V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FAIRFAX WORKERS COALTION 3900 Jermantown Road Suite 420 Fairfax, VA 22030 And [redacted] Plaintiffs, v. FAIRFAX COUNTY Serve: Elizabeth Teare, Esq. County Attorney Suite 549 12000 Government Center Pkwy Fairfax, VA 22035 And Sarah Miller Espinosa, J.D. Labor Relations Administrator for Fairfax County D/b/a SME Dispute Resolution, LLC 16 Shermans Ridge Road Stafford, VA 22554 Defendants.	Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF AND ATTORNEYS' FEES

COMES NOW the plaintiffs, Fairfax Workers Coalition, and thirteen employees of Fairfax County Government, [redacted], by and through their undersigned counsel, and ask this Court to enjoin Defendants Fairfax County and Sarah Miller Espinosa, the Labor Relations Administrator for Fairfax County, from conducting an election for the Exclusive Collective Bargaining Representative for the General County Bargaining Unit of Fairfax County employees, to strike down as unconstitutional portions of the statutory language of the County's Collective Bargaining Ordinance and the current application thereof, and for Breach of Contract, for the reasons stated herein.

PARTIES

1. Plaintiff Fairfax Workers Coalition ("FWC") is a union of Fairfax County Government employees which is independent of any national or international union. Founded in April 2017, FWC is organized by Fairfax County employees for Fairfax County Employees. FWC wishes to present itself for election as the exclusive collective bargaining representative for General County employees.

2. Plaintiffs [redacted] are employees of Fairfax County Government, in the General County collective bargaining unit, who wish to vote for FWC to be the exclusive bargaining representative. They further do not support SEIU 512 in its campaign to be the exclusive bargaining

representative but believe they are being counted by Defendant Espinosa as supportive of SEIU for purposes of determining certification to call an election.

3. Defendant Fairfax County (the "County") is a municipal government in Virginia.

4. Defendant Sarah Miller Espinosa, doing business as SME Dispute Resolution, LLC, is a contractor to the County serving as its Labor Relations Administrator ("LRA").

JURISDICTION AND VENUE

5. This Court has jurisdiction over the Defendants with respect to this action pursuant to Virginia Code § 8.01-328.1(3) because the Defendants' acts were conducted in Fairfax County in the Commonwealth of Virginia.

6. Venue is properly in this Court pursuant to Virginia Code § 8.01-262(3) because the actions upon which the Complaint are based took place in Fairfax County, Va.

FACTUAL ALLEGATIONS

Background

7. In 1977, the last public employee collective bargaining agreement expired in Virginia, consistent with the direction of the Supreme Court of Virginia.

8. In 2021, the Virginia General Assembly passed, and the Governor signed, amendments to the Code of Virginia permitting the resumption of Collective Bargaining for Public Employees. Under Va. Code §40.1-57.2, effective May 1, 2021, collective bargaining for public employees was permitted again in Virginia if a local government unit adopted an ordinance establishing such collective bargaining, as long as the ordinance provided a procedure for the certification of exclusive bargaining unit representatives, among other provisions.

9. Fairfax County adopted an ordinance establishing collective bargaining, which was effective October 19, 2021 (the "Ordinance"). A copy of the Ordinance is attached to this Complaint as Exhibit A.

10. Under the Ordinance, the County established three collective bargaining units: "Police," for sworn uniformed police officers; "Fire and Emergency Medical Services," for uniformed fire employees; and "General County," for everyone else. *See Ordinance* §3-10-6.

11. The Ordinance also established a "labor relations administrator" ("LRA") to be "appointed by the County Executive …" in accordance with a procedure in which employee organizations with at least 300 members who notified the County Executive of their interest in representing bargaining units under the Ordinance ("Interested Organizations") were involved. *See Ordinance* §3-10-7(d).

12. Under the Ordinance, the LRA was tasked with holding and conducting elections for certification of exclusive bargaining representatives in the three collective bargaining units. *Ordinance* §3-10-7(j).

13. The LRA was also given the authority to "determine disputed issues of employee inclusion in or exclusion from the bargaining units under this Article." *Id.* at §3-10-7(5).

14. The Ordinance further provides that an organization would become the exclusive bargaining agent or representative of all employees in a bargaining unit if it won a certification election with a majority of the employees voting in the election. *Id.* at §3-10-8(a).

15. To trigger an election for an exclusive collective bargaining representative in a bargaining unit, an employee organization must present a "Showing of Interest" of at least thirty percent (30%) of the employees in the bargaining unit supporting that organization. *Id.* at §3-10-9(a). At that point, any other Interested Organization can join in the election by submitting its own Showing of Interest by 30% of the employees in the same bargaining unit, at which point it would become an "intervening organization." *Id.* at §3-10-9(b).

16. The Showing of Interest must consist of "administratively acceptable evidence" which is defined as:

> Current employee group membership cards; a current membership roster; evidence of a currently effective dues payment; or other current evidence of bargaining unit employees' desire to be represented by an employee organization for collective bargaining purposes.

Id. at §3-10-8(c).

17. The Ordinance further provides that "the determination by the LRA of the sufficiency of a showing of support for a representation election shall not be subject to challenge by any person or employee organization or by the County." *Id.*

18. Following the passage of the Ordinance, the FWC and the Service Employees Internation Union, Local 512 ("SEIU") both notified the County that they were Interested Organizations for the General County bargaining unit under the Ordinance and they were accepted by the County as such.

19. After a selection process which included input from Interested Organizations in all three bargaining units, the County issued a contract with Espinosa to serve a four-year term as LRA. A copy of the contract is attached as Exhibit B.

20. The LRA engaged in further consultation with Interested Organizations and on August 30, 2022, adopted her "Procedures and Rules Related to Chapter 3 of the Code of the County of Fairfax Virginia, Article 10, Collective Bargaining …" (the "LRA Rules"). A copy of the LRA Rules is attached as Exhibit C.

21. The LRA Rules were not endorsed by the Board of Supervisors and did not go through any legislative process or review before being adopted by the LRA. In fact, no county employee approved the LRA Rules (the LRA being a contractor, and not an employee, of the County).

22. The LRA Rules set forth her procedures for a "Petitioning Employee Organization" to submit a petition of Administratively Acceptable Evidence to call for an election to certify a collective bargaining representative for any of the bargaining units. *See LRA Rules*, Section II.

23. The LRA Rules do not contain a definition of Administratively Acceptable Evidence nor outline any process by which the LRA will determine what constitutes Administratively Acceptable Evidence.

24. The LRA Rules further state that the LRA "will not share the administratively acceptable evidence provided by the Employee Organization; such evidence will be kept confidential." *LRA Rules*, Section II, p. 3.

25. The LRA Rules provide that the LRA will compare the Initial Bargaining Unit List (provided by the County) with the Administratively Acceptable Evidence submitted by the petitioning organization to determine whether the organization met the 30% threshold necessary to certify an election. *Id.* at p.4.

26. The LRA Rules further state that after the LRA has determined whether one or more organizations have submitted a sufficient Statement of Interest (30% of the bargaining unit), then the LRA, the organization(s) submitting a sufficient Statement of Interest, and the County will meet to set the election and election rules. *Id.* at p. 5.

The Upcoming General County Certification Election

27. On or about December 31, 2024, SEIU filed a petition seeking an election for certification as the General County Collective Bargaining Representative.

28. The initial SEIU petition failed to meet the required 30% threshold.

29. The SEIU then submitted additional "administratively acceptable evidence."

30. On January 21, 2025, the LRA issued a determination that the SEIU petition "met the requirements of the Fairfax County Collective Bargaining Ordinance and demonstrated a showing of interest."

31. The LRA then issued a "Notice of Petition and Opportunity to Intervene" in response to her determination that the SEIU petition sufficed to trigger an election and set February 11, 2025, as the date for any other organization to submit a petition to be an "Intervening Organization" for the election.

32. On February 11, 2025, FWC submitted a petition to be an Intervening Organization.

33. After an initial review, the LRA informed Plaintiff David Lyons, the Executive Director of FWC, that over 400 employees on the FWC petition would not be accepted by the LRA. Given that the FWC petition only contained about 250 names that were not on the FWC's payroll dues list, the LRA's response necessarily meant that she had rejected hundreds the FWC members.

34. The only plausible explanation for the LRA's action was that well over 200 FWC members' names also appeared on the SEIU petition and were being counted only for SEIU, as required by Section 3-10-9(b) of the *Ordinance.* That provision of the *Ordinance* requires the LRA to count any name that appears on more than one petition only on the first petition submitted.

35. FWC was not able to secure additional petition signatures to qualify for the certification election ballot.

36. An open question exists whether SEIU would have met the SEIU's threshold without counting the hundreds of names on the SEIU submission that were FWC members or supporters, but given the SEIU's failure to meet the 30% threshold with its initial submission, it is likely that the SEIU would not, in fact, have qualified for and election without using the names of FWC members and supporters.

37. Plaintiffs believe the LRA is preparing to schedule an election for the exclusive bargaining representative for General County employees for no later than March 17, 2025, in accordance with the deadlines in the Ordinance and the LRA Rules.

Objections to Inclusion on the SEIU Petition

38. Upon information and belief, the SEIU petition contained names of employees who were former, but not current, SEIU members; employees who had signed vague SEIU "interest" cards that did not clearly state that the signature meant that the employee was supporting the SEIU in a petition for election as the collective bargaining representative; signatures procured at social events, one of which involved getting a free sandwich if you signed a card; employees responding orally to telephone messages asking for support which may have not clearly stated that an affirmative response would be used to support a petition; and other documentation.

39. Several employees who are "former" SEIU members in that they had resigned, or notified the SEIU of their desire to resign, continued to receive communications from the SEIU after resignation, suggesting the SEIU kept them on its membership list and, presumably, including their names in the SEIU petition.

40. Upon learning that several hundred employee names may have appeared on both the SEIU petition and the FWC petition, but were being counted on only the SEIU petition, a number of employees sought information from the LRA on whether they fell into that category.

41. Plaintiffs [redacted] are all former SEIU members, who quit SEIU years ago, and support FWC now. Other non-plaintiff General County employees fall into the same category.

42. Upon hearing that the LRA had rejected several hundred FWC names, these Plaintiffs and others contacted the LRA to ask whether they were on the SEIU list and to state that they did not wish to be counted as supporting SEIU.

43. In response to the inquiries of the Plaintiffs above, the LRA refused to answer the employees' questions about whether they were on the SEIU list, citing the "confidentiality" of the petition under the LRA Rules.

44. Several of the Plaintiffs and other employees had contacted SEIU numerous times to state that they no longer supported SEIU, but they continued to receive SEIU communications, leading them to believe that SEIU is still counting them as members.

Deletion of Civilian Fire Department Employees from the Bargaining Unit

45. When the International Association of Fire Fighters ("IAFF") filed a petition which was accepted to trigger a certification for the Fire and Emergency Medical Services bargaining unit, which by Ordinance consists of uniformed fire fighters and medical personnel, the IAFF, LRA, and County agreed to move the civilian employees of the Fire Department out of the General County Bargaining Unit (where they belonged under the Ordinance) and into the Fire and Emergency Medical Services unit (where they did not belong because they are not uniformed members).

46. Some FWC members were among those civilian Fire and Rescue employees who were involuntarily moved out of the General County bargaining unit and into the Fire and Emergency Medical Services bargaining unit. Once the IAFF was election as the exclusive bargaining representative for Fire and Emergency Medical Services, these

FWC members could no longer be served by FWC in grievances and other county business and were required to be represented by the IAFF.

47. Due to the County and LRA's action in changing the bargaining units in a way not consistent with the Ordinance, FWC lost members and supporters who could support its petition to represent General County employees.

FOIA Requests

48. Charles Smith, an attorney who performs some legal work for FWC, submitted a FOIA request to the County seeking copies of the SEIU petition, among other documents. The County FOIA Office responded on February 3, 2025, by stating, "it was confirmed that the LRA is in possession of records that may be responsive to your request. Please be advised that the LRA is neither an employee of nor the agency of Fairfax County. No records responsive to your request are in the custody of Fairfax County Government." *See Smith FOIA Response* at Feb. 2 thread (Exhibit D).

49. That same day, Plaintiff [redacted] made a similar FOIA request, asking for the SEIU submission to the LRA. The County FOIA officer similarly stated that the information was not in the possession of Fairfax County. *See Lyons FOIA Response* (Exhibit E).

50. A week later, however, the County further responded to Smith that it was withholding 604 pages as confidential personnel records. *See Smith FOIA Response* at February 11 thread. There is no indication in the thread that these 604 pages had been created between February 3 and 11. Instead, the County was now claiming that records

that a third party (SEIU) gave to a County contractor (the LRA) were County personnel records.

51. Other general county employees filed their own FOIA requests with the County requesting documents showing whether they were included on the SEIU list. At least one received a response stating that the LRA is no longer in possession of the SEIU petition documents. That response suggests that the LRA returned to the SEIU its petition and "administratively acceptable evidence" in order to avoid having to produce it pursuant to a FOIA request or subpoena.

The Current Rules and Application Thereof Violate the Plaintiffs' Rights

52. SEIU's ability to participate in the election, and indeed the holding of the election itself, may be based on the LRA counting as SEIU supporters Plaintiffs who have refuted any connection to SEIU for collective bargaining purposes.

53. FWC's ability to participate in a future election, in which it may have enough support to meet the 30% threshold to get on the ballot, will permanently disappear if the SEIU is elected using FWC supporters and becomes the exclusive collective bargaining representative.

54. The Ordinance's prohibition on review of the LRA's decision on which petitions to accept makes it impossible to protect the individual plaintiffs' rights to free association.

55. The individual Plaintiffs' right to be associated with a labor organization and to have the opportunity to have that organization compete to be the exclusive bargaining representative has been taken away, and will disappear permanently, if the election

occurs. This right, conferred by state law, cannot be taken away without notice and an opportunity to be heard. The LRA and the County have deprived the individual plaintiffs of their due process rights concerning their association with FWC and participation in the collective bargaining process.

56. The First Amendment rights of the individual plaintiffs to associate with the organization of their choice – in this case, FWC – have been violated by the LRA's actions, which were taken in the name of the County as the LRA is running the election for the County.

57. FWC is unable to compete in the upcoming election, in part, because the LRA would not accept hundreds of its members off its own membership rolls because of an arbitrary provision in the Ordinance establishing a "first across the line" rule, with no outside review, for collective bargaining petitions.

COUNT I
("Administratively Acceptable Evidence" Terminology is Unconstitutionally Vague)
(All Plaintiffs Against Both Defendants)

58. Plaintiffs restate and reallege the allegations contained in the Factual Allegations section of the Complaint as if fully set forth herein.

59. The term "Administratively Acceptable Evidence" as defined in the Ordinance is unconstitutionally vague. The term on its face is open to far too many interpretations. "Other current evidence of bargaining unit employees' desire to be represented by an employee representative for collective bargaining purposes" can encompass everything from a card signed in exchange for a free sandwich to almost anything else. The term "current" membership list is too vague if it allows an organization such as SEIU to keep

someone on their membership list even after that person has asked to be taken off, as is apparently the case with a dozen individual plaintiffs (who are only a cross-section of what is a much wider group).

60. The term "current members" is vague, at least in application, if the SEIU and other groups can count a former member as a current one simply by refusing to process a resignation, and there is no process to refuting that designation with the LRA.

61. Candidates for elected government office submit petitions which carry the name of the office and the date of the election, making it clear to those signing, what they are signing. *See* Exhibit F. The County and LRA's procedures do not do so.

62. By not permitting outside review of the LRA's decisions on what is accepted as Administratively Acceptable Evidence, the ordinance allows the definition to include anything, as there is no check on the LRA's power to abuse the system.

63. By not defining "Administratively Acceptable Evidence" in more detail, or permitting outside review of her decisions, the LRA also used a vague and indeed arbitrary and capricious standard to make decisions on which organizations can appear on the ballot for a collective bargaining election.

64. When the Ordinance dictated that, if a person's name appeared on both organization's petitions, the name would be accepted on the petition first filed and denied on later petitions, that was an arbitrary and capricious use of overbroad authority and is also evidence that the definition of Administratively Acceptable Evidence is unconstitutionally vague.

65. The use of an unconstitutionally vague term "Administratively Admissible Evidence" denied FWC the ability to compete in a fair election with SEIU.

66. The use of an unconstitutionally vague term "Administratively Admissible Evidence" allowed SEIU to secure access to the ballot for a collective bargaining election to which they were otherwise not entitled, thus denying FWC the ability to compete in a fair election with SEIU at a later date when FWC would be able to submit the required number of signatures.

67. The use of unduly vague terminology is a violation of the Virginia and United States Constitutions.

COUNT II
(Deprivation of Property Interest and First Amendment Rights Without Due Process)
(Individual Plaintiffs Against Fairfax County)

68. Plaintiffs restate and reallege the allegations contained in the Factual Allegations section of the Complaint as if fully set forth herein.

69. The Individual Plaintiffs were granted a property interest in their right to support and vote for the organization of their choice in a collective bargaining election through the state law re-establishing collective bargaining and the Ordinance, passed under state authority, enabling that right for Fairfax County employees.

70. The Individual Plaintiffs had the right under the First Amendment to determine for themselves which organization could use their names on a petition for certification of an election for collective bargaining.

71. The rights of the individual plaintiffs, who wanted to be counted as supporting FWC but who instead may have been counted as supporting SEIU, were taken away

without notice and the opportunity to be heard, thus depriving the Individual Plaintiffs of their due process rights under the Fourteenth Amendment, also known as *Loudermill* rights.

COUNT III
(Breach of Contract)
(All Plaintiffs Against LRA)

72. Plaintiffs restate and reallege the allegations contained in the Factual Allegations section of the Complaint as if fully set forth herein.

73. The LRA contract is a contract between the County and LRA for the conduct of collective bargaining rights, including elections.

74. Implied in that contract is a right of good faith and fair dealing.

75. Stated in that contract is the requirement of the LRA to conduct herself in accordance with the law, which would include the Virginia and United States Constitutions.

76. The FWC and the individual plaintiffs are third party beneficiaries of that contract, because the purpose of the contract is to provide for a mechanism for a fair election for collective bargaining representatives, which respects the rights of all employees and interested organizations to compete and participate in a fair electoral process.

77. The LRA breached that contract by counting FWC supporters as SEIU supporters simply because the persons at issue appeared on both petitions and the SEIU petition was filed first.

78. The LRA breached that contract by counting people who were no longer *current* SEIU members and supporters, by refusing to acknowledge such person's statements of non-support of SEIU.

79. The individual plaintiffs were irreparably harmed by the LRA's breach of contract because they were denied the ability to support the organization of their choice for exclusive bargaining representative.

80. FWC was irreparably harmed when its members were counted as supporting SEIU, instead of FWC, by the LRA, who applied a vague and unfair interpretation to the facts and law.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated about, Plaintiffs demand judgment against the Defendants Fairfax County and Sarah Miller Espinosa d/b/a SME Dispute Resolution, LLC as Labor Relations Administrator and request the following relief:

(1) A temporary injunction barring the County and Labor Relations Administrator from conducting an election for exclusive collective bargaining representative for General County employees during the pendency of this action;

(2) A declaration that the portion of the Ordinance using the term "Administratively Acceptable Evidence" is invalid as it is unconstitutionally vague, with a permanent injunction enjoining its use,

(3) A declaration that the portion of the Ordinance prohibiting review of the decisions of the Labor Relations Administrator regarding "Administratively Acceptable Evidence" is unconstitutional in its application as it permits arbitrary and capricious actions by a government agent without opportunity for review, with a permanent injunction enjoining its use;

(4) A permanent injunction barring the conduct of an election for exclusive collective bargaining representative for General County employees until such time as the Ordinance is amended to correct these errors;

(5) An award of attorneys' fees against the Defendants pursuant to 42 U.S.C. §1988(b); and

(6) Plaintiffs' costs of this action.

Respectfully submitted,

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