

CITY OF ALEXANDRIA

LABOR RELATIONS ADMINISTRATOR

In the matter of	)	
	)	Decision No. 27002
	)	
American Federation of State,	)	
County and Municipal Employees,	)	
District Council 20, Local 3001,	)	
	)	September 23, 2026
Exclusive Representative,	)	
	)	
-and-	)	
	)	Petition for Unit Clarification
City of Alexandria,	)	
	)	
Employer	)	
	)	
	)	

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Murphy Anderson PLLC
For the Exclusive Representative

Julio Munoz, Jr., Esq.
Assistant County Attorney
For the Employer

DECISION AND ORDER

STATEMENT OF THE CASE

On or about July 9, 2026, the American Federation of State, County and Municipal Employees, District Council 20, Local 3001, (“AFSCME” or “Exclusive Representative” or “Union”) filed a Prohibited Practice Charge (“PPC”) and Petition for Unit Clarification against the City of Alexandria (“City” or “Employer”) alleging violations of the Collective Bargaining Ordinance (“CBO”), Title 2, Chapter 5, Article E, Collective Bargaining, Sections 2-5-67 through 2-5-80, of the Code of the City of Alexandria. The Union also requests bargaining unit clarification related to four job titles: Environmental Health Specialist II; Family Services Specialist II; Probation Officer; and Therapeutic Recreation Leader. The City submitted its Answer to the Prohibited Practice Charge and Petition For Clarification on or about July 20, 2026. The LRA held an informal conference with the parties on August 13, 2026. On or about August 27, 2026, the City requested the LRA extend her consideration of the Petition for Unit Clarification to allow the City to submit additional information concerning the Fair Labor Standards Act (FLSA) status of positions involved and indicating the City intended to file its own Petition for Unit Clarification. On or about August 29, 2026, the LRA directed the City to provide information on or before September 4, 2026 and informed the parties that the Union would have an opportunity to respond to any information provided by the City if the Union so desired and such response was due by September 11, 2026. On or about September 4, 2026, the City filed a Petition for Unit Clarification requesting the removal of an intermittent employee from the Professional bargaining unit. The City also provided information concerning the FLSA status of the three position titles at issue in the Union’s Petition. No response was received from the Union. The prohibited practice charge is addressed separately in LRA Decision No. 27001.

RELEVANT PROVISIONS OF THE CBO

The CBO provides in relevant part:

Section 2-5-67 – Statement of policy.

It is the public policy of the City of Alexandria and the purpose of this article to promote orderly and constructive relationships between the city and its employees subject, however, to the supreme right of the citizens of the city that their government honor guarantees for their health, safety, welfare, and the uninterrupted operations and functions of government. Because unresolved disputes between the city and its employees are detrimental to the public and to city employees, adequate means must be established from their speedy and effective resolution. Within the limitations required by the greater public interest, and recognizing that amicable relationships are required between the city and its employees, the city council has determined that the overall policies set forth here may best be accomplished by (1) granting to city employees the right to organize and choose freely their representatives; (2) permitting the city to negotiate and bargain in good faith with employee organizations representing city employees and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the city, city employees and the public at large.

The council establishes this policy with the intent that city employees enjoy the right to bargain collectively within parameters that promote a government that provides ethical, effective and efficient services that are responsive to the community and focused on improving quality of life through the services of well-qualified staff who value and work to actively promote policies (1) to achieve and maintain diversity, equity and inclusion in city government, and (2) to advance all things reasonably necessary to achieve organizational excellence, while at all time elevating principles of cooperation, ethics, honesty, initiative, and learning.

Section 2-5-68 – Definitions.

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

Administrative employee means an employee whose primary duty is the performance of office or non-manual work directly related to or in furtherance of the management or general business operations and services of the city.

City means the City of Alexandria acting through its city manager or the city manager's designee.

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

(1) an employee of the courts or of any local constitutional officer, i.e., officers elected pursuant to Article VII, Section 4 of the Constitution of Virginia;

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

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

(4) a supervisor, as defined in this section;

(5) an intermittent, temporary or seasonal employee, as defined in this section;

(6) an intern or volunteer;

(7) a member of a board or commission, or other appointee of any public body as defined by state law; or

(8) An attorney whose responsibilities include providing legal advice to the city or performing legal research for the city as a client.

Exclusive bargaining representative and *exclusive bargaining agent* mean the employee organization recognized by the City as the only organization to bargain collectively for all employees in a bargaining unit (as defined in section 2-5-72).

Intermittent employee means irregular or variably recurring, hourly employment that is less than full time in any calendar year.

Professional employee means an employee exempt from the Fair Labor Standards Act and whose primary duty is the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

(2) Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Technical employee means an individual whose work requires a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

Sec. 2-5-70 – City’s Rights and Authority.

(a) This article shall not be deemed in any way to limit or diminish the authority of the city to manage and direct the operations and activities of the city to the fullest extent authorized and permitted by law. Thus, to the extent not inconsistent with a collective bargaining agreement, the city retains exclusive rights including, but not limited to, the rights:

(1) to determine the type and scope of work to be performed by city employees, and the manner in which services are to be provided;

(2) to direct the work of employees and determine the number of employees to perform any work or service;

(3) to hire, promote, transfer, assign, retain, classify and schedule all employees and to suspend, demote, discharge, or take other disciplinary action against employees in accordance with applicable law and regulations;

(4) to relieve employees from duties by layoff or other reduction-in-force due to lack of work, changed working conditions/requirements, budget limitations or for other reasons in the city’s reasonable business judgment and not prohibited by law;

(5) to introduce new, or different services, methods, equipment, or facilities;

(6) to contract for, expand, reduce, sell, transfer, convey, eliminate or change in any way the operations of general government, as well as any department, office or part thereof;

(7) to establish and change standards of behavior or performance, staffing levels, job qualifications and job descriptions;

(8) to determine the kind, type, location and use of city-owned equipment or facilities, provided that the city does not require use of operation of unsafe equipment or the unsafe operation of equipment;

(9) to maintain the efficiency and integrity of the operations entrusted to the city;

(10) to do all things reasonable and necessary to carry out the mission of the city; and

(11) to retain the ability and authority to continue to implement the current administrative regulation in the management of probationary employees.

(b) Notwithstanding the provisions of any collective bargaining agreement, the city retains the right to take whatever actions may be necessary to carry out the city's mission during emergencies.

(c) In accordance with Virginia Code §40.1-57.2 and other applicable law, nothing in this section, any provision of this article or the terms of any collective bargaining agreement shall impair or restrict the authority of the city council to establish its budget and appropriate funds in its discretion.

Sec. 2-5-72 – Bargaining Units.

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

(a) Police: The police employees' bargaining unit shall consist of all sworn uniformed employees of the police department, except those excluded by definition in Sect. 2-5-68;

(b) Fire and Emergency Medical Services: The fire and emergency medical services employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals, except those excluded by definition in Sec. 2-5-68;

(c) Labor & Trades: Those eligible classes of employees associated with maintenance and skilled crafts, i.e., job classes of workers performing duties that result directly in the comfort and convenience of the general public, or contribute to the maintenance of capital assets, land and infrastructure of the city, except those excluded by definition in Sec. 2-5-68; and

(d) Professional: Those non-supervisory and non-managerial employees within the definition of "professional employee" as set forth in Sec. 2-5-68; and

(e) Administrative and Technical: Those non-supervisory and non-managerial employees within the definition of "administrative employee" or who perform office support work and who are not confidential employees excluded from collective bargaining within the definition set forth in Sec. 2-5-68.

Sec. 2-5-73 – Labor Relations Administrator.

(a) A labor relations administrator (LRA or the administrator) shall be appointed by the city manager in the manner set forth in subsection (c) of this section to effectively administer this article as it governs exclusive bargaining representative selection, certification and decertification procedures, labor-management disputes as defined in section 2-5-68, and choice of mediator(s) and/or arbitrator(s) as needs arise under this article or under any collective bargaining agreement.

(h) The administrator shall:

(1) hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue the certification or decertification, or cause these actions to occur.

(2) request from the city or an employee organization, and the city or such organization shall provide, any relevant assistance, service, and data that will enable the administrator to properly carry out duties under this article.

(3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents in proceedings within the responsibility of the administrator under this article.

(4) investigate and attempt to resolve or settle, as provided in Section 2-5-80 – Mediation and Arbitration, charges of either the city or an employee organization engaging in prohibited practices as defined in this article. However, if the city and a certified representative have negotiated a labor-management dispute resolution procedure, the administrator must defer to that procedure to resolve any dispute that properly may be submitted to the procedure, absent a showing that the deferral results in the application of principles contrary to this article. The administrator must defer to state procedures in any matter governed by the Law-Enforcement Officers' or Firefighters and Emergency Medical Technicians' Bill of Rights set forth in the Virginia Code, or to any other such procedure dictated by state statute.

(5) determine unresolved issues of employee inclusion in or exclusion from the bargaining units permitted under this article.

(6) obtain any necessary support services and make necessary expenditures in the performance of duties, subject to appropriation.

(7) determine any issue regarding the negotiability of any collective bargaining proposal.

(8) Exercise any other powers and perform any other duties and functions specified in this article of an administrative nature.

Sec. 2-5-77 – Right Accompanying Exclusive Representation.

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

(a) To speak on behalf of all members of the unit and shall be responsible for representing the interests of all members of the bargaining unit without discrimination and without regard to employee organization membership; and

(b) To meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this article, may be the subject of collective bargaining, in an effort to reach an agreement, subject to the tentative approval of the city manager or the city manager's designee with responsibility for the employees in the bargaining unit.

(c) To meet with bargaining unit employees on the premises of the city in non-secure areas during times when the employees are on break or in a non-duty status. Any other employee organization that has submitted a petition and established a valid question concerning representation of the bargaining unit shall also be permitted to meet with bargaining unit employees with the same limitations. This subsection shall not restrict an exclusive bargaining agent and the city from negotiating for greater access to employees by the exclusive bargaining agent as provision of a collective bargaining agreement.

(d) To meet with newly hired employees, without charge to the pay or leave time of any of the employees for a maximum of 30 minutes, within 30 calendar days from the date of hire, during new employee orientations, or if the city fails to conduct new employee orientation, at individual or group meetings.

(e) To be the only labor organization eligible to receive from the city amounts deducted from the pay of employees as authorized by written assignment of the employees, for the payment of regular and periodic dues to the exclusive bargaining agent, unless two exclusive bargaining agents of city employees agree that they can both receive deductions from the same employee. Any such authorization may be revoked in accordance with the terms of the authorization which shall provide a period of irrevocability of not more than one year. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.), including, without limitation, electronic authorizations and voice authorizations, shall be valid for employee's authorizations for payroll deductions and authorization for representation for purposes of a petition filed by an employee organization for exclusive representation.

(f) To be represented at any formal discussions between one or more representatives of the city and one or more employees in the bargaining unit or their representatives concerning (1) any matter that is within the scope of collective bargaining as set forth in the definition of collective bargaining (see Section 2-5-68); or (2) any examination of bargaining unit employees by a representative of the city in connection with an investigation if the employee reasonably believes that the

examination involves matters covered by any collective bargaining agreement then in effect, and the employee requests representation.

(g) Notwithstanding any other provision in this section, an individual employee may present a personal complaint, concern or question at any time to the city without the intervention of an employee organization, provided that any such organization that is recognized by the city as the exclusive bargaining agent for the bargaining unit in which the employee is a member is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the matter and that any adjustment made shall not be inconsistent with the terms of any applicable collective bargaining agreement. Such employee or employees who utilize this avenue of presenting personal complains, concerns or questions to the city shall not do so under the name, or by representation, of an employee organization.

Sec. 2-5-83 – Time Limits.

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

BACKGROUND FACTS

AFSCME was certified as the exclusive representative of the Administrative and Technical bargaining unit on or about January 2, 2025. (See LRA Case No. 24-RC-01, Certification No. 004). On or about March 11, 2026, AFSCME was certified as the exclusive representative of the Professional bargaining unit. (See LRA Decision No. 26001). Prior to the secret ballot election for the Professional bargaining unit, the City and AFSCME agreed on a list of those employees included in the unit.

On or about June 15, 2026, Ernesto Tamayo (“Tamayo”), the City’s Chief Labor Relations Officer (“CLRO”), emailed the Union stating:

This notice is to advise AFSCME Local 3001 that the following twelve (12) employees were previously identified as potentially eligible for inclusion in the Professionals bargaining unit.

Upon further examination of the applicable FLSA status governing each position, the City has determined that these employees are not eligible for representation in the Professionals bargaining unit.

Eligibility for inclusion in the Professionals bargaining unit is limited to positions designated as FLSA-exempt. Each of the positions listed below carries an FLSA non-exempt designation. Accordingly, the incumbents do not meet the unit eligibility criteria and will not be included in the Professionals bargaining unit.

The email identified 12 employees in four job titles, Environmental Health Specialist II (one employee); Family Services Specialist II (one employee); Probation Officer (two employees); and Therapeutic Recreation Leader (eight employees).

On or about June 18, 2026, the Union emailed Tamayo asking whether or not the City intended to include the twelve employees in the Administrative & Technical unit and, if not, to provide a basis for exclusion. The Union requested a response by June 22, 2026. The City did not respond to the Union's message prior to the Union's filing of the Prohibited Practice Charge and Petition for Unit Clarification on or about July 9, 2026. Concerning the Petition for Unit Clarification, the Union requests "that the LRA clarify that the employee positions ... if not appropriately placed in the Professional bargaining unit, are included in the Administrative and Technical unit and direct the City to immediately and retroactively include all such positions in the Administrative and Technical unit and make employees whole for any losses they may have incurred based on their prior misclassification."

On or about July 13, 2026, Tamayo sent the Union a letter concerning "Professional Bargaining Unit Eligibility Determinations – Twelve Employees Identified June 15, 2026." The letter stated, in relevant part:

I write in follow-up to the City's June 15, 2026 notice regarding the bargaining unit eligibility of the twelve employees identified in that notice, and to your June 18, 2026 correspondence requesting the City's position on their unit placement.

Since issuing the June 15 notice, the Office of Labor Relations has continued to examine the basis for the FLSA classification determinations underlying that notice. Having identified questions regarding the accuracy of those determinations, the City has asked the Department of Human Resources to conduct a review of the FLSA classification applicable to each of the twelve positions at issue.

Pending the outcome of that review, the twelve employees identified in the June 15, 2026 notice will continue to be treated as members of the Professionals bargaining unit certified in LRA Decision No. 26001, consistent with their status prior to that notice. The City is not removing these employees from the Professionals bargaining unit.

Should the Department of Human Resources' review confirm that the FLSA non-exempt designations identified in the June 15 notice are accurate, the City will file a petition for unit clarification with the Labor Relations Administrator, in accordance with LRA Rule 1500.7, to resolve the appropriate bargaining unit placement for the affected positions. The City does not intend to make any further change to the affected employees' bargaining unit status outside of that process.

We will provide a further update once the Department of Human Resources' review is complete.

On or about September 4, 2026, the City informed the Union and the LRA of the outcome of the FLSA determinations for three of the four position titles following the review of Segal, the compensation and human resources consulting firm whom the City engaged to conduct the review. The review determined the FLSA status of the Environmental Health Specialist II position as exempt. The review determined the FLSA status of the Probation Officer and Therapeutic Recreation Leader as non-exempt. Concerning the Family Services Specialist II position, the City filed a Petition for Clarification asserting the incumbent employee, Joseph Ernest (“Ernest”) is an intermittent employee as defined by Sec. 2-5-68, and not appropriately included in any bargaining unit per the CBO.

POSTIONS OF THE PARTIES

As part of its Petition for Unit Clarification, the Union:

requests that the LRA clarify that the employee positions set forth in paragraph 6, if not appropriately placed in the Professional bargaining unit, are included in the Administrative and Technical unit and direct the City to immediately and retroactively include all such positions in the Administrative and Technical unit and make employees whole for any losses they may have incurred based on their prior misclassification.

(Union Petition at 6). In support of its request, the Union states, in part:

Article 17 of the Administrative and Technical collective bargaining agreement provides that bargaining unit employees are entitled to a three percent pay increase effective the first full pay period commencing on or after July 1, 2026, and eligible employees are entitled to a one-time longevity bonus starting at the same time.

The twelve employees identified by the City as being excluded from the Professional bargaining unit have not been paid the pay increase or the longevity bonus, to the extent they may be eligible, that is provided for in the Administrative and technical collective bargaining agreement.

(Union Petition at 4).

In its Answer, the City asserts, in part: “The twelve (12) bargaining unit members will remain within the Professionals bargaining unit and therefore are not eligible for any wage benefits provided for in the Administrative and Technical collective bargaining agreement.” (City Answer at 3). Concerning the City’s Petition for Clarification, the City asserts Ernest is an intermittent employee and not eligible to be included in any bargaining unit. In support of its position, the City contends that Ernest “is not assigned a minimum or maximum number of hours per week and only works on an at-will, as needed basis,” accepted employment in his current intermittent position in 2017, and though Ernest FLSA status was changed from exempt to non-exempt in 2020, Ernest continued to work irregular or variably recurring hours. (City Petition at 2).

ANALYSIS AND DECISION

The Union's Petition for Unit Clarification requests the LRA determine the bargaining unit status of the four position titles at issue: Environmental Health Specialist II, Family Services Specialist II, Probation Officer, and Therapeutic Recreation Leader. The City's Petition for Clarification requests the LRA remove Ernest, an employee classified as a Family Services Specialist II, from any bargaining unit. The LRA will consider these requests in light of the relevant provisions of the CBO.

The CBO establishes the Professional bargaining unit as "those non-supervisory and non-managerial employees within the definition of 'professional employee' as set forth in Sec. 2-5-68. Section 2-5-68 defines "professional employee" as an employee exempt from the Fair Labor Standards Act and whose primary duty is the performance of work: (1) Requiring Knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (2) Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor." The City engaged a consultant to review the FLSA status of at least three of the four positions at issue. The consultant determined that the position of Environmental Health Specialist II was FLSA exempt. This means the position of Environmental Health Specialist II (and the incumbent employee occupying said position) will remain in the Professional bargaining unit, the bargaining unit which the City and the Union previously agreed was appropriate.

The City's consultant determined that the positions of Probation Officer (two incumbent employees) and Therapeutic Recreation Leader (eight employees) are FLSA non-exempt. This designation means that these positions and the ten incumbent employees assigned to said positions cannot remain in the Professional bargaining unit because, by definition, an employee must be exempt in order to be considered a professional employee. The CBO establishes the Administrative and Technical bargaining unit as "those non-supervisory and non-managerial employees within the definition of 'administrative employee' or who perform office support work and who are not confidential employees excluded from collective bargaining within the definition set forth in Sec. 2-5-68." Section 2-5-68 defines "administrative employee" as "an employee whose primary duty is the performance of office or non-manual work directly related to or in furtherance of the management or general business operations and services of the city." The Probation Officer and Therapeutic Recreation Leader positions (and the ten incumbent employees occupying said position) will be placed in the Administrative and Technical bargaining unit. Because these positions were classified as nonexempt at the time of the election involving the Professional bargaining unit and because it was the City's oversight in having suggested and agreed to the inclusion of non-exempt positions in the Professional bargaining unit, this change will be retroactive to July 1, 2026 and the affected incumbent employees will be entitled to whatever retroactive compensation and benefits they would have otherwise been entitled to receive under the collective bargaining agreement pertaining to the Administrative and Technical bargaining unit.

As to the position of Family Specialist II, which, according to the City, it determined was FLSA non-exempt in 2020, this position also cannot remain in the Professional bargaining unit. The LRA likewise determines that this position belongs in the Administrative & Technical bargaining unit. However, there is only one incumbent Family Specialist II, Ernest. Ernest was hired and has continued to function in a role which has no minimum or maximum number of scheduled hours per week. Sec. 2-5-68 of the CBO defines intermittent employee as “irregular or variably recurring, hourly employment that is less than full time in any calendar year.” The CBO excludes intermittent employees from inclusion in any bargaining unit. Therefore, given the uncontested assertions of the City as to the nature of Ernest employment, Ernest is removed from the Professional bargaining unit and will not be assigned to any bargaining unit so long as Ernest remains an intermittent employee.

ORDER

By virtue of and pursuant to the powers vested in the Labor Relations Administrator codified at Title 23, Chapter 5, Article E, Collective Bargaining, Sections 2-5-67 through 2-5-80 of the Code of the City of Alexandria, it is hereby ordered:

1. The position of Environmental Health Specialist II and the incumbent employee occupying said position shall remain in the Professional bargaining unit.
2. The positions of Family Specialist II, Probation Officer, and Therapeutic Recreation Leader are assigned to the Administrative and Technical bargaining unit. The incumbent employees occupying the positions of Probation Officer and Therapeutic Recreation Leader are assigned to the Administrative and Technical bargaining unit retroactive to July 1, 2026. The City is ordered to make these incumbents whole for any lost compensation and benefits to which they would otherwise have been entitled.
3. The incumbent employee assigned to the position of Family Specialist II is an intermittent employee and, therefore, removed from the Professional bargaining unit and not included in any bargaining unit.

BY:

CITY OF ALEXANDRIA LABOR RELATIONS ADMINISTRATOR

Sarah Miller Espinosa, J.D.

September 23, 2026