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HOUSE BILL NO. 335

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 40.1-57.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 40.1 a section numbered 40.1-57.4, relating to independent bargaining by public employees.

Patrons—Freitas, LaRock and Scott, P.A.

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-57.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 4 of Title 40.1 a section numbered 40.1-57.4 as follows:

§ 40.1-57.2. Collective bargaining.

A. As used in this article, unless the context requires a different meaning:

"Bargaining agent" or "bargaining representative" means any employee association that has been certified or designated as the representative of the employees in an appropriate collective bargaining unit to represent the employees in their employment relations with employers.

"Collective bargaining" means the performance of the mutual obligation of the representatives of a public employer and the employee association designated as a bargaining representative to meet and bargain in good faith in an effort to reach written agreements with respect to wages, hours, and terms and conditions of employment.

"Employee association" means any association or organization of employees and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

B. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.

~~B. C.~~ No ordinance or resolution adopted pursuant to subsection ~~A B~~ shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.

~~C. D.~~ For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.

~~D. E.~~ Notwithstanding the provisions of subsection ~~A B~~ regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

§ 40.1-57.4. Independent bargaining.

A. As used in this section:

"Independent bargaining" or "to bargain independently" means to bargain between a public employer and a public employee with respect to rates of pay, wages, hours of employment, adjustment of

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59 grievances, or other terms and conditions of employment without the intervention of an employee
60 association, bargaining agent, or exclusive bargaining representative. "Independent bargaining" does not
61 grant any greater or lesser rights or privileges to public employees who have chosen to represent
62 themselves in a unit with exclusive representation than those public employees in a unit without an
63 exclusive bargaining representative. "Independent bargaining" does not grant any greater or lesser
64 duties or obligations for a public employer to public employees who have chosen to represent
65 themselves in a unit with an exclusive bargaining representative than those duties or obligations the
66 public employer owes to public employees in a unit without an exclusive bargaining representative.

67 "Public employee" means a person holding a position by appointment or employment in the
68 government of the Commonwealth, or any of its political subdivisions, including public schools and any
69 authority, commission, or board, or in any other branch of public service.

70 "Public employer" means any state or local government, government agency, government
71 instrumentality, special district, joint powers authority, public school board, or special purpose
72 organization that employs one or more persons in any capacity.

73 B. For any county, city, or town that has adopted an ordinance or resolution providing for collective
74 bargaining pursuant to § 40.1-57.2, the public employees of that county, city, or town shall have the
75 right to independently bargain in their relations with a public employer rather than participate only in
76 collective bargaining with a bargaining representative or employee association.

77 C. No provision of any agreement between an employee association and a public employer, or any
78 other public policy, shall impose representation by an employee association on public employees who
79 are not members of that association and have chosen to bargain independently. Nothing in any
80 collective bargaining agreement shall limit a public employee's ability to negotiate with his employer or
81 adjust his grievances directly with his public employer, nor shall a resolution of any such negotiation or
82 grievance be controlled or limited by the terms of a collective bargaining agreement.

83 D. There shall only be one bargaining representative designated by the county, city, or town that has
84 passed an ordinance or resolution providing for collective bargaining as the representative of the public
85 employees in an appropriate collective bargaining unit.

86 E. No provision of any agreement between an employee association and a public employer, or any
87 other public policy, shall impose wages or conditions of employment for members of an employee
88 association that are linked or contingent upon wages or conditions of employment to public employees
89 who are not members of the association.