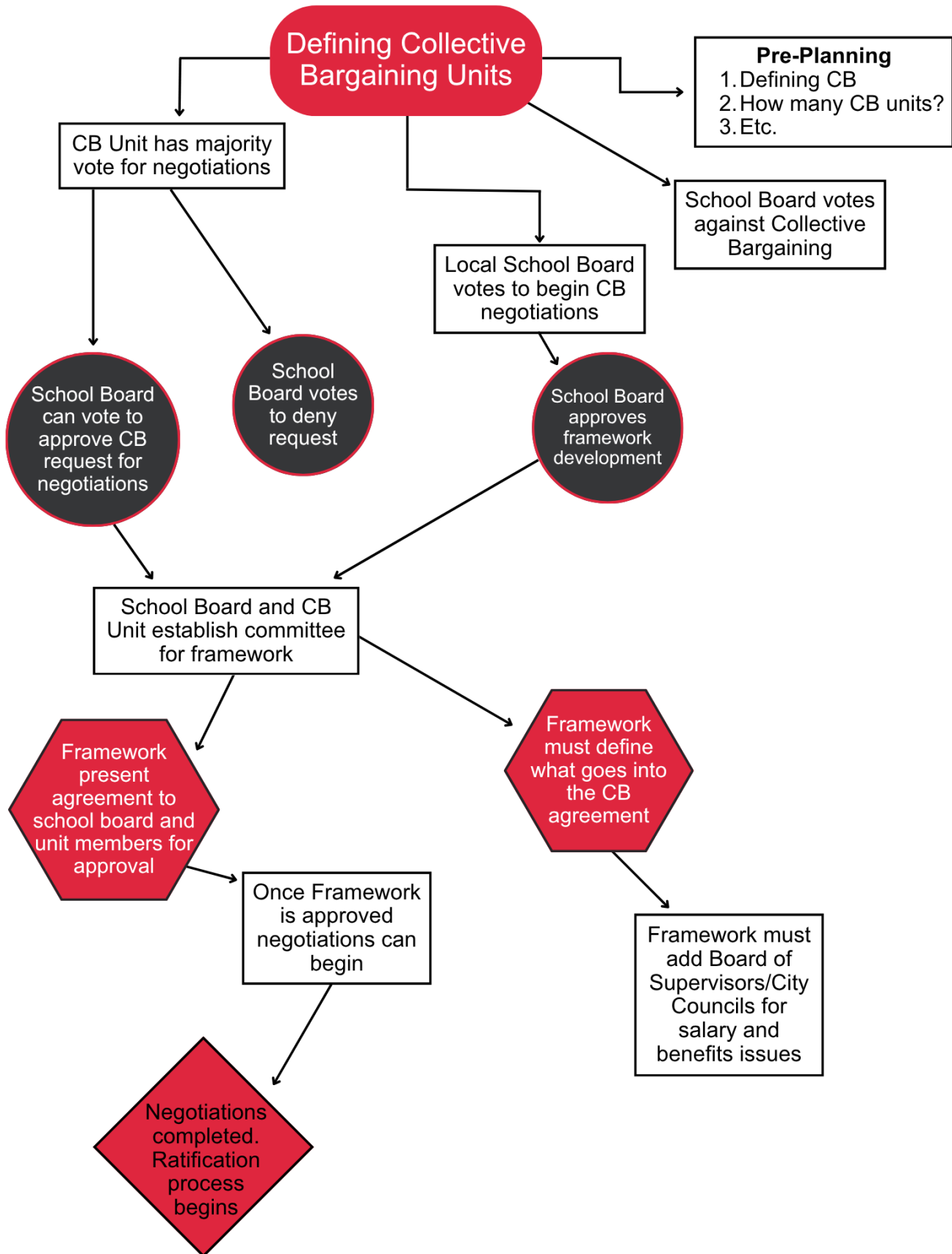
Process Should Boards of Supervisors/City Councils and School Boards Differ on Entering into Collective Bargaining Agreements

The Code of Virginia defines specific areas of responsibility for local political subdivisions. 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 of 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.

Figure 2: Collective Bargaining Flow Chart



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