

IEERB Procedures under SEA 575

Presented by Michael W. McConnell,
Ed. D., IEERB Chairman

To
Indiana School Boards Academy

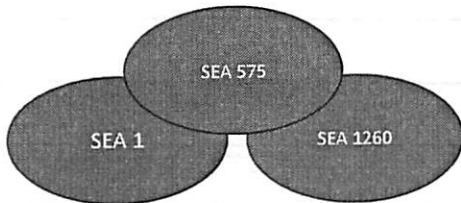
July 12, 2011

IEERB Background

Function
And
Authority

INTRODUCTION TO SEA 575

Numerous changes in the laws



New Working Relationship with DOE

- Neutrality on cases
- Collaboration on Education Reform
- DOE's FAQs

Changes on IEERB Functions and Bargaining

- Committees
- Scope of Contracts/Subjects of Bargaining
 - Salary and wage-related fringe benefits, including paid time off
 - SEA 1
 - Other subjects are prohibited
 - Terms of contract

Changes on IEERB Functions and Bargaining (Continued)

- Subjects of Discussion
 - Discussables can't be bargained
 - No longer discussing Working Conditions!
 - Discussables now include:
 - Evaluation
 - Safety Issues
 - Hours (thus, no longer bargained)

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Deficit Financing

SEA 575 defines as:

"Deficit financing' for a budget year means actual expenditures exceeding the employer's current year actual general fund revenue."

And further states:

"It is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue."

- Collective Bargaining Initiation and Certification
- Collective Bargaining and Mediation Timelines/Deadlines
 - Certification of General Fund revenue by DOE
 - Board Appoints Mediator
 - Mediation Requirements

Fact Finding

❖ Initiation and Requirements

- Board shall appoint a fact finder within 15 days after the end of mediation.
- Requirements

❖ Appeals

Frivolous Unfair Practice Complaints

Pursuant to SEA 575, if a complaint is found to be frivolous, the party that filed the complaint is liable for costs and attorney fees.

New Processes

- Templates for Fact Finders
- Training topics
- Hearing process
- Report to Include Findings of Fact and Conclusions of Law
- Recruitment of Ad Hoc Panelists

IEERB Procedures:

Tips for Practitioners

Updated July 1, 2011

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Introduction and Framework

- This document was produced by the Indiana Education Employment Relations Board to assist our customers in understanding the agency's operations under Indiana Code 20-29. It is not binding upon IEERB, nor is it legal advice. For further assistance, please visit the IEERB website, www.in.gov/ieerb, or feel free to contact an IEERB staff member.
- Law and Rules: IEERB operates under Indiana Code 20-29 and its promulgated rules at 560 Indiana Administrative Code. Please note that, as of mid-2011, the promulgated rules are in the process of revision to adhere to statutory amendments passed in the 2011 legislative session. These provisions will be discussed in detail and can be found in Appendix D. This document is not a substitute for nor does it supersede these laws and rules.

Initiation of Bargaining

Contract bargaining may not formally begin before August 1st of the 1st year of a State budget biennium or the 2nd year of a budget biennium where the parties are negotiating a 1 year contract.

Funding Estimates and Certifications

- Before August 1st of the first year of a State budget biennium, the Indiana Department of Education (DOE) will provide the parties with an estimate of the general fund revenue available for bargaining.
- If a school corporation has gotten additional funding through an approved general fund referendum, the corporation must have the amount certified by the Indiana Department of Local Government Finance (DLGF) before bargaining commencement.
- Within 30 days after the first ADM count in the 1st year of a State budget biennium, DOE will provide a *certification* of estimated GF revenue.
- The DOE certification of estimated GF revenue and the DLGF certification of referendum amount (if applicable) must be the basis for all IEERB determinations throughout impasse proceedings.

Impasse Procedures

- **Mediation**
 - At any time at least 60 days after the commencement of bargaining [September 30 or later], if an impasse exists, the IEERB appoints a mediator from its staff or ad hoc panel
 - **Mediation Requirements:**
 - Must begin within 15 days of IEERB notice of impasse;
 - Maximum 3 sessions
 - Must result in either agreement or last best offers, including fiscal rationale
 - Mediation shall be completed within 30 days
 - Cost for the mediation shall be borne equally by the parties
 - Under rare circumstances, and only by mutual agreement of the parties, a contract dispute may proceed directly to factfinding without undergoing any mediation proceedings.
- **Factfinding Procedures**
 - If the parties do not reach agreement within 15 days after mediation ends, IEERB *shall* initiate factfinding.
 - Factfinding must culminate in the imposition of contract terms.
 - Each party must fully present its last, best offer, including fiscal rationale.
 - A factfinding proceeding may include a maximum of 2 days of testimony.
 - Hearings must take place in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located (or county with greatest number of students). IEERB interprets local unity of government to include school employers, so factfindings will continue to be held in school buildings.
 - The factfinder can only consider general funds and those funds certified by DOE and DLGF, unless the school funding formula allows other funds to be used for certain items.
 - The factfinder must select one of the parties' last-best offers.
 - The factfinder's report may only cover bargainable items.
 - The factfinder's report may not create deficit financing.

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- The factfinding process cannot last longer than 15 days from beginning to end.
 - The public hearing may not begin before October 1 of each year and must be concluded by December 31 of the same year.
 - The cost for the factfinding shall be borne equally by the parties.
 - **Appeal of Factfinding Report**
 - An appeal of a factfinder's decision must be filed within 30 days after receipt of the factfinder's decision
 - The Board's decision upon appeal is restricted to bargainable items
 - The Board's decision must not create deficit financing
 - The Board's decision may not go beyond a party's last, best offer
 - The Board must rule within 30 days of receipt of the notice of appeal
 - **Note on Impasse Procedures: IEERB will be unable to continue its long-standing practice of flexibility in scheduling and deadlines. Mediations and fact-findings will be scheduled like court dates- without checking on the convenience for the parties. This is a statutory process and must take priority.**

Press Releases and Open Door Policy

- It has been the policy for IEERB to notify the local media (newspapers only, not television or radio) of EACH Unfair Practice Hearing; Unit Determination Hearing; and Factfinding Hearing.
- Those notified include newspapers that cover the geographic area (county) of the school corporation involved, as well as all entities who have submitted Open Door requests. In addition, a copy of the press release is posted on the front bulletin board in IEERB's reception area and a copy is placed on IEERB's web page, in the Newsroom section.
- The media will be notified no later than 48 hours in advance of the date, time, place and nature of the hearing. These hearings will not be rescheduled within the 48 hour time frame established by the Indiana Open Door Law.
- For any hearings that need to be rescheduled at any time, including within 48 hours of the original hearing date, notice must be sent to the media at the same time notice is sent to the parties.

Unfair Practice Cases

- Types of Unfair Practices

- IC 20-29-7-1 establishes 6 actions that constitute unfair practices if *committed by a school employer* (summarized below):
 - Interfering with rights granted to certificated employees by IC 20-29
 - Interfering with the independence of an exclusive representative
 - Encouraging or discouraging membership in an exclusive representative through discrimination
 - Discharging or discriminating against a certificated employee for using the legal processes established in IC 20-29
 - Refusing to bargain or discuss (as defined in IC 20-29)
 - Violating any other provision of IC 20-29
- IC 20-29-7-1 establishes 4 actions that constitute unfair practices if *committed by a school employee organization or its agents* (summarized below):
 - Interfering with employee rights granted by IC 20-29
 - Causing or attempting to cause a school employer to discriminate against an employee in violation of IC 20-29
 - Refusing to bargain (as defined in IC 20-29)
 - Violating any other provision of IC 20-29

- Requirements and Chronology of an Unfair Practice Case

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- A complaint is filed with IEERB by a person and/or entity alleging that another person and/or entity has violated 1 or more provisions of IC 20-29-7-1 or -2. All complaints must be written, and IEERB does not have a fill-in-the-blank complaint form. Most complaints are submitted by attorneys or other representatives of the Complainant(s).
 - In addition to being written, all complaints must be under oath; signed by the Complainant(s); and served by the Complainant(s) to the Respondent(s) by certified mail or personal service.
 - The complaint must list the name, address, and telephone number of the Respondent(s), all Complainants, and all attorney(s) and/or representative(s) of the Complainants. The complaint must provide a summary of the alleged facts; the section(s) of the statute which are claimed to have been violated; and a statement of remedy sought.
 - All attorney(s) and/or representatives for either Complainant(s) or Respondent(s) must file an Appearance with IEERB and send a copy of the appearance to the other parties.
 - Upon receipt of a Complaint, IEERB appoints a Hearing Examiner. Often, the initial Hearing Examiner in practice serves as a mediator for the case.
 - The parties are permitted and encouraged to engage in mediation of unfair practice complaints, because mediation can result in cost-effective and timely resolution of these complaints. IEERB mediators serve to assist the parties in reaching resolution; they will not take action related to substantive pre-hearing matters and will not find facts, make conclusions of law, or issue any substantive order (other than to dismiss the complaint upon the request of the Complainant(s)).
 - Mediation continues to be an option even where the formal process of the case continues past this initial stage. If mediation is requested after the initial stage, IEERB will assign a mediator who is not the actual Hearing Examiner. As the best outcome of any case is that to which the parties have agreed, parties are urged to keep in mind the mediation option at all stages of the proceedings.
 - Respondent(s) must file a written Answer with IEERB within fifteen (15) days of the first Hearing Examiner's appointment (unless an extension is granted). The

Answer must provide the name, address, and telephone number of Respondent's attorney or representative; and the Answer must specifically admit, deny, explain, or state a lack of knowledge as to each allegation in the Complaint. The failure to answer is taken as an admission of the truth of the Complaint or its relevant specific allegation(s).

- **Where an initial mediation does not result in settlement of the case, a new Hearing Examiner will be assigned to begin the pre-hearing and hearing procedures. Our hearing examiners are selected from a pool of highly qualified, experienced professionals who serve in this capacity on an ad hoc basis.**
- **The parties may submit Motions to the Hearing Examiner prior to hearing, as appropriate, or may make Motions at the hearing.**
- **The Hearing Examiner (HE) also manages the discovery process and all pre-hearing matters involving the parties. Most HEs hold pre-hearing conferences, often by conference call.**
- **The Hearing Examiner first makes a determination as to whether IEERB has jurisdiction over the complaint. If jurisdiction is present, the Hearing Examiner conducts a hearing at which both sides may present their evidence, cross-examine opposing witnesses, brief the Hearing Examiner as to the relevant law and precedent, and all other due process related to the Hearing Examiner finding the facts and applying the law in the case.**
- **If the complaint is found to be frivolous, the filing party is liable for costs and attorney's fees.**
- **Unfair practice hearings are public hearings open to the public and the media.**
- **A court reporter creates an official transcript of the proceedings, which are often conducted in a room within a school building.**
- **The Hearing Examiner prepares a report detailing the HE's Findings of Fact, Conclusions of Law, and Recommended Order in the matter. IEERB then serves the HE's Report on all parties by certified mail.**
- **The Findings of Fact, Conclusions of Law, and Recommended Order becomes the Final Order of the board if no party files timely Exceptions to the report. Once a final order is issued, the order is subject only to judicial review.**

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- Any party may file a Notice of Intent to File Exceptions to the report. Such Notice must be filed with IEERB within fifteen (15) days of service of the HE's Report on the filing party. After Notice is filed, the IEERB will notify the filing party of the date the Exceptions are due. The Exceptions, and supporting brief, must be related to matters of procedure, fact, law, or policy.
 - Any party that opposes the Exceptions may file an answering brief within the timeframe scheduled by the Board for that case.
 - When Exceptions are filed, the Board plays the role of a specialized court of appeals. The Board considers the record of proceedings, reviews the exceptions and briefs, and hears oral argument from the parties (if requested) at a meeting of the Board. As with all other types of appeals in the American legal system, the Board does not consider any new or additional evidence.
 - If appropriate the Board may remand the case back to the Hearing Examiner or reassign the case to another HE; otherwise, the Board issues its final order affirming, denying, or dissolving the HE's report in whole or in part.
 - Judicial review of a final order of the Board may be sought under the provisions of IC 4-21.5-5 (the Administrative Orders and Procedures Act).

Research

- 560 IAC 2-5-1 requires all school corporations to file a copy of their negotiated contracts/collective bargaining agreements with IEERB within 30 days of the date the contract is ratified. When school corporations comply with this promulgated rule, they assist the IEERB in keeping accurate records. Timely submission of contracts leads to timely entry of documents into the IEERBSearch document management system, allowing for complete research data.

APPENDIX A: GLOSSARY

BARGAINING AGENT -- An organization which is the exclusive representative of all workers in a bargaining unit, both members and non-members. An employer may voluntarily recognize a particular employee organization as a bargaining agent for his workers, or the question of representation may be settled by a secret ballot election conducted by IEERB.

BARGAINING UNIT -- A group of employees that the employer has recognized and/or IEERB has certified as appropriate to be represented by an employee organization for the purpose of collective bargaining. One way of judging the appropriateness of a bargaining unit is to determine a community of interest among the employees. Other typical criteria are bargaining history, employee desires, and employer structure.

CERTIFICATION -- The formal determination by IEERB that a particular employee organization is the majority choice, and hence the exclusive bargaining agent, of all employees in a given bargaining unit. The determination usually follows a secret ballot election of the workers in the bargaining unit. Certification usually carries with it a ban for a set period of time on elections to choose another bargaining agent, called an election bar.

CERTIFIED EMPLOYEE ORGANIZATION -- The organization which IEERB has certified as the official representative of the employees in the bargaining unit for the purposes of collective negotiations. Certification usually follows a representation election.

CERTIFICATED EMPLOYEE -- An employee of a school corporation whose individual contract requires the employee to hold a license or permit from the Indiana Department of Education, Division of Professional Standards, or a teacher at a charter school established under IC 20-24.

COLLECTIVE BARGAINING -- A method of determining conditions of employment through negotiations between representatives of the employer and the exclusive representative of the employees. The results of the bargaining are set forth in a collective bargaining agreement. Collective bargaining, which determines conditions of employment for all workers in a bargaining unit, is to be distinguished from individual bargaining, which applies to negotiations between a single employee and the employer.

CONCILIATION -- Attempts by a neutral party to reconcile opposing viewpoints in a labor dispute in order to help the negotiating parties come to a voluntary settlement. In current

usage, the terms conciliation and mediation are used interchangeably, although traditionally a “conciliator” played a less active role than a “mediator” in a labor dispute.

EMPLOYEE RIGHTS -- Those collective bargaining rights, stipulated in IC 20-29, which are given to employees. Alleged violations of these rights may be brought before IEERB for redress. **EXAMPLE:** Employees have the right to form, join, or assist employee organizations, to participate in collective bargaining, and to engage in other activities, individually or in concert, for the purposes of collective bargaining, and they also have the right to refrain from any and all such activities.

EXCEPTIONS and OBJECTIONS - Exceptions are appeals filed on a Hearing Examiner's unfair practice case determination. Objections are appeals filed on a Hearing Officer's representation case determination.

EXCLUSIVE REPRESENTATIVE -- The employee organization which has won the right, through a secret ballot election, by the voluntary recognition of the employer, or by an IEERB order, to be the sole representative of all the employees in the appropriate bargaining unit.

FACTFINDING -- A method of impasse resolution that involves investigation of a labor-management dispute by a neutral third party, whether it be an individual, board, or panel. A factfinder holds formal or informal hearings, may subpoena documents or individuals, and submits his report to IEERB, which in turn submits it to the parties and, later, to the public.

GOOD FAITH BARGAINING -- The requirement that the two parties in negotiations engage in a bargaining process at reasonable times with a willingness to reach an agreement on new contract terms. Good faith bargaining does not require that either party make a concession or agree to any proposal.

HEARING EXAMINER/OFFICER - The official appointed by IEERB to take testimony and make findings and conclusions on either an unfair practice or representation case. IC 20-29 establishes that hearing *examiners* administer unfair practice cases, while hearing *officers* administer representation cases; however, the terms are often used interchangeably.

IMPASSE -- That point in labor-management negotiations at which either party determines that no further progress can be made toward reaching an agreement. In public sector labor relations, impasses are often resolved by the intervention of a neutral third party, such as a mediator or fact finder.

INTERLOCUTORY ORDER -- An order that relates to some intermediate matter in the case; any order other than a final order.

MANAGEMENT CLAUSE -- A provision in the collective bargaining agreement which describes the scope of management rights, functions, and responsibilities. The clause sets forth those activities which management can carry out without obtaining the agreement of the exclusive representative.

MEDIATION -- An attempt by an impartial third party, called a mediator, to bring together the parties in a labor dispute. The mediator, however, has no power to force a settlement. The mediator operates primarily through persuasion to help the negotiating parties come to an agreement.

MEDIATOR -- An individual who acts as an impartial third party to help settle labor-management disputes. The mediator's role is to meet with parties, act as a go-between, and help the parties discover areas of agreement in order to reach a settlement in negotiations without a strike.

NEGOTIATOR -- The person who represents the employer or exclusive representative in collective bargaining negotiations to reach an agreement. Often committees or "teams" represent each party, and one of the committee members acts as chief negotiator or spokesperson for the group. The chief negotiator is often the most experienced individual on the team, although occasionally the chief negotiator will not be the person with the authority to commit the team to a position. The chief negotiator will serve only as a spokesperson and for information; this person will rely on persons who have the authority to make contractual commitments.

RATIFICATION -- Formal approval of a newly negotiated agreement by vote of the organization's members who are affected. **EXAMPLE:** Indiana Code 20-29 specifically requires the employees affected by a contract negotiated between representatives of teachers and school board to ratify it. Typically, however, ratification procedures are provided for in the employee organization's constitution.

REFUSAL TO BARGAIN -- In an unfair practice case, findings made by IEERB indicating that either the employer or the exclusive representative has failed to bargain "in good faith" according to the requirements of the statute. The refusal to bargain may be indicated by specific actions or by the overall behavior of the exclusive representative or employer during the negotiating period.

REPRESENTATION HEARING -- The procedures followed by IEERB to determine whether a particular employee organization represents the employees in an appropriate bargaining unit or a sufficient number of employees to warrant holding a representation election. Also covers hearings held in unit determination cases, which are requests for determination on whether a particular position lies within the bargaining unit.

SCOPE (of bargaining) -- The range of issues that are made bargainable by IC 20-29.

SEVERABILITY (Separability) CLAUSE -- The part of a law or contract which permits sections of the law or contract to remain in effect while other sections are declared invalid by decisions of the courts; also called a savings clause. A collective bargaining agreement may incorporate a savings clause so that if part of the agreement is held to be invalid or unenforceable, the remainder of the contract will remain in effect.

UNFAIR PRACTICE -- A practice on the part of either employee organization or management which violates the provisions set forth in IC 20-29. Examples on the part of employee organizations are: 1) causing an employer to discriminate against an employee on the basis of that employee's membership in a union; 2) refusing to bargain collectively with an employer; 3) interfering in an employer's exercise of his rights under the statute. Examples on the part of management are: 1) controlling or interfering with employee organizations; 2) discriminating against workers for their support for or activity in an employee organization; 3) retaliating against workers for complaining to IEERB; 4) refusing to bargain collectively with the exclusive representative.

UNIT DETERMINATION HEARING - See REPRESENTATION HEARING.

APPENDIX B: CASE NUMBER ASSIGNMENT

SAMPLE: U-05-22-1910

- First letter represents:

U = Unfair Practice Complaint
C = Compliance
R = Representation/Unit Determination
M = Mediation
F = Factfinding
P = Post-Factfinding Mediation

- Next, two digits represent:

U, C, R = Calendar year filed.

04 = 2004

05 = 2005

M, F, P = School year being bargained.

07 = 2007-08 year being bargained.

08 = 2008-09 year being bargained

- The next two digits are the specific number of that particular type of case filed. In the sample above, this is the 22nd unfair practice complaint filed in 2005.

- The final 4 digits are the school corporation number.

NOTE: All school corporation numbers end in "0" or "5"

APPENDIX C: UNFAIR PRACTICE CASE STEPS

1. A Complaint charging unfair practice is filed with IEERB. *560 IAC 2-3-2*
2. IEERB Chairman issues letter appointing Hearing Examiner (HE) and Case Administrator (CA). *560 IAC 2-3-1* The HE will be either a member of IEERB's full-time staff or an ad hoc panelist. The CA will be a member of IEERB's full-time staff. The CA handles case management, flow of paperwork, and other practical needs for each complaint.
3. Answer from Respondent party due 15 days from the date of the HE/CA appointment letter. *560 IAC 2-3-5(b)*
4. Order Setting Pre-Hearing Conference (initiated by HE) *560 IAC 2-3-14(7)*
5. After pre-hearing conference is held, HE prepares Order Re: Pre-Hearing Conference, setting forth dates to exchange witness and exhibit lists, any pre-hearing briefs, any stipulated facts, and the actual hearing date, time, and location. IEERB arranges with Court Reporter to attend hearing. *560 IAC 2-3-20(a); 560 IAC 2-3-13; 560 IAC 2-3-19*
6. Two weeks prior to hearing, Press Release is prepared and mailed (initiated by secretary once HE provides pertinent information). *IC 5-14-1.5-3(a)*
7. A party may request Subpoenas from IEERB for witnesses to attend hearing. *560 IAC 2-6-6*
8. Hearing is conducted. At end of hearing, date set for Post-Hearing Briefs to be filed (if allowed). *560 IAC 2-3-20(c)*

Arrangements made for transcript preparation. All parties must sign for their request for transcript. (It is much cheaper to order all at once rather than later). *560 IAC 2-3-20(c)*
9. Once transcript arrives in IEERB office, CA prepares letter informing parties of the cost needed to pick up their copies. Sometimes, this is when the Post-Hearing Briefing schedule is arranged.
10. Once all briefs arrive to HE, a report is written within 90 days and served upon all parties involved in the case, not just the spokespersons. *560 IAC 2-3-21(b)*

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11. Parties have 15 days to file Exception to Hearing Examiner's Report with the Board. *560 IAC 2-3-22(a)*

CASES BEFORE THE BOARD

12. Parties have 15 days to file Exception to Hearing Examiner's Report with the Board. *560 IAC 2-3-22(a); 560 IAC 2-3-22(b)*
- Parties have 30 days to appeal a Factfinder's Report. *IC 20-29-6-18.*
13. Upon receipt of Exceptions, Chairman reviews document. Should the parties request oral argument (which they must do in order to be granted an oral argument), the Chairman then determines a date to hear oral arguments, ensuring the other Board Members can attend to get a quorum. An Order is prepared and mailed to parties involved, which arranges a date for answering briefs. An Order will be issued at a later date setting the date of the oral argument before the Board. *560 IAC 2-3-22(c)*
14. Upon conclusion of the public meeting, the Board may:
- (A) Make a determination at that time; *560 IAC 2-3-23(c)*
 - (B) Table the issue for a future meeting;
 - (C) Remand the case to a hearing examiner for further investigation, either of the entire case or an issue of the case; or *560 IAC 2-3-23(b)*
 - (D) Make a determination on a parties' request for rehearing due to (1) newly discovered material evidence or (2) the evidence could not have been produced during the evidentiary hearing. *560 IAC 2-3-23(c)*
15. An Order is prepared and circulated to members for signatures. Once it is returned to the IEERB office, copies are made and forwarded to all parties involved. Original will be placed into case file, with a copy placed in the Board file.
16. Within 30 days of receipt of this Order, the parties may appeal the Board's decision in court. A Praeceptum for Record will be filed. This initiates the preparation of IEERB's case file for the requesting party to file with the court. *560 IAC 2-3-26*
17. The Board may enter the interlocutory orders, after summary hearing, it considers necessary in carrying out the intent of the statute. *IC 20-29-7-4 (f)*. As a practical

matter, such “interlocutory orders” are difficult to obtain because the moving party must fulfill the high standards required for an injunction.

Legal Aspects of Teacher Evaluation Following the 2011 School Reform Legislation
ISBA Summer Academy, July 2011
David Emmert
General Counsel

All too often, a school board member has called an ISBA attorney regarding the perceived under-performance of some teachers and inquired as to what can be done about it. When asked about the school's staff performance evaluation plan and its implementation by the administration, including a report to the board, the member has responded with: "What plan?" and "What report to the board?"

Although such a plan has been required of every Indiana school system since 1987, it apparently has been buried and the headstone lost in too many school districts. With the passage of Indiana's school reform legislation in 2011, Senate Enrolled Act 1 (P.L. 90-2011) and Senate Enrolled Act 575 (P.L. 48-2011), school board members need to elevate their collective conscious levels and recognize the era of new expectations when it comes to staff performance. Not only does SEA 1 require the new evaluation plan to be implemented in the 2012-2013 school year, SEA 575 requires the bargaining of a totally new salary scale beginning with the 2013-2014 school year, wherein teacher raises will be mainly linked to teacher performance, with only a maximum amount of 33% allowed for experience, degrees, and graduate credits.

It is noted however, these new requirements will apply differently throughout the state depending upon when the present collective bargaining agreement in each school corporation expires. For those presently expired (and to expire before the start of the 2012-2013 school year), the above-stated timelines will apply. For all others, these new laws will go into immediate effect upon the expiration date.

Although the staff performance evaluation plan law does not require an administrative report to the school board as to the results of teacher evaluations, a wise board would want to be on record as having a policy requiring a written report be received for each individual member's review. The new SEA 1-created code, IC 20-28-11.5-9, does require all schools to notify the Department of Education by August 1 of each year the evaluation results by performance category (not by teacher names). The Department must then report the results to the State Board of Education and to the public, via the Department's website.

The following outline was originally developed by ISBA Attorney Lisa Tanselle and supplemented by Dave Emmert for this document. It relates to SEA 1's requirements regarding the hiring, evaluation, and dismissals of teachers.

I. Powers of School Board

A. School Board must still approve teacher hiring and dismissal decisions, but the superintendent is expressly responsible for selecting and discharging persons for specific positions, as is both the principal and superintendent for other specially-named positions.

B. Superintendent responsible for the selection and discharge of principals, central office administrators, business managers, superintendents of building and grounds, janitors, physicians, dentists, nurses, athletic coaches, and any other employees necessary to the operation of the school corporation, subject to school board approval. IC 20-26-4-5(a).

C. Superintendent and principal are responsible for the selection and discharge of teachers, teacher aides, assistant principals, building administrative staff, librarians, and any other employees necessary to the operation of the school, subject to school board approval. IC 20-26-4-5(b).

II. New Tenure Categories (“PEP”—Probationary, Established, Professional)

A. Probationary Teacher. IC 20-28-6-7.5 (b).

A teacher who has not received a rating (newly hired) or a professional teacher who receives a rating of ineffective.

B. Established Teacher. IC 20-28-6-8.

A teacher who serves under contract before July 1, 2012 and enters into another contract before July 1, 2012.

C. Professional Teacher. IC 20-28-6-7.5(c).

1. A teacher who receives a rating of effective or highly effective for at least 3 years in a 5-year (or shorter) period. (The new valuation process to determine this must be implemented at the beginning of the 2012-13 school year per IC 20-28-11.5-4(a). This means that the first school year that it is possible for a teacher to be "professional" is 2015-16.)

2. A professional teacher becomes probationary if s/he receives a rating of ineffective. IC 20-28-6-7.5(d).

D. Definition of "Teacher" IC 20-28-2-22

One whose position in the school corporation requires educational preparation and licensing and whose primary responsibility is the instruction of students.

III. Contract Cancellation Grounds. IC 20-28-7.5-1.

A. Probationary Teacher

1. Ineffective Rating
2. 2 consecutive years of Improvement Necessary
3. Justifiable Decrease in Teaching Positions

Note: After June 30, 2012, justifiable decrease in positions must be based on performance and not seniority.

4. Any reason considered relevant to the school's interest.

B. Established/Professional Teacher

- 1. Justifiable Decrease in Positions**
- 2. Immorality**
- 3. Insubordination**
- 4. Incompetence**
 - a) 2 consecutive years of ineffective rating; or*
 - b) Ineffective or improvement necessary in 3 years of any 5-year period*
- 5. Neglect of Duty**
- 6. Certain Felony Convictions**
- 7. Other Good and Just Cause**

IV. Contract Cancellation Procedures. IC 20-28-7.5-2.

A. Written Notification by Principal

RIF notice must occur between May 1 and July 1

B. Conferences

- 1. Simplified conference if reason for cancellation is "RIF," incompetence, or a felony conviction for 20 listed crimes**
- 2. A more elaborate conference if reason for cancellation is immorality, insubordination, neglect of duty, or other good or just cause**

C. Superintendent Recommendation to School Board

D. Board Vote

V. Court Decisions Relevant to Teacher Contract Cancellation

A. Immorality

- 1. [Immorality is] not essentially confined to a deviation from sex morality; it may be such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and to elevate. Fiscus v. Board of School Trustees of Central School District of Greene County, 509 N.E.2d 1137 (Ind.App. 1987)**

B. Insubordination

A teacher may be dismissed for insubordination if the teacher willfully refuses to follow a reasonable rule of the school corporation. ... Rules of the school corporation can include an unambiguous order of the school principal. However, before a teacher can be terminated for violating a principal's directive the evidence must establish that the order was unambiguous and reasonable. ... Furthermore, for a rule to be found reasonable, at a minimum, the rule must be lawful. Werblo v. Hamilton Heights School Corporation, 519 N.E.2d 185 (Ind.App. 1988)

C. Incompetence

Bales was often unprepared to teach class, that he was unable to maintain discipline over the students, and that he failed to improve his performance according to the job targets. There was evidence that Bales slept during class and during scheduled conferences. There was also testimony indicating that Bales' grading methods were deficient. The Board's findings of incompetency, neglect of duty, and other good and just cause were corroborated by substantial evidence. Harrison-Washington Community Schools v. Bales, 450 N.E.2d 559 (Ind.App. 1983)

D. Neglect of Duty

1. That Mr. Willis D. Bales has failed to keep and have control of his classroom and maintain proper discipline therein during class periods; That Mr. Willis D. Bales has failed to make proper class preparation, to carry into effect, fulfill and accomplish the duties of an elementary school teacher; Mr. Willis D. Bales' failure to follow administrative direction in the method of teaching and grading of students and his failure to improve his teaching methods after administrative conferences; Sleeping during classroom period. Harrison-Washington Community Schools v. Bales, 450 N.E.2d 559 (Ind.App. 1983)

2. Repeatedly reporting late to work; (2) failing to comply with the corporal punishment policy; (3) failing to issue timely interim progress reports to students; and (4) failing to make reasonable efforts to implement the principal's improvement plan for bettering relationships with parents and students. State ex rel. Newton v. Bd. of Sch. Trustees of M.S.D. of Wabash County, 460 N.E.2d 533 (Ind.App. 1984)

C. Other Good or Just Cause

'Other good and just cause,' as used in this statute, has been held to mean any ground which is put forward in good faith, and which is not arbitrary, irrational, unreasonable, or irrelevant to the school board's task of building up and maintaining an efficient school system. Board of School Trustees, School City of Peru v. Moore, 33 N.E.2d 114, 116 (Ind. 1941).

VI. Staff Performance Evaluation Requirements. IC 20-28-11.5 (to be implemented in 2012-13 school year).

A. Development of plan for the annual performance evaluation of certificated employees.

1. Options

- a. Adopt the state model; OR
- b. Master teachers plan, TAP, or PAR

2. Required Components

- a. Performance evaluation for all certificated employees (includes administrators) on an annual basis
- b. Objective measures of effectiveness
- c. Rigorous measures of effectiveness
- d. Designation of Highly Effective, Effective, Improvement Necessary, or Ineffective
- e. Explanation of recommendations for improvement and timeline
- f. A provision that if a teacher negatively affects student achievement, the teacher cannot be designated as highly effective or effective

B. Evaluation Process

- 1. Discuss**
- 2. Copy**
- 3. Remediation Plan**
- 4. Conference with Superintendent**

C. A student may not be taught for 2 consecutive years by 2 consecutive teachers rated as ineffective

If not possible, parent must be notified.

D. Duties of SBOE/DOE

- 1. Develop rules before January 31, 2012**
- 2. Develop and release to schools a model staff performance evaluation plan by January 31, 2012.**
- 3. Publish all school corporations' plans**
- 4. Publish aggregate teacher ratings before September 1 of each year**

E. School Corporation Duties

- 1. Adopt state model or own**
- 2. Submit plan to DOE**
- 3. Provide results of evaluations before August 1 of each year**

Number of teachers in each category

VII. Teacher Compensation. IC 20-28-9-1.

A. Effective July 1, 2012 or sooner, increases in salary must be based on a combination of:

- 1. Experience, additional degrees, and additional credit hours but only up to 33%**

2. Evaluation results
3. Instructional leadership roles
4. Academic needs of students in the school corporation

B. Teachers rated ineffective or improvement necessary may not receive a raise. Teachers may request a private conference with the superintendent.

C. Every school corporation must submit its salary schedule to DOE. The DOE will publish all salary schedules on its website.



Public Law 221 Fact Sheet

Public Law 221 Overview

Public Law 221 (P.L. 221) is Indiana's comprehensive accountability system for K-12 education. Passed by the Indiana General Assembly in 1999 (prior to the federal No Child Left Behind Act of 2001), the law, codified at Indiana Code 20-31, aimed to establish major educational reform and accountability statewide.

To measure progress, P.L. 221 places Indiana schools into one of five categories based upon student performance and improvement data from the state's ISTEP+ assessments in Grades 3 – 8 and End of Course Assessments in Algebra I and English 10. The five categories include:

- Exemplary Progress
- Commendable Progress
- Academic Progress
- Academic Watch (priority)
- Academic Probation (high priority)

Please note: Schools will not begin receiving letter grades until accountability determinations are made in Summer 2011.

Public Law 221 Category Placements

The Indiana State Board of Education first adopted category placements for the state's public and accredited non-public schools beginning with the 2005-06 school year.

Category placements are based on three factors:

1. **Performance** – Percentage of all students who pass the English/language arts and math portions of the ISTEP+ (averaged across subjects and grade levels).
2. **Improvement** – Improvement in the passing percentage of students passing English/language arts and math portions of the ISTEP+ from one year to the next, averaged over a three-year period.
3. **Adequate Yearly Progress status** – Schools that do not make Adequate Yearly Progress (AYP) under the federal No Child Left Behind Act (NCLB) for two consecutive years can place no higher than the "Academic Progress" category. Such schools remain "capped" at Academic Progress until they make AYP for two consecutive years.

PERFORMANCE (% passing ISTEP+)	IMPROVEMENT (Average passing percentage improvement over three years)				
	Exemplary Progress	Commendable Progress	Academic Progress	Academic Watch (Priority)	Academic Probation (High Priority)
≥ 90%					
≥ 80%	≥ 1%	< 1%			
≥ 70%	≥ 3%	≥ 2%	≥ 1%	< 1%	
≥ 60%	≥ 4%	≥ 3%	≥ 2%	< 2%	< 0%
≥ 50%	≥ 5%	≥ 4%	≥ 3%	< 3%	< 1%
< 50%		≥ 5%	≥ 4%	≥ 3%	< 3%

NOTE: *Improvement* and *performance* both are valued under the P.L. 221 category design. Schools with lower performance but higher improvement may be placed in the same category as schools with higher performance and lower improvement.

Public Law 221 and No Child Left Behind

Two laws set the standard for school accountability in Indiana: 1) Public Law 221 at the state level and 2) the No Child Left Behind Act at the federal level. Although Indiana's accountability law preceded the No Child Left Behind Act by two years, states were required to incorporate the federal law into their existing accountability systems. This is why Indiana schools that do not make AYP under NCLB for two consecutive years cannot place higher than the "Academic Progress" category under P.L. 221.

Other differences between P.L. 221 and AYP include the following:

- AYP only measures the percentage of students passing ISTEP+ and End of Course Assessments; P.L. 221 incorporates improvement as well as performance.
- AYP uses year-to-year comparisons of the same grade level(s); P.L. 221 tracks student cohort groups (classes) from year-to-year.
- AYP is unaffected by P.L. 221; P.L. 221 category placements are capped at Academic Progress for those schools where the same student subject fails to make AYP for two consecutive years.
- AYP disaggregates data by student demographic subgroups; P.L. 221 does not use disaggregated data but instead factors in AYP determinations as part of category placements.
- AYP consequences (improvement status) apply only to Title I schools; P.L. 221 consequences apply to both Title I and non-Title I schools. Public charter schools and nonpublic schools are exempt from P.L. 221 consequences.
- AYP bases accountability on students enrolled in the school 162 days in the year of testing; P.L. 221 uses 126 days as the improvement measure. The performance measure in P.L. 221 includes all students tested.

Consequences under Public Law 221

Schools in the lowest P.L. 221 category (Academic Probation) face a series of interventions that are designed to provide the additional support needed to improve student achievement. These consequences become more serious the longer schools remain in the bottom category.

Charter schools and accredited non-public schools are placed into categories but are exempt from consequences under the law.

See the following page for a complete list of consequences under P.L. 221.

Public Law 221 Consequences for Schools on “Academic Probation”

Year 1	
Local Response	Local school board notifies public and conducts hearing.* School improvement committee revises improvement plan which may include shifting resources and changing personnel.
State Assistance	The local school board may request the State Board of Education appoint an outside team to assist the school in revising its school improvement plan and recommend changes in the school that will promote improvement, including the allocation of resources and requests for technical assistance. If this happens, the state will consider the school to be in Year 4 under P.L. 221. (See section on Years 4 and 5).
Accreditation	Provisional
Years 2 and 3	
Local Response	School implements revised school improvement plan.
State Assistance	The local school board can request the State Board of Education appoint an outside team to assist in the development of a new plan. If this happens, the state will consider the school to be in Year 4 under P.L. 221.
Accreditation	Provisional
Years 4 and 5	
Local Response	School implements revised school improvement plan.
State Assistance	A state-appointed expert team assists the school in revising its school improvement plan and recommending changes in the school that will promote improvement, including the allocation of resources and requests for technical assistance. The expert team must include representatives from the community or region that the school serves, and may include school superintendents, members of governing bodies, teachers from school corporations that are in high categories or designations; and special consultants or advisers.
Accreditation	Probationary
Year 6	
Local Response	Implement action as determined by the State Board of Education.
State Assistance	State Board of Education will conduct at least one hearing to solicit testimony on several possible options for the school, including merging the school with another school; assigning a special management team to operate all, or part of, the school; Department recommendations; other options expressed at hearing; and revising the improvement plan in any way (including changes in procedures or operations, professional development, and interventions for teachers or administrators). If the State Board determines that intervention will improve the school, the school must implement at least one of the options listed above.
Accreditation	Probationary. School corporation placed on probation. Legislative recommendation made after one additional year in category.

* Though the statutory requirement for a public hearing under P.L. 221 technically may apply only during the first year a school is placed on “Academic Probation,” the Indiana Department of Education recommends that school corporations conduct public hearings each subsequent year a school remains on probation. These hearings continue the necessary community dialogue, gather valuable feedback, and garner public support to further school improvement efforts aimed at addressing areas of concern.

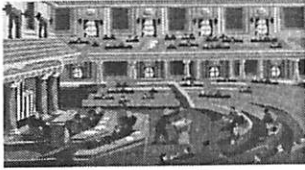
For more information on Public Law 221, visit www.doe.in.gov/pl221.

Year 6 Implementation Options (Indiana Code 20-31-9-4)

1. Merging the school with a nearby school that is in a higher category
2. Assigning a special management team to operate all or part of the school (Turnaround School Operator)
3. Recommendations from the Indiana Department of Education for improving the school
4. Other options for school improvement expressed at the public hearing, including closing the school
5. Revising the school's plan in the areas of school procedures/operations, professional development, or intervention for individual teachers or administrators

LEGISLATIVE HISTORY

- Enacted in 1973 as P.L. 217-1973
- Amended in 2011 as P.L. 48-2011
(SEA 575)



BASIC MANDATES

1. Requires bargaining with certificated employees
defined as employees who are required to have a license from DOE
2. Limits subjects of bargaining
3. Requires discussion on certain subjects

INTENT

1. Develop harmonious relationships
2. Alleviate strife and unrest
3. Protect public
4. Recognize differences between public sector and private sector



EMPLOYER RIGHTS



1. Direct work of employees
2. Establish policy
3. Make personnel decisions
4. Discipline personnel
5. Maintain efficiency
6. Take necessary actions

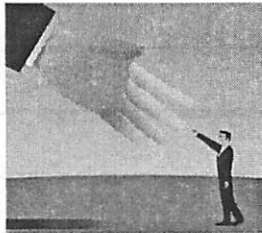
EMPLOYEE RIGHTS

1. Form and participate in employee organizations
2. Participate in bargaining
3. Engage in protected activities



EXCLUSIVE REPRESENTATIVE

- The organization certified to represent teachers
- The organization with certain exclusive rights



BARGAINING UNIT

Includes:

- employees with similar duties



Excludes:

- supervisors
- confidential employees
- employees performing security

DUTY TO BARGAIN

Both parties must:

meet at reasonable times to negotiate in good faith

AND

execute a written contract that incorporates the agreement reached



WRITTEN CONTRACT

✓ Cannot conflict with:

- rights under federal or state law
- school employee rights under bargaining law
- school employer rights under bargaining law

✓ Cannot place the employer in deficit financing
expenditures cannot exceed revenue



CONTRACT Con't.

- ✓ Cannot include any subject other than salary, wages, and fringe benefits
- ✓ Cannot extend past the end of a state budget biennium
maximum length is two years

THE CONTRACT IS BINDING ONLY IF RATIFIED BY

SCHOOL
BOARD
AND
TEACHERS



MANDATORY (ONLY) SUBJECTS OF BARGAINING

- Salary
- Wages
- Salary and wage related fringe benefits



**NO LONGER
BARGAINABLE**

- Hours
- Items included in 1972-73 agreements (grandfathered subjects)
- School calendar
- Teacher evaluation
- Teacher dismissal
- Any subject not expressly identified

**PERMISSIBLE SUBJECTS
OF BARGAINING**

Grievance procedure
advisory or binding
BUT
no binding arbitration of
teacher dismissals



SALARY/WAGES

- Salary Schedule
- Severance Pay
- Retirement Pay
- Extracurricular Stipends
- Wellness Stipend



NEW SALARY SCHEDULE

- Increases must be based on:
 1. Experience, degrees, and credit hours but only up to 33%
 2. Evaluation results
 3. Instructional leadership roles
 4. Academic needs of students

FRINGE BENEFITS

- Leave days
- Leaves of absence
- Insurance
 - health, dental, vision, disability
- Pension/retirement benefits



BARGAINING MEETINGS

- Each team selects members
- Bargaining meetings not subject to the Open Door Law
- Board may meet with its team in executive session to discuss strategy
- Both sides may inform the public by releasing factual information



BARGAINING PROCESS

Formal Negotiations

- ✓ **May not begin before August 1**
although informal negotiations
before then are OK



PROCESS Con't.

- ✓ **DOE must provide an estimate of**
general fund revenue before August
1

- ✓ **DOE must then certify the estimated**
general fund revenue within 30 days
of ADM count date

MEDIATION

- **Available 60 days after the start of**
formal bargaining
- **Must begin within 15 days**
- **No more than 3 sessions**
- **Must be completed within 30 days**
- **Costs shared by both sides**

FACTFINDING

- **Must begin within 15 days after mediation ends**
- **May not exceed 15 days**
 - **no more than 2 days of public testimony**
- **Costs shared by both sides**

FACTFINDING Con't.

- **Factfinding hearing**
 - **conducted in public**
 - **county facility**
 - **between October 1 and December 31**
 - **parties present last, best offer**

FACTFINDING Con't.

- **Factfinder's decision**
 - **limited to subjects of bargaining**
 - **no deficit financing**
 - **select one party's offer**
 - **binding on both parties**
 - **submitted to IEERB**

STATUS QUO

- Terms of current contract continue
- No increase or increment in salary, wages, or fringe benefits



**STRIKES
ARE
ILLEGAL**



**THE FOLLOWING
IS NOT ILLEGAL:**



- Wearing black
- Passing out flyers
- Writing letters to the editor
- Picketing

DUTY TO DISCUSS

Both parties shall discuss certain subjects



“DISCUSSION” MEANS

- Meet at reasonable times to:
 - discuss
 - provide meaningful input; or
 - exchange points of view



Not required to:



- Bargain
 - Negotiate
 - Enter into a written contract
- OR
- Enter into impasse procedures

**MANDATORY
SUBJECTS
OF DISCUSSION**



- Working conditions – REMOVED
- Curriculum development/revision
- Textbook selection
- Teaching methods
- Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of teachers

**MANDATORY SUBJECTS
OF DISCUSSION**

- Student discipline
- Expulsion or supervision of students
- Pupil/teacher ratio
- Class size or budget appropriations



DISCUSSION Con't.

Two New Subjects

- Hours
- Safety issues for students and employees

CURRICULUM

- elimination of health course
- expansion of existing course
- pilot of new math program
- creation of after-school remediation program



PERSONNEL POLICIES



- change in grade level assignment
- change in teaching schedule
- hiring/assigning extracurricular activities
- reduction-in-force

HOURS

- Hours of employment
 - number of hours
 - starting/ending times
- Number of days to be worked
- Extended contracts



Duty to discuss applies only to overall policies, procedures and not to individual situations



DISCUSSION MEETINGS

- Superintendent/designee represents employer
- Exclusive representative selects its members
- Not subject to Open Door Law



COMMITTEE APPOINTMENTS

- Number of teachers appointed by union limited to percent of teachers who are members
 - If district-wide committee, calculate percentage of all teachers in district
 - If school-wide committee, calculate percentage of teachers in school
- Union must certify membership by September 15



UNFAIR LABOR PRACTICES



The school employer cannot:

- Interfere with, restrain, or coerce school employees
- Dominate, interfere, or assist any school employee organization
- Encourage or discourage membership

The school employer cannot:

- Discharge or otherwise discriminate against a school employee
- Refuse to bargain collectively or discuss
- Fail or refuse to comply with the law



The school employee organization cannot:

- Interfere with, restrain, or coerce school employees or a school employer
- Cause/attempt to cause a school employer to discriminate
- Refuse to bargain collectively
- Fail or refuse to comply with law



COMPLAINTS

If:

ULP complaint is alleged failure or refusal to discuss AND the complaint is determined to be frivolous

Then:

the party that filed the complaint is liable for costs and attorney fees

IEERB

- State agency responsible for enforcing law
- 3 member board
- Hearing officers, mediators, factfinders



ISBA *Legal Services*

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COLLECTIVE BARGAINING BETWEEN SCHOOL CORPORATIONS AND THEIR CERTIFICATED EMPLOYEES IC 20-29-1

July 2011

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13	Findings and recommendations – Repealed
13.1	Findings and recommendations
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IC 20-29-9

Strikes

- 1 Unlawful participation in strike
- 2 Actions taken for aiding or abetting in a strike
- 3 Loss of dues deduction privilege by exclusive representative for participating in strike
- 4 Minimum length of school year
- 5 School corporation not required to pay salary for days on strike

This should be used for informational purposes only. It is not a substitute for the official acts. Consult your school attorney before making a decision with respect to the statutes.

IC 20-29-1 Findings and Intent

IC 20-29-1-1 Intent

Sec. 1. The general assembly declares the following:

(1) The citizens of Indiana have a fundamental interest in the development of harmonious and cooperative relationships between school corporations and their certificated employees.

(2) Recognition by school employers of the right of school employees to organize and acceptance of the principle and procedure of collective bargaining between school employers and school employee organizations can alleviate various forms of strife and unrest.

(3) The state has a basic obligation to protect the public by attempting to prevent any material interference with the normal public school educational process.

(4) The relationship between school corporation employers and certificated school employees is not comparable to the relationship between private employers and employees for the following reasons:

(A) A public school corporation is not operated for profit but to ensure the citizens of Indiana rights guaranteed them by the Constitution of the State of Indiana.

(B) The obligation to educate children and the methods by which the education is effected will change rapidly with:

(i) increasing technology;

(ii) the needs of an advancing civilization; and

(iii) requirements for substantial educational innovation.

(C) The general assembly has delegated the discretion to carry out this changing and innovative educational function to the governing bodies of school corporations, composed of citizens elected or appointed under applicable law, a delegation that these bodies may not and should not bargain away.

(D) Public school corporations have different obligations concerning certificated school employees under constitutional and statutory requirements than private employers have to their employees.

As added by P.L.1-2005, SEC.13.

IC 20-29-2 Definitions

IC 20-29-2-1 Application of chapter

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-2 "Bargain collectively"

Sec. 2. "Bargain collectively" means the performance of the mutual obligation of the school employer and the exclusive representative to:

(1) meet at reasonable times to negotiate in good faith concerning the items enumerated in IC 20-29-6-4;

and

(2) execute a written contract incorporating any agreement relating to the matters described in subdivision

(1).

As added by P.L.1-2005, SEC.13.

IC 20-29-2-3 "Board"

Sec. 3. "Board" refers to the Indiana education employment relations board established by IC 20-29-3-1.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-4 "Certificated employee"

Sec. 4. "Certificated employee" means a person:

(1) whose contract with the school corporation requires that the person hold a license or permit from the division of professional standards of the department under IC 20-28; or

(2) who is employed as a teacher by a charter school established under IC 20-24.

As added by P.L.1-2005, SEC.13. Amended by P.L.1-2007, SEC.145.

IC 20-29-2-5 "Confidential employee"

Sec. 5. "Confidential employee" means a school employee whose:

- (1) unrestricted access to confidential personnel files; or
- (2) functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees;

makes the school employee's membership in a school employee organization incompatible with the school employee's official duties.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-6 "Deficit financing" --- AMENDED by SEA 575

Sec. 6. "Deficit financing" for a budget year means **actual** expenditures exceeding ~~the money legally available to the employer.~~ **employer's current year actual general fund revenue.**

IC 20-29-2-7 "Discuss"

Sec. 7. "Discuss" means the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to:

- (1) discuss;
- (2) provide meaningful input; or
- (3) exchange points of view;

with respect to items enumerated in IC 20-29-6-7.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-8 "Employees performing security work"

Sec. 8. "Employees performing security work" means a school employee:

- (1) whose primary responsibility is the protection of personal and real property owned or leased by the school corporation; or
- (2) who performs police or quasi-police powers.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-9 "Exclusive representative"

Sec. 9. "Exclusive representative" means the:

- (1) school employee organization that has been:
 - (A) certified for purposes of this article by the board; or
 - (B) recognized by a school employer as the exclusive representative of the employees in an appropriate

unit;

under IC 20-29-5-1 through IC 20-29-5-5; or

- (2) person or persons authorized to act on behalf of a representative described in subdivision (1).

As added by P.L.1-2005, SEC.13.

IC 20-29-2-10 "Governing body"

Sec. 10. "Governing body" means:

- (1) a township trustee and the township board of a school township;
- (2) a county board of education;
- (3) a board of school commissioners;
- (4) a metropolitan board of education;
- (5) a board of trustees;
- (6) any other board or commission charged by law with the responsibility of administering the affairs of a

school corporation; or

- (7) the body that administers a charter school established under IC 20-24.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-11 "Noncertificated employee"

Sec. 11. "Noncertificated employee" means a school employee whose employment is not dependent on the

holding of a license or permit under IC 20-28.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-12 "School corporation"

Sec. 12. "School corporation" means a local public school corporation established under Indiana law. The term includes any:

- (1) school city;
- (2) school town;
- (3) school township;
- (4) consolidated school corporation;
- (5) metropolitan school district;
- (6) township school corporation;
- (7) county school corporation;
- (8) united school corporation;
- (9) community school corporation; and
- (10) public career and technical education center or school or school for children with disabilities

established or maintained by two (2) or more school corporations.

As added by P.L.1-2005, SEC.13. Amended by P.L.234-2007, SEC.109.

IC 20-29-2-13 "School employee"

Sec. 13. "School employee" means a full-time certificated person in the employment of the school employer. A school employee is considered full time even though the employee does not work during school vacation periods and accordingly works less than a full year. The term does not include:

- (1) supervisors;
- (2) confidential employees;
- (3) employees performing security work; and
- (4) noncertificated employees.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-14 "School employee organization"

Sec. 14. "School employee organization" means an organization that:

- (1) has school employees as members; and
- (2) as one (1) of its primary purposes, represents school employees in dealing with their school employer.

The term includes a person or persons authorized to act on behalf of the organization.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-15 "School employer"

Sec. 15. "School employer" means:

- (1) the governing body of each:
 - (A) school corporation; or
 - (B) charter school established under IC 20-24; and
- (2) a person or persons authorized to act for the governing body of the school employer in dealing with its employees.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-16 "Strike"

Sec. 16. "Strike" means:

- (1) concerted failure to report for duty;
- (2) willful absence from one's position;
- (3) stoppage of work; or
- (4) abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment;

without the lawful approval of the school employer or in any concerted manner interfering with the operation of

the school employer for any purpose.
As added by P.L.1-2005, SEC.13.

IC 20-29-2-17 "Submission date" ---- REPEALED by SEA 575

Sec. 17. "Submission date" means the first date for the legal notice and publication of the budget of a school corporation under IC 6-1.1-17-3.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-18 "Superintendent"

Sec. 18. "Superintendent" means:

(1) the chief administrative officer of a:

(A) school corporation; or

(B) charter school established under IC 20-24; or

(2) a person or persons designated by the officer or by the governing body to act in the officer's behalf in dealing with school employees.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-19 "Supervisor"

Sec. 19. "Supervisor" means an individual who has:

(1) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline school employees;

(2) responsibility to direct school employees and adjust their grievances; or

(3) responsibility to effectively recommend the action described in subdivisions (1) through (2);

that is not of a merely routine or clerical nature but requires the use of independent judgment. The term includes superintendents, assistant superintendents, business managers and supervisors, directors with school corporationwide responsibilities, principals and vice principals, and department heads who have responsibility for evaluating teachers.

As added by P.L.1-2005, SEC.13.

IC 20-29-3 Indiana Education Employment Relations Board

IC 20-29-3-1 Establishment of board

Sec. 1. The Indiana education employment relations board is established.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-2 Members

Sec. 2. The board consists of three (3) members appointed by the governor to serve at the governor's pleasure.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-3 Chairperson

Sec. 3. The governor shall designate one (1) member of the board to serve as chairperson.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-4 Political affiliation of board members

Sec. 4. Not more than two (2) members of the board may be members of the same political party.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-5 Terms and vacancies

Sec. 5. Each member of the board is appointed for a term of four (4) years. A member appointed to fill a vacancy is appointed for the unexpired term of the member whom the appointed member is to succeed.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-6 Qualifications

Sec. 6. Members may not:

(1) hold:

(A) another public office; or

(B) employment by the state, a public agency, or a public employer;

(2) be an officer or employee of a school employee organization or any affiliate of an organization; or

(3) represent a:

(A) school employer; or

(B) school employee organization, or an organization's affiliates.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-7 Member on university teaching staff

Sec. 7. Section 6 of this chapter does not apply to an individual on the teaching staff of a university who is knowledgeable in public administration or labor law if the individual is not actively engaged, other than as a member, with any labor or employee organization. This section shall be construed liberally to effectuate the intent of the general assembly.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-8 Chairperson's duties

Sec. 8. The chairperson of the board shall give full time to the chairperson's duties and may not engage in any other business, vocation, or employment.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-9 Compensation

Sec. 9. The members of the board (other than the chairperson) receive as compensation payment equal to that of the chairperson, computed on a daily rate and paid for every day actually spent serving on the board.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-10 Quorum

Sec. 10. Two (2) members of the board constitute a quorum.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-11 Powers

Sec. 11. The board has the following powers:

(1) To adopt an official seal and prescribe the purposes for which the seal may be used.

(2) To hold hearings and make inquiries as the board considers necessary to carry out properly the board's functions and powers.

(3) To establish a principal office in Indianapolis.

(4) To meet and exercise the board's powers at any other place in Indiana.

(5) To conduct in any part of Indiana a proceeding, a hearing, an investigation, an inquiry, or an election necessary to the performance of the board's functions. For this purpose, the board may designate one (1) member, or an agent or agents, as hearing examiners. The board may use voluntary and uncompensated services as needed.

(6) To appoint staff and attorneys as the board finds necessary for the proper performance of its duties. The attorneys appointed under this section may, at the direction of the board, appear for and represent the board in court.

(7) To pay the reasonable and necessary traveling and other expenses of an employee, a member, or an agent of the board.

(8) To subpoena witnesses and issue subpoenas requiring the production of books, papers, records, and documents that may be needed as evidence in any matter under inquiry, and to administer oaths and affirmations. In cases of neglect or refusal to obey a subpoena issued to a person, the circuit or superior court of the county in which the investigations or the public hearings are taking place, upon application by the board, shall issue an order requiring the person to:

(A) appear before the board; and

(B) produce evidence about the matter under investigation.

A failure to obey the order may be punished by the court as a contempt. A subpoena, notice of hearing, or other process of the board issued under this chapter shall be served in the manner prescribed by the Indiana Rules of Trial Procedure.

(9) To adopt, amend, or rescind rules the board considers necessary and administratively feasible to carry out this chapter under IC 4-22-2.

(10) To request from any public agency the assistance, services, and data that will enable the board properly to carry out the board's functions and powers.

(11) To publish and report in full an opinion in every case decided by the board.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-12 Functions of board staff ---- REPEALED by SEA 575

Sec. 12. The board shall organize the board's staff to provide for the functions of:

- (1) unit determination;
- (2) unfair labor practice processing;
- (3) conciliation and mediation;
- (4) factfinding; and
- (5) research.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-13 Conciliation; mediation; factfinding ---- REPEALED by SEA 575

Sec. 13. In connection with conciliation and mediation or factfinding, the board may:

- (1) use full-time employees; or
- (2) appoint employees for specific cases from a panel the board establishes.

As added by P.L.1-2005, SEC.13.

IC 20-29-3-14 Research division

Sec. 14. The board's research division must be organized to provide:

- (1) statistical data on the resources of each school corporation;
- (2) the substance of any agreements reached by each school corporation; and
- (3) other relevant data.

As added by P.L.1-2005, SEC.13.

IC 20-29-4 Rights and Responsibilities of School Employees and Employers

IC 20-29-4-1 Rights of school employees ---- AMENDED by SEA 575 and HEA 1001

Sec. 1. School employees may:

- (1) form, join, or assist school employee organizations;
- (2) participate in collective bargaining with school employers through representatives of their own choosing; and
- (3) engage in other activities, individually or in concert;

to establish, maintain, or improve salaries, wages, ~~hours~~, salary and wage related fringe benefits, and other matters set forth in IC 20-29-6-4 and IC 20-29-6-5. ~~and IC 20-29-6-7.~~

IC 20-29-4-2 School employee not required to join or financially support school employee organization

Sec. 2. (a) A school employee may not be required to join or financially support through the payment of:

- (1) fair share fees;
- (2) representation fees;
- (3) professional fees; or
- (4) other fees;

a school employee organization.

(b) A rule, regulation, or contract provision requiring financial support from a school employee to a school employee organization is void. *As added by P.L.1-2005, SEC.13.*

IC 20-29-4-3 Responsibilities of school employers ---- AMENDED by SEA 575

Sec. 3. School employers have the responsibility and authority to manage and direct on behalf of the public the operations and activities of the school corporation to the full extent authorized by law, including but not limited to the following:

- (1) Direct the work of the school employer's employees.
- (2) Establish policy through procedures established in IC 20-29-6-4 and IC 20-29-6-5. ~~and IC 20-29-6-7.~~
- (3) Hire, promote, demote, transfer, assign, and retain employees. ~~through procedures established in IC 20-29-6-4, IC 20-29-6-5, and IC 20-29-6-7.~~
- (4) Suspend or discharge employees in accordance with applicable law through procedures established ~~in IC 20-29-6-4, IC 20-29-6-5, and IC 20-29-6-7.~~ **under state law.**
- (5) Maintain the efficiency of school operations.
- (6) Relieve employees from duties because of lack of work or other legitimate reason through procedures established in IC 20-29-6-4, IC 20-29-6-5, and IC 20-29-6-7.
- (7) Take actions necessary to carry out the mission of the public schools as provided by law.

IC 20-29-5 Units and Exclusive Representatives

IC 20-29-5-1 Exclusive representatives; selection of unit

Sec. 1. (a) The exclusive representative shall serve for school employees within certain groups referred to in this chapter as units or bargaining units. A bargaining unit may not contain both certificated and noncertificated employees. Subject to this limitation, the units for which an exclusive representative serves are determined in accordance with subsections (b) through (d).

(b) The parties may agree on the appropriate unit. For this purpose, the parties consist of the school employer and a school employee organization representing at least twenty percent (20%) of the school employees in a proposed unit.

(c) If the parties do not reach an agreement on the appropriate unit, or if a school employee in the proposed unit files a complaint about the unit with the board, the board shall determine the proper unit after a hearing. The board's decision must be based on but not limited to the following considerations:

- (1) Efficient administration of school operations.
- (2) The existence of a community of interest among school employees.
- (3) The effects on the school corporation and school employees of fragmentation of units.
- (4) Recommendations of the parties involved.

(d) In making a determination under subsection (c), the board shall give notice to all interested parties in accordance with the rules of the board. In giving notice under this subsection, the board is not required to follow IC 4-21.5.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-2 Recognition of school employer organization as exclusive representative by school employer

Sec. 2. (a) A school employer may recognize as the exclusive representative of the school employer's employees within an appropriate unit a school employee organization that presents to the employer evidence of the school employee organization's representation of a majority of the school employees within the unit, unless:

- (1) another school employee organization representing twenty percent (20%) of the school employees within the unit files written objections to the recognition; or
- (2) a school employee files a complaint to the composition of the unit with the school employer or the board within the notice period set forth in this section.

(b) Before recognizing an exclusive representative under this section, the school employer shall post a written public notice of the school employer's intention to recognize the school employee organization as exclusive representative of the school employees within the unit. The notice must be posted, for thirty (30) calendar days immediately preceding recognition, in each of the buildings where the school employees in any unit principally work.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-3 Determination of exclusive representative other than exclusive school employee organization

Sec. 3. (a) If an exclusive school employee organization is not determined under section 2 of this chapter, the determination of whether a school employee organization shall be the exclusive representative shall be determined under this section.

(b) A school employee organization may file a petition asserting that:

(1) twenty percent (20%) of the employees in an appropriate unit wish to be represented for collective bargaining by the school employee organization as exclusive representative; or

(2) the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(c) The school employer may file a petition asserting:

(1) that one (1) or more school employee organizations have presented to the school employer a claim to be recognized as the exclusive representative in an appropriate unit; or

(2) that the school employer has good faith doubt that the previously certified school employee organization represents a majority of employees in the bargaining unit.

(d) Twenty percent (20%) of the school employees in a unit may file a petition asserting that the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(e) The board shall investigate a petition filed under subsection (b), (c), or (d). If the board has reasonable cause to believe that a question exists as to whether the designated exclusive representative or any school employee organization represents a majority of the school employees in a unit, the board shall provide for an appropriate hearing within thirty (30) days. In holding a hearing, the board is not required to comply with IC 4-21.5.

(f) If the board finds, based on the record of a hearing held under subsection (e), that a question of representation exists, the board shall direct an election by secret ballot in a unit the board determines to be appropriate.

(g) Certification as the exclusive representative may be granted only to a school employee organization that has been selected in a secret ballot election under subsection (f), by a majority of all the employees in an appropriate unit as their representative.

(h) An election described in subsection (f) may not be held in a bargaining unit if a valid election has been held in the preceding twenty-four (24) month period.

As added by P.L.1-2005, SEC.13. Amended by P.L.1-2006, SEC.333.

IC 20-29-5-4 Elections

Sec. 4. In any election under this chapter, the board shall:

(1) determine who is eligible to vote in the election; and

(2) establish rules governing the election.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-5 Ballots

Sec. 5. The ballot in an election under this chapter must contain the following:

(1) The name of the petitioning school employee organization.

(2) The names of any other school employee organization showing written evidence satisfactory to the board of at least twenty percent (20%) representation of the school employees within the unit.

(3) A provision for choosing "No representation by a school employee organization."

As added by P.L.1-2005, SEC.13.

IC 20-29-5-6 Dues deductions

Sec. 6. (a) The school employer shall, on receipt of the written authorization of a school employee:

(1) deduct from the pay of the employee any dues designated or certified by the appropriate officer of a school employee organization that is an exclusive representative of any employees of the school employer; and

(2) remit the dues described in subdivision (1) to the school employee organization.

(b) Deductions under this section must be consistent with:

(1) IC 22-2-6;

(2) IC 22-2-7; and

(3) IC 20-28-9-18.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by SEA 575

Sec. 7. (a) This section does not apply to the bargaining team for the exclusive representative.

(b) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school corporation who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(c) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school wide committee may not exceed the percentage of teachers in the school who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(d) A committee to which this section applies may not address subjects of bargaining under this article. A school employer's appointment of a teacher to a committee is not an unfair practice as it relates to the appointment of the teacher committee members.

(e) By September 15 of each school year, the local president or other officer or designee of the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative.

IC 20-29-6 Collective Bargaining

IC 20-29-6-1 Duty to bargain collectively and discuss ---- AMENDED by SEA 575

Sec. 1. School employers and school employees shall:

- (1) have the obligation and the right to bargain collectively the items set forth in section 4 of this chapter;**
- (2) have the right and obligation to discuss any item set forth in section 7 of this chapter; and**
- (3) enter into a contract embodying any of the matters listed in section 4 of this chapter on which they have bargained collectively.**

IC 20-29-6-2 Contracts ---- AMENDED by SEA 575

Sec. 2. (a) ~~A Any contract entered into under this chapter~~ may not include provisions that conflict with:

- (1) any right or benefit established by federal or state law;**
- (2) school employee rights set forth in IC 20-29-4-1 and IC 20-29-4-2; or**
- (3) school employer rights set forth in IC 20-29-4-3;**
- (4) restructuring options available to a school employer under federal or state statutes, regulations, or rules because of the failure of the school corporation or a school to meet federal or state accountability standards;**
- (5) a school employer's ability to contract, partner, or operate jointly with an educational entity that provides postsecondary credits to students of the school employer or dual credits from the school employer and the educational entity; or**
- (6) section 4.5(a) of this chapter.**

(b) A subject that is set forth in section 4.5(a) of this chapter may not be included in any contract after June 30, 2011.

IC 20-29-6-3 Unlawful deficit financing ---- AMENDED by SEA 575

Sec. 3. (a) It is unlawful for a school employer to enter into any agreement that would place the employer in

a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue.

(b) A contract that provides for deficit financing is void to that extent, and an individual teacher's contract executed under the contract is void to that extent.

IC 20-29-6-4 Subjects of bargaining ---- AMENDED by SEA 575

Sec. 4. (a) A school employer shall bargain collectively with the exclusive representative on the following:

(1) Salary.

(2) Wages.

~~(3) Hours.~~

(4) ~~(3)~~ Salary and wage related fringe benefits, including accident, sickness, health, dental, or other vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11. ~~under IC 20-26-5-4 that were subjects of bargaining on July 1, 2001.~~

(b) Salary and wages include the amounts of pay increases available to employees under the salary scale adopted under IC 20-28-9-1, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool.

IC 20-29-6-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by SEA 575

Sec. 4.5. (a) For a contract entered into after June 30, 2011, a school employer may not bargain collectively with the exclusive representative on the following:

(1) The school calendar.

(2) Teacher dismissal procedures and criteria.

(3) Restructuring options available to a school employer under federal or state statutes, regulations, or rules because of the failure of the school corporation or a school to meet federal or state accountability standards.

(4) The ability of a school employer to contract, partner, or operate jointly with an educational entity that provides postsecondary credits to students of the school employer or dual credits from the school employer and the educational entity.

(5) Any subject not expressly listed in section 4 of this chapter.

(b) A subject set forth in subsection (a) that may not be bargained collectively may not be included in an agreement entered into under this article.

IC 20-29-6-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE] ---- ADDED by SEA 575

Sec. 4.7. (a) A school employer may not bargain collectively with the exclusive representative on teacher evaluation procedures and criteria after this section has been enacted into law.

(b) A contract entered into between a school employer and an exclusive representative after this section has been enacted into law may not extend past the end of a state budget biennium.

IC 20-29-6-5 Arbitration provisions ---- AMENDED by SEA 575

Sec. 5. A contract entered into under this chapter may contain a grievance procedure. ~~culminating in final and binding arbitration of unresolved grievances. However, the binding arbitration has no power to amend, add to, subtract from, or supplement provisions of the contract.~~

IC 20-29-6-6 Limitations on obligation to bargain collectively

Sec. 6. The obligation to bargain collectively does not include the final approval of a contract concerning any items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-7 Subjects of discussion ---- AMENDED by SEA 575

Sec. 7. ~~(a)~~ A school employer shall discuss with the exclusive representative of certificated employees the following items: listed in subsection ~~(b)~~.

~~(b)~~ A school employer may but is not required to bargain collectively, negotiate, or enter into a written contract concerning, be subject to, or enter into impasse procedures on the following matters:

~~(1)~~ Working conditions, other than those provided in section 4 of this chapter.

~~(2)~~ (1) Curriculum development and revision.

~~(3)~~ (2) Textbook selection.

~~(4)~~ (3) Teaching methods.

~~(5)~~ (4) Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees. and changes to any of the requirements set forth in IC 20-28-6 through IC 20-28-8.

~~(6)~~ (5) Student discipline.

~~(7)~~ (6) Expulsion or supervision of students.

~~(8)~~ (7) Pupil/teacher ratio.

~~(9)~~ (8) Class size or budget appropriations.

(9) Safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law.

(10) Hours.

~~(e)~~ items included in the 1972-1973 agreements between an employer school corporation and the school employee organization continue to be bargainable.

IC 20-29-6-8 Contract, agreement, or concession not required ---- AMENDED by SEA 575

Sec. 8. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the items listed in section 7 of this chapter. A failure to reach an agreement on a matter of discussion does not require allow the use of any part of the impasse procedure under IC 20-29-8.

IC 20-29-6-9 Discussions outside obligation to bargain collectively

Sec. 9. The obligation to bargain collectively or discuss a matter does not prevent:

(1) a school employee from petitioning the school employer, governing body, or superintendent for a redress of the employee's grievances, either individually or through the exclusive representative; or

(2) the school employer or superintendent from conferring with a citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-10 Recommendations by superintendent

Sec. 10. Nothing shall prevent a superintendent or the superintendent's designee from making recommendations to the school employer.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-11 Chapter does not limit rights of school employer and exclusive representative ---- REPEALED by SEA 575

Sec. 11. This chapter may not be construed to limit the rights of the school employer and the exclusive representative to mutually agree to the matters authorized under IC 20-28-7-13.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-12 Commencement of collective bargaining ---- AMENDED by SEA 575 and HEA 1001

Sec. 12. ~~Collective Formal~~ collective bargaining between a school corporation and the exclusive representative shall not begin ~~not later than before~~:

(1) August 1 in the first year of the state budget biennium; or

(2) August 1 in the second year of the state budget biennium if the parties agreed to a one (1) year contract during the first year of the state budget biennium or the contract provides for renegotiating certain financial items the second year of a two (2) year contract.

Informal negotiations may be held before August 1. ~~one hundred eighty (180) days before the submission date of a budget by a school employer.~~

IC 20-29-6-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by SEA 575 and AMENDED by HEA 1001

Sec. 12.5. (a) Before August 1 of the first year of the state budget biennium, the department shall provide the parties with an estimate of the general fund revenue available for bargaining in the school corporation from the school funding formula.

(b) Within thirty (30) days after the date of the first state ADM count date of the school year in the first year of the state budget biennium, the department shall provide the parties with a certification of estimated general fund revenue available for bargaining from the school funding formula. A school employer that has passed a general fund operating referendum under IC 20-46-1 must have that amount certified by the department of local government finance. The school corporation must obtain the certification before the commencement of bargaining. These certifications must be the basis for determinations throughout impasse proceedings under this chapter.

IC 20-29-6-13 Appointment of mediator ---- AMENDED by SEA 575 and by HEA 1001

Sec. 13. (a) At any time after ~~the one hundred eighty (180) days described in section 12 of this chapter has begun~~, at least sixty (60) days following the beginning of formal bargaining collectively between the parties, an impasse is declared, and the board shall appoint a mediator from the board's staff or an ad hoc panel. ~~if either party declares an impasse either:~~

- (1) in the scope of the items that are to be bargained collectively; or**
- (2) on the substance of any item to be bargained collectively.**

if after five (5) days the mediator is unsuccessful in finding a solution to the problems or in causing the parties to reach agreement, either party may request the board to initiate factfinding on the items that the parties are obligated to bargain collectively.

(b) The mediator shall begin mediation with fifteen (15) days after the board receives notice of impasse.

(c) The mediation must consist of not more than three (3) mediation sessions and must result in one (1) of the following:

(1) An agreement between the parties on the items permitted to be bargained under section 4 of this chapter.

(2) Each party's last best offer, including fiscal rationale, related to items permitted to be bargained under section 4 of this chapter.

(d) Costs for the mediator shall be borne equally by the parties.

(e) Mediation shall be completed within thirty (30) days.

IC 20-29-6-14 Initiation of mediation ---- REPEALED by SEA 575

Sec. 14. If an agreement has not been reached on the items to be bargained collectively seventy-five (75) days before the submission date of a budget by a school employer, the board shall initiate mediation.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-15 Initiation of factfinding ---- REPEALED by SEA 575

Sec. 15. If an agreement has not been reached on the items to be bargained collectively forty-five (45) days before the submission date of a budget by a school employer, the board shall initiate factfinding.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-15.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by HEA 1001

Sec. 15.1. (a) If an agreement has not been reached on the items permitted to be bargained collectively under section 4 of this chapter, within fifteen (15) days after mediation under section 13 of this chapter has ended, the board shall initiate factfinding.

(b) Factfinding must culminate in the factfinder imposing contract terms on the parties. The factfinder must select one (1) party's last best offer as the contract terms. The factfinder's order must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under

section 4 of this chapter and must not put the employer in a position of deficit financing (as defined in IC 20-29-2-6). The factfinder's order may not impose terms beyond those proposed by the parties in their last, best offers.

(c) Costs for the factfinder shall be borne equally by the parties.

(d) Factfinding may not last longer than fifteen (15) days.

IC 20-29-6-16 Status quo period ---- AMENDED by SEA 575 and HEA 1001

Sec. 16. (a) If an agreement has not been reached on the items to be bargained collectively by November 1, as provided in IC 6-1.1-17-5, ~~fourteen (14) days before the submission date of a budget by a school employer,~~ the parties shall continue the ~~status quo~~ the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this ~~status quo~~ period, in order to allow the successful resolution of the dispute, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(b) ~~During the bargaining process~~ Upon the expiration of the current contract that is in effect, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed, unless continuation of the ~~status quo~~ would put the school employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in an employer's expenditures when the expenditures exceed the current year actual general fund revenue.

(c) The only parts of the contract that must continue ~~in status quo~~ under this section are the items contained in the contract and listed in section 4 of this chapter.

~~(b)~~ (d) This section may not be construed as relieving the school employer or the school employee organization from the duty to bargain collectively until a mutual agreement has been reached and a contract entered as called for in this chapter.

IC 20-29-6-17 Request for mediation or factfinding ---- REPEALED by SEA 575

Sec. 17. At any time after the one hundred eighty (180) days described in section 12 of this chapter has begun:

(1) either party may request mediation or factfinding on items; or

(2) the parties may act together to request mediation or factfinding on any items;

that must be bargained collectively under section 4 of this chapter.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by SEA 575

Sec. 18. (a) Either party may appeal the decision of the factfinder under IC 20-29-6-15. The appeal must be filed not later than thirty (30) days after receiving the factfinder's decision.

(b) The board's decision must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing, as defined in IC 20-29-2-6. The board's decision may not impose terms beyond those proposed by the parties in their last, best offers.

(c) The board must rule on the appeal within thirty (30) days after receipt of notice of appeal.

IC 20-29-7 Unfair Practices

IC 20-29-7-1 Unfair practices by school employer ---- AMENDED by SEA 575

Sec. 1. (a) It is an unfair practice for a school employer to do any of the following:

(1) Interfere with, restrain, or coerce school employees in the exercise of the rights guaranteed in IC 20-29-4.

(2) Dominate, interfere, or assist in the formation or administration of any school employee organization or contribute financial or other support to the organization. Subject to rules adopted by the governing body, a school employer may permit school employees to confer with the school employer or with any school employee organization during working hours without loss of time or pay.

(3) Encourage or discourage membership in any school employee organization through discrimination in regard to:

- (A) hiring;
- (B) tenure of employment; or
- (C) any term or condition of employment.

(4) Discharge or otherwise discriminate against a school employee because the employee has filed a complaint, affidavit, petition, or any information or testimony under this article.

(5) Refuse to:

- (A) bargain collectively; or
- (B) discuss;

with an exclusive representative as required by this article.

(6) Fail or refuse to comply with any provision of this article.

(b) If:

(1) a complaint is filed that alleges an unfair practice has occurred with respect to a subject that may be discussed under this article; and

(2) the complaint is found to be frivolous;

the party that filed that complaint is liable for costs and attorney's fees.

IC 20-29-7-2 Unfair practices by school employee organization

Sec. 2. It is an unfair practice for a school employee organization or the organization's agents to do any of the following:

(1) Interfere with, restrain, or coerce:

(A) school employees in the exercise of the rights guaranteed by this article; or

(B) a school employer in the selection of its representatives for the purpose of bargaining collectively, discussing, or adjusting grievances.

This subdivision does not impair the right of a school employee organization to adopt its own rules with respect to the acquisition or retention of membership in the school employee organization.

(2) Cause or attempt to cause a school employer to discriminate against an employee in violation of section 1 of this chapter.

(3) Refuse to bargain collectively with a school employer if the school employee organization is the exclusive representative.

(4) Fail or refuse to comply with any provision of this article.

As added by P.L.1-2005, SEC.13.

IC 20-29-7-3 Right of school employer or school employee organization to bring suit

Sec. 3. This chapter does not in any way restrict the right of a:

(1) school employer; or

(2) school employee organization;

to bring suit for specific performance or breach of performance, or both, of a collective bargaining contract in any court having jurisdiction.

As added by P.L.1-2005, SEC.13.

IC 20-29-7-4 Prevention of unfair practices

Sec. 4. (a) Unfair practices are remediable under this section.

(b) A school employer or a school employee who believes the employer or employee is aggrieved by an unfair practice may file a complaint under oath:

(1) setting out a summary of the facts involved; and

(2) specifying the section or sections of this article alleged to have been violated.

(c) The board shall:

(1) give notice to the person or school employee organization against whom the complaint is directed; and

(2) determine the matter raised in the complaint.

(d) Appeals may be taken under IC 4-21.5-3.

(e) A hearing examiner or agent of the board, who may be a member of the board, may:

(1) take testimony; and

(2) make findings and conclusions.

(f) The board, but not a hearing examiner or agent of the board, may enter the interlocutory orders, after summary hearing, the board considers necessary in carrying out the intent of this chapter.

As added by P.L.1-2005, SEC.13.

IC 20-29-8 Impasse Procedures

IC 20-29-8-1 Purposes of mediation of disputes ---- REPEALED by SEA 575

Sec. 1. The purposes of mediation of disputes between school employers and exclusive representatives are the following:

- (1) To delineate the problems involved in bargaining collectively.
- (2) To find solutions that can reasonably be accepted by both parties.
- (3) To determine common grounds, if any.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-2 Mediators ---- REPEALED by SEA 575

Sec. 2. The board shall establish and hire a:

- (1) permanent staff of mediators; and
- (2) panel of part-time mediators.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-3 Appointment of mediator ---- REPEALED by SEA 575

Sec. 3. When a mediator is requested or required under IC 20-29-6, the board shall appoint a mediator from the staff or panel established under section 2 of this chapter.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-4 Confidentiality of mediation ---- REPEALED by SEA 575

Sec. 4. The mediation process is confidential in nature. The mediator is not subject to the subpoena power of courts or other administrative agencies of the state regarding the subjects discussed as a part of the mediation process.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-5 Purpose of factfinding ---- AMENDED by SEA 575

Sec. 5. The purpose of factfinding is to ~~give a neutral advisory opinion~~ **provide a final solution on the items permitted to be bargained under IC 20-29-6-4** whenever the parties are unable by themselves, or through a mediator, to resolve a dispute.

IC 20-29-8-6 Factfinders ---- REPEALED by SEA 575

Sec. 6. (a) The board shall establish and hire a:

- (1) permanent staff of factfinders; and
- (2) panel of part-time factfinders.

(b) The persons described in subsection (a) may also be mediators.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-7 Appointment of factfinder ---- AMENDED by SEA 575 and HEA 1001

Sec. 7. (a) When a factfinder is requested or required under IC 20-29-6, the board shall appoint a factfinder from the staff or panel established under section 6 of this chapter.

(b) The factfinder shall make an investigation and hold hearings as the factfinder considers necessary in connection with a dispute.

(c) The factfinder:

- (1) may restrict the factfinder's findings to those issues that the factfinder determines significant;
- (2) **must restrict the findings to the items listed in IC 20-29-6-4; and**
- (3) **may not impose terms beyond those proposed by the parties in their last, best offers.**

(d) The factfinder may use evidence furnished to the factfinder by:

- (1) the parties;
- (2) the board;
- (3) the board's staff; or
- (4) any other state agency.

(e) **The factfinder shall conduct the factfinding hearing in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located, or if the school employer is located in more than one (1) county, in the county in which the greatest number of students who attend the school employer's schools reside. The public hearing may begin not earlier than October 1 in the first year of the state budget biennium and must be concluded by December 31 of the same year.**

(f) **The factfinding process may not exceed fifteen (15) days from beginning to end, and not more than two (2) of those days may be used for public testimony, which may be taken at the discretion of the factfinder. During the public hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer. Only general operating funds and those funds certified by the department of education and the department of local government finance may be considered as a source of the finding funding for items, unless the school funding formula allows other funds to be used for certain items.**

~~(e)~~ (g) **The factfinder shall make a recommendation as to the settlement of the disputes over which the factfinder has jurisdiction.**

~~(f)~~ (h) **The factfinder shall:**

- (1) make the investigation, hearing, and findings as expeditiously as the circumstances permit; and
- (2) deliver the findings to the parties and to the board.

~~(g)~~ (i) **The board, after receiving the findings and recommendations, may make additional findings and recommendations to the parties based on information in:**

- (1) the report; or
- (2) the board's own possession.

The board may not make any recommendations to the parties related to any items not specifically identified in IC 20-29-6-4.

~~(h)~~ (j) **At any time within five (5) days after the findings and recommendations are delivered to the board, the board may make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through news media and other means the board considers effective.**

~~(i)~~ (k) **The board shall make the findings and recommendations described in subsection ~~(h)~~ (j) available to the public not later than ten (10) days after the findings and recommendations are delivered to the board.**

IC 20-29-8-8 Factors considered by factfinder ---- AMENDED by SEA 575

Sec. 8. In conducting hearings and investigations, the factfinder is not bound by IC 4-21.5. The factfinder shall, however, consider the following factors:

- (1) Past memoranda of agreements and contracts between the parties.
- (2) Comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation.
- (3) The public interest.
- (4) The financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing as described in IC 20-29-6-3.

IC 20-29-8-9 Submission of issue to arbitration ---- REPEALED by SEA 575

Sec. 9. The school employer and the exclusive representative may also at any time submit any issue in dispute to final and binding arbitration to an arbitrator appointed by the board. The award in the arbitration constitutes the final contract between the parties for the issue.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-10 Mediator may not serve as factfinder or arbitrator ---- REPEALED by SEA 575

Sec. 10. A person who has served as a mediator in a dispute between a school employer and an exclusive

representative may not serve as a factfinder or an arbitrator in a dispute arising in the same school corporation within a period of five (5) years except by the mutual consent of the parties.

IC 20-29-8-10.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by HEA 1001

Sec. 10.1. A person who has served as a mediator in a dispute between a school employer and an exclusive representative may not serve as a factfinder in a dispute arising in the same school corporation within a period of five (5) years except by the mutual consent of the parties.

IC 20-29-8-11 Other employment of mediators and factfinders ---- REPEALED by SEA 575

Sec. 11. Mediators and factfinders may not be employed on a full-time or part-time basis by:

- (1) a public school employer that is a school corporation; or
- (2) an organization of:
 - (A) public employees; or
 - (B) public employers; or
- (3) affiliates of an organization described in subdivision (2)(A) or (2)(B).

As added by P.L.1-2005, SEC.13.

IC 20-29-8-12 Payment of expenses by board ---- AMENDED by SEA 575/REPEALED by HEA 1001

Sec. 12. The board shall pay the following: ~~(1) The compensation and expenses of any mediator or factfinder.~~ ~~(2) The cost of an arbitrator, which shall be reimbursed equally by the two (2) parties under procedures for collection and payment established by the board.~~

IC 20-29-8-13 Findings and recommendations ---- REPEALED by SEA 575

Sec. 13. (a) The investigation, hearing, and findings of the factfinder must be:

- (1) made as expeditiously as the circumstances allow; and
- (2) delivered to the parties and to the board.

(b) The board, after receiving the findings and recommendations under subsection (a), may make additional findings and recommendations to the parties based upon information in the report or in the board's possession.

(c) The board:

- (1) may, at any time within five (5) days; and
- (2) shall, within ten (10) days;

after receiving the findings and recommendations delivered under subsection (a), make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through the news media and any other means.

As added by P.L.1-2005, SEC.13.

IC 20-29-8-13.1 IS ADDED IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011] ---- ADDED by HEA 1001

Sec. 13.1. (a) The investigation, hearing, and findings of the factfinder must be:

- (1) made as expeditiously as the circumstances allow; and
- (2) delivered to the parties and to the board.

(b) The board, after receiving the findings and recommendations under subsection (a), may make additional findings and recommendations to the parties based upon information in the report or in the board's possession. The board may not make any recommendations to the parties related to any items not specifically identified in IC 20-29-6-4 and may not address items beyond those proposed by the parties in their last, best offers.

(c) The board:

- (1) may, at any time within five (5) days; and
- (2) shall, within ten (10) days;

after receiving the findings and recommendations delivered under subsection (a), make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through the news media and any other means."

**IC 20-29-8-14 Further mediation and factfinding upon issuance of tentative individual contracts ----
REPEALED by SEA 575**

Sec. 14. If a school employer issues tentative individual contracts, the board shall provide for further mediation and factfinding until an agreement is reached.

As added by P.L.1-2005, SEC.13.

IC 20-29-9 Strikes

IC 20-29-9-1 Unlawful participation in strike

Sec. 1. It is unlawful for:

- (1) a school employee;
- (2) a school employee organization; or
- (3) an affiliate, including state or national affiliates, of a school employee organization;

to take part in or assist in a strike against a school employer or school corporation.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-2 Actions taken for aiding or abetting in a strike

Sec. 2. A school corporation or school employer may in:

- (1) an action at law;
- (2) a suit in equity; or
- (3) another proper proceeding;

take action against a school employee organization, an affiliate of a school employee organization, or any person aiding or abetting in a strike for redress of the unlawful act.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-3 Loss of dues deduction privilege by exclusive representative for participating in strike

Sec. 3. If an exclusive representative:

- (1) engages in; or
- (2) aids or abets in;

a strike, the exclusive representative shall lose the exclusive representative's dues deduction privilege for one (1) year.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-4 Minimum length of school year

Sec. 4. A regulation, rule, or law concerning the minimum length of a school year may not:

- (1) apply; or
- (2) require makeup days;

if schools in a school corporation are closed as a result of a school employee strike.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-5 School corporation not required to pay salary for days on strike

Sec. 5. A school corporation shall not pay a school employee for any day when the school employee fails, as a result of a strike, to report for work as required by the school year calendar.

As added by P.L.1-2005, SEC.13.