

## **2013 IEERB Practitioner's Guide to Bargaining & Impasse**

The Indiana Education Employment Relations Board (IEERB) is a neutral agency that oversees labor relations between public school teachers and the school employers they serve.

In 2011, Public Law 48-2011 went into effect, changing many aspects of teacher collective bargaining in Indiana. For example, there is now a bargaining timeline and mandatory impasse procedures. IEERB staff has developed this Guide to help both parties learn the basics of the law and rules, as well as navigate this new process.

**The following Guide is for GUIDANCE ONLY on collective bargaining agreements and impasse under Indiana Code 20-29 (as amended by PL 48-2011) and 560 Indiana Administrative Code 2. IEERB is a neutral agency and cannot provide legal advice; nor does this Guide bind IEERB or its Board in any way.** This Guide is not intended to take the place of careful review of IC 20-29 and 560 IAC 2, or as a substitute for legal advice. Some of this Guide may not be relevant to a school employer or exclusive representative based on the ratification date of a current collective bargaining agreement. Moreover, it is IEERB-only guidance. Guidance or information from other agencies involved with CBAs or collective bargaining have been provided for information only and may not reflect the views of IEERB. Please note that this Guide pertains to teacher collective bargaining laws and rules; however, the parties are still subject to other state and federal laws and rules not mentioned or analyzed here. **This Guide supercedes prior IEERB guidance on bargaining and impasse.**

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## Collective Bargaining

### Overview

Bargaining collectively is the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, known as a collective bargaining agreement ("CBA"), relating to the settlement of bargaining subjects. 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. Informal negotiations may be held prior to August 1. However, pursuant to IC 20-29-6-12, formal collective bargaining between a school corporation and the exclusive representative shall not begin before August 1 in the first year of the state budget biennium, or August 1 in the second year of the state budget biennium if either the parties agreed to a one-year contract during the first year of the state budget biennium, or the contract provides for renegotiating certain financial items during the second year of a two-year contract.

The mandatory subjects of bargaining listed in IC 20-29-6-4 are salary, wages, and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11. 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. Indiana code sections 20-29-6-4.5 and -4.7 state that the following are impermissible subjects of bargaining: school calendar, teacher dismissal procedures and criteria, restructuring options available to a school employer, the school employer's ability to work with educational entities regarding postsecondary or dual credits, teacher evaluation procedures and criteria, and any subject not required to be bargained.

Prior to the start of factfinding, there is no restriction under IC 20-29 or 560 IAC 2 regarding what sources of funding may be used to settle a CBA (although there may be restrictions from other sources, including statutory or policy restrictions). However, it is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing. For more information, see the Financial Consideration section, below.

Beyond simply bargaining, the parties must reduce any agreement to writing. Language necessary for the formation of a collective bargaining agreement includes a ratification section, the CBA term, a recognition clause, and definitions. Additionally, a grievance procedure may be in a collective bargaining agreement, but may not conflict with other laws, such as IC 20-28-7.5-7(c). Pursuant to IC 20-29-6-2, a CBA cannot contain either impermissible subjects of bargaining (as set forth in IC 20-29-6-4.5(a)), or provisions that conflict with: any right or benefit established by federal or state law, school employee rights set forth in IC 20-29-4-1 and IC 20-29-4-2, school employer rights set forth in IC 20-29-4-3, restructuring options available to a

school employer, or a school's ability to work with educational entities regarding postsecondary or dual credits. **IEERB is not able to provide legal advice on CBA content or compliance. For legal advice, contact your local counsel.**

Once the parties have reduced their agreements to writing, the CBA must be ratified by the governing body of the school corporation and the exclusive representative. Once it is ratified, it should be signed and posted on the school corporation's website. **Ratified CBAs also must be sent to IEERB via email at [ratifiedcontract@ieerb.in.gov](mailto:ratifiedcontract@ieerb.in.gov).** Any side agreements or memoranda of understanding (MOUs) regarding subjects of bargaining, as well as any prior agreements or portions of a prior agreement incorporated by reference in a CBA, must be included with the CBA submitted to IEERB. The email's subject line should include the school name, the school number, the ratified CBA, and the CBA term (e.g., Sunnyville, 1234, Ratified CBA 2013-2014); the other party's representative must be cc'd on the email. Both parties are responsible for ensuring that IEERB timely receives a ratified CBA.

Pursuant to 560 IAC 2-4-1, IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. To give the parties more time to bargain, IEERB is allowing the parties who notify IEERB of settlement prior to the declaration of impasse until October 10 to ratify and submit their CBA. As such, the parties should ensure that their respective governing body is able to ratify the CBA within that timeline. For more information, see the Impasse Declaration section, below.

The State Board of Accounts reviews CBAs for compliance during their biannual audits. Attached in the appendix is the Collective Bargaining Agreement rubric published by the State Board of Accounts in their June 2012 School Administrator and Uniform Compliance Guidelines. Check with State Board of Accounts for any current guidance they may have on CBAs. **Note: SBOA's guidance is not binding on IEERB, and may not reflect IEERB's views.**

IEERB has reviewed all 2012-2013 CBAs. Although IEERB cannot provide legal advice on how to draft a CBA or what can be contained in a CBA, IEERB encourages the parties to have the CBA reviewed in its entirety prior to ratification and submission to ensure compliance. IEERB may return CBAs if they are not signed, lack a valid term, or are incomplete (e.g., attachments or agreements referred to in the CBA are not actually attached).

See IC 20-29-6, 560 IAC 2-4, and IEERB precedent (to the extent it is still good law) for more information.

### Salary Models/Scales/Schedules

Indiana Code 20-28-9-1 provides that increases or increments in a local salary scale must be based upon a combination of the following factors:

1. Education and experience. Specifically, a combination of
  - a. the attainment of either: additional content area degrees beyond the requirements for employment; or additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29; and
  - b. the number of years of a teacher's experience
 taken together may account for not more than 33% of the calculation used to determine a teacher's increase or increment.
2. Evaluation. Specifically, the results of an evaluation conducted under IC 20-28-11.5.
3. Leadership. Specifically, the assignment of instructional leadership roles, including the responsibility of conducting evaluations under IC 20-28-11.5.
4. Student needs. Specifically, the academic needs of students in the school corporation.

Moreover, IC 20-28-9-1 provides that **a teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year** if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of the teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the factors listed above.

The code also provides that these new salary model requirements should not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be solely to conform to the new salary scale. Pursuant to IC 20-28-9-1, compensation attributable to additional degrees or graduate credits earned before the effective date of the local salary schedule created under that chapter shall continue. Compensation attributable to additional degrees for which a teacher has started course work before July 1, 2011, and completed course work before September 2, 2014, also shall continue.

Pursuant to IC 20-28-9-1, each school corporation shall submit its local salary schedule to the Department of Education, who will publish the schedules on its website. DOE shall report any noncompliance to the State Board of Education, who shall take appropriate action to ensure compliance. Please check with the DOE regarding submission and compliance of salary schedules. **Note: DOE's guidance is not binding on IEERB, and may not reflect IEERB's views.**

DOE has developed an Indiana Model Salary Schedule (Version 2.0), which was current as of the publication of this Guide, and can be found at [www.doe.in.gov/improvement/educator-effectiveness/compensation-systems](http://www.doe.in.gov/improvement/educator-effectiveness/compensation-systems). According to DOE guidelines, this model can be implemented in a school corporation without modification, modified to fit a school corporation needs, or simply used as a starting point in a corporation's process of creating an innovative salary schedule program. DOE also has published a "Compensation Guidance: Salary Scale Compliance Checklist," attached, which was current as of the publication of this Guide (and also can be found at the website listed above). Please

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check with the DOE for any current guidelines or salary models. **Note: DOE's guidance is not binding on IEERB, and may not reflect IEERB's views.**

Additionally, although IEERB cannot provide a legal opinion about salary models, or recommend that a particular model be used, a variety of salary models, embedded within CBAs, are available through IEERB Search at: <https://ieerbsearch.ieerb.in.gov/login.aspx> (if you do not already have an account, you will need to self register for one on the website). Additionally, IEERB can provide information on the type and frequency of salary models. **Please note that IEERB's posting or information signifies neither the salary model's or CBA's compliance with applicable laws and rules, nor IEERB's endorsement of the salary model or CBA.**

Prior to ratifying and submitting salary models, particularly given the various individuals and agencies that may be reviewing them, IEERB recommends that the models are reviewed to ensure they are compliant, complete, and understandable.

For more information, see IC 20-28-9-1.

### Collecting Information for Bargaining

IEERB encourages the parties to voluntarily and readily exchange bargaining information. Aside from any voluntary exchange, such disclosure may be mandatory. *Lebanon Classroom Teacher Association, Inc. v. Board of School Trustees of the Lebanon Community Schools*, Case No. U-10-13-0665, 2012 WL 3549830, at \*3 (IEERB Mar. 27, 2012), provides that a party "has a right to information about mandatory subjects of bargaining for purposes of making future bargaining proposals, current bargaining proposals, or for contract administration. ... Under EERB precedent, the information must be provided at any time, not just within normal bargaining periods." See IEERB precedent for more information on disclosure requirements.

Moreover, schools are subject to the Access to Public Records Act, IC 5-14-1.5 et seq., which allows all persons, including associations, access to public records from a public agency. The Public Access Counselor provides advice and assistance concerning Indiana's public access laws to members of the public and government officials and their employees. For more information on APRA, including requirements, exclusions, timelines, etc., go to [www.in.gov/pac](http://www.in.gov/pac).

### Expiration of Collective Bargaining Agreements

CBAs entered into on or after April 21, 2011, may not extend past the end of a state budget biennium. 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 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.

Pursuant to IC 20-29-6-16, 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, the parties shall continue 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 period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

Pursuant to IC 20-29-6-16, only certain parts of the CBA must continue. For more information, see IC 20-29-6-4.7 and IC 20-29-6-16.

Parties with CBAs that were ratified prior to April 21, 2011, may call IEERB for questions regarding the expiration of their CBA.

### Discussion

Discussion is the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss, provide meaningful input, or exchange points of view, with respect to the following subjects: curriculum development and revision; textbook selection; teaching methods; hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; student discipline; expulsion or supervision of students; pupil/teacher ratio; class size or budget appropriations; safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law; and hours. 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 mandatory subjects of discussion. See IC 20-29-2-7, IC 20-29-6-6, IC 20-29-6-7, IC 20-29-6-8, and IEERB precedent (to the extent it is good law) for more information.

### Miscellaneous Topics

#### Committee Appointments

Pursuant to IC 20-29-5-7, the percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. This requirement does not apply to the bargaining team for the exclusive representative, and such a committee may not address subjects of bargaining.

### Collective Bargaining/Discussion Meetings

Pursuant to IC 5-14-1.5-6.5, whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization, or any person authorized to act for an employee organization, for the purpose of collective bargaining or discussion, any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.

Effective July 1, 2013, collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries does not constitute a meeting under Indiana's Open Door Law if the governing body has not appointed a collective bargaining agent.

### Calendar-Year Collective Bargaining Agreements

Parties with questions regarding calendar-year CBAs should contact IEERB's conciliation director.

### Miscellaneous Issues

Pursuant to IC 20-29-6-9, the obligation to bargain collectively or discuss a matter does not prevent 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 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.

Pursuant to IC 20-29-6-10, nothing shall prevent a superintendent or the superintendent's designee from making recommendations to the school employer.

Pursuant to IC 20-29-5-7(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.

### Impasse Overview

At the end of September 2013, IEERB will post and send to all parties (for whom IEERB has contact information) a Bargaining Status Form. **This Form should be completed – regardless of whether the parties are bargaining – and sent to IEERB via email at [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov) by October 5, 2013.** The email should include the school name, school number, and topic in the subject line (e.g., Sunnyville, 1234, Joint Bargaining Status Form). IEERB requests the parties' cooperation in helping ensure that all parties receive the Bargaining Status Form, so IEERB asks that you send the Form to the school's superintendent or the

exclusive representative president when you either receive it or find it on IEERB's website. School employers and exclusive representatives may complete the form together, or separately. In either case, the other party's representative must be cc'd on the email submission to IEERB. The contact information on the Bargaining Status Form will be the contact information used by IEERB for the Declaration of Impasse unless notice of another or additional contact is given to IEERB.

### Impasse Steps

1. Declaration of Impasse by IEERB
2. Appointment of Mediator by IEERB
3. Mediation
4. Exchange of Last, Best Offers (LBOs)
5. Appointment of Factfinder by IEERB
6. Factfinding
7. Appeal to IEERB
8. Appeal to Court

The 2013 Bargaining Timeline is attached in the appendix.

### Impasse Declaration

IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB.

Parties who are at impasse should notify IEERB on or after October 1. Parties may inform IEERB of impasse through the Bargaining Status Form, or via email at [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov). This notice should include the school name, school number, exclusive representative name, contact information for both parties, and the fact that the parties are at impasse (if the parties disagree whether they are at impasse, please note that as well). Either party may submit the email, but the other party's representative must be cc'd.

To give the parties more time to bargain, IEERB is allowing parties who notify IEERB of settlement prior to the declaration of impasse until October 10 to ratify and submit their CBA. As such, the parties should ensure that their respective governing body is able to ratify the CBA within that timeline. Notice of settlement should be made on the Bargaining Status Form. If the parties settle after they submit the Form, the parties should submit written notice of settlement to IEERB via email at [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov). This notice should include the school name, school number, exclusive representative name, contact information for both parties, the fact that the parties have settled, and the earliest date of ratification (which must be prior to October 10 to avoid declaration of impasse). Either party may submit the email, but the other party's representative must be cc'd.

IEERB will send a Declaration of Impasse to the contacts listed on the parties' Bargaining Status Form. Once impasse is declared, it will continue unless and until IEERB receives either a ratified CBA (at which point it will issue an End of Impasse notice) prior to the initiation of factfinding, or a factfinder's report.

Upon receipt of the Declaration of Impasse, each party is required to provide IEERB with the name, position, address, e-mail address, and phone number of its chief spokesperson, and of the individual to whom billing invoices should be submitted. Each party is required to immediately submit a change in contact information occurring during mediation or factfinding. The individual listed as the chief negotiator will be the contact throughout impasse unless notice of a change is provided to IEERB and the mediator or factfinder if the party is in mediation or factfinding. Unless otherwise indicated in these rules, all correspondence for impasse procedures shall be via e-mail. Parties or the IEERB may, in addition to e-mail, correspond via mail, facsimile, or hand delivery. Receipt of an e-mail will be presumed upon dispatch.

See 560 IAC 2-4 for more information.

## Mediation

### Overview

Once impasse is declared, IEERB will appoint a mediator within 15 days. Mediation is mandatory, and the cost is split by the parties. During mediation the mediator will attempt to help the parties reach a settlement, but cannot force one. If for any reason either party does not feel that mediation will be successful, the mediator should be contacted immediately so the mediator can decide how to proceed.

At no cost to the parties, IEERB provides training to its mediators on the laws and rules of teacher collective bargaining. Parties may jointly request a mediator if they wish. A list of approved ad hoc panelists can be found at <http://www.in.gov/ieerb/2337.htm>. Such a request will be taken into consideration by IEERB, but may not be granted. IEERB strives to appoint quality mediators who will best facilitate settlement. As such, IEERB has developed an evaluation system for our mediators, and depends on the parties to provide honest, detailed assessments of mediators so that we can better train and place them. Any concerns should be addressed to IEERB. Evaluations will be dispersed at the end of mediation.

Mediation will consist of 1-3 sessions, which generally occur at the school corporation. Mediation will last up to 30 days starting from the date of the mediator's appointment. During mediation, there is no restriction under IC 20-29 or 560 IAC 2 regarding what sources of funding may be used to settle a CBA (there may be restrictions from other sources, including statutory or policy restrictions). However, it is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing. For more information, see the Financial Consideration section, below.

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If the parties cannot **settle and ratify** their CBA by the end of mediation, they must exchange LBOs. IEERB must receive a ratified CBA to end impasse. The mediator will set the dates and times of mediation sessions, the number of sessions, and when mediations ends/the parties must exchange LBOs. Prior to the first mediation, the mediator may contact the parties and request information, either orally or in writing, in order to help facilitate more efficient sessions. Parties should cooperate with the mediator's request to help the mediator understand the nature of impasse.

The mediator will inform IEERB whether the parties have settled. The mediator also will report the number of hours worked and expenses incurred during mediation. The current hourly rate for mediators is \$800/7.5. **IEERB will pay the mediator, and then send the parties an invoice reflecting the shared cost. This invoice will be due 30 days from receipt. Failure to timely pay the IEERB may result in legal action.** For more information on the collection process, please contact IEERB's conciliation director.

See IC 20-29-6-13 and 560 IAC 2-4 for more information.

### Preparing for Impasse Mediation

Successful mediation often will require time and effort by the parties and the mediator. This time and effort can pay off in a big way – if you settle and the CBA is ratified, not only are you done with impasse, but you will not have to draft an LBO and participate in factfinding, both of which may involve significant time and money. Below is some additional information on what to expect from mediation to help you prepare.

After receiving a Declaration of Impasse from IEERB, you will receive a Mediator Appointment, which will name the appointed mediator and provide information on the process. The mediator will contact the parties to set up dates and time for mediation. **Given the tight timeframe, it is important that the parties be flexible in when they can attend mediation sessions. Mediators can unilaterally set the date and time of mediation.** The first session will ideally take place within 10 days of the start of mediation. **Parties who fail to attend scheduled sessions will still be responsible for any time spent and costs incurred by the mediator.** Knowing that a mediation session could take all day, parties should clear their schedule for the date of mediation so they can attend and fully participate until the mediator decides to end the session.

Within the mediation period (up to 30 days), the parties must attend at least one mediation session, and may attend up to three. If the parties settle, the CBA must be ratified within the mediation period. Therefore, parties should plan for ratification when dealing with the mediation timelines. IEERB will issue an End of Impasse notice when it receives a ratified CBA. **If the parties do not settle and ratify a CBA, they will have to exchange LBOs by the date given by the mediator within the mediation period.**

The mediator may require information, either via telephone or written statement, from the parties prior to the first session to give the mediator some background on the parties and their bargaining history. It is strongly recommended that the parties provide all relevant information requested by the mediator. If the mediator does not require any information prior to the first session, parties may ask the mediator if they can submit information. Receiving information prior to the first session will help the mediator devise a mediation strategy based on the particular case, and will likely lead to a quicker (and cheaper) resolution.

In addition to requesting information, the mediator also may provide information on his or her general style of mediation. For example, many mediators will start with a joint session where the parties present an opening statement and then split the parties into separate rooms for the remainder of the session. Other mediators will have no joint sessions; others will not separate the parties. The parties are encouraged to ask the mediator what the parties can expect from the first mediation session, including whether they will be asked to provide opening statements. Opening statements generally consist of concise statements regarding a party's positions on disputed issues.

Regardless of the format of mediation, the parties should be prepared to explain to the mediator and the other party their positions on the disputed issues and the support for that position. To do that, the parties will have to know and understand the basics of the law and procedures, the cost and source of funding for their proposals, and the reason their position should be adopted (an example could be explaining how your position is consistent with the factors that a factfinder, should the case go to factfinding, would take into consideration in selecting an LBO: past memoranda of agreements and contracts between the parties; comparisons of wages and hours of the employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation; the public interest; and the financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing). Also, knowing – and being able to articulate – why your position is important to you may help the mediator devise creative solutions. For example, if the exclusive representative would like a stipend for teachers for meeting the academic needs of students and the school can pay it, but not immediately, the parties may agree to a delayed stipend (remember that agreements must still be compliant with other laws, such as federal and state wage payment and collection laws).

Parties may need to request information from the other side in order to be prepared for mediation. Such information should be requested as far in advance as possible to give the other party time to respond. For more information, see the section entitled Collecting Information for Bargaining, above.

Varying interests may not only be represented on opposite sides of the table, but also on the same side of the table. The mediator is there to mediate between the parties, not within the parties. As such, meeting with the team who will attend mediation for your party prior to mediation to sort through and decide on issues will help to show a unified front and ultimately may facilitate settlement.

The takeaway: preparing for mediation and taking it seriously will help all the parties resolve matters more quickly and efficiently. Here are some tips to help you prepare:

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Request non-confidential information from the other party in advance that may help you prepare for mediation. Make your request reasonable in scope and time frame.
- Provide requested information to the other party in a timely fashion.
- Be as flexible as possible with scheduling.
- Be prepared to provide the mediator with requested information to help the mediator understand the nature of impasse prior to the start of mediation.
- Be prepared to stay at mediation for as long as it takes to settle, or for the session to become unproductive.
- Be open to creative solutions that address the interests of both parties.
- Determine which issues are contested.
- For each contested issue, determine the overall cost compared to available funds.
- For each contested issue, determine the source of the funding, and whether it will be available if the parties go to factfinding.
- For each contested issue, be sure you can articulate the reason for your position and counter any reasons against it that may be offered by the other side.

### Last, Best Offers

**An LBO shall be presented to the opposing party at the end of mediation if the parties have not settled and ratified a CBA. The LBO also must be submitted to IEERB electronically within two days after mediation has ended.** The LBO submitted to IEERB must be identical to the LBO presented to the opposing party at the end of mediation. The LBO shall be submitted in the format required by IEERB and include all information and documents required by IEERB. Each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not 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. A draft verification is attached to the appendix under 2012 LBO Requirements. Additionally, an LBO must be based on permissible sources of funding. For more information, see the Financial Considerations section below.

Prior to October 1st of each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties with the Declaration of Impasse. **The LBO shall be submitted to IEERB via email at [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov).** If the large size of any supporting documentation precludes electronic delivery, the supporting documentation may be submitted to IEERB in hard copy or an electronic format within 24 hours of the submission of the LBO.

IEERB shall review the LBO to ensure that the LBO is in the required format and contains the required information and documents. The 2012 LBO Requirements are attached in the appendix to show what was required last year. **Check IEERB's website for 2013 LBO Requirements.** Failure to substantially comply with the requirements of an LBO could result in rejection of the submitted LBO and acceptance of the opposing party's LBO. If a party has substantially complied with the LBO requirements, IEERB will notify the submitting party, who will have twenty-four hours to provide the requested format, information, or documents. Failure to submit an LBO as requested by IEERB could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

Completing an LBO requires the submission of information and documents. IEERB recommends that parties collect, compile, or request this information prior to the start of mediation. If not, parties should ensure that these documents are obtained with enough time for the other party to produce them (in addition to the time it will take the requesting party to analyze and explain them in the LBO). Parties also may want to obtain information beyond what is required for the LBO in order to sufficiently explain their LBO. For more information, see the section entitled "Collecting Information for Bargaining," above.

A good LBO will not just provide the required information and documents, but also will explain the LBO's terms and effects so the factfinder, financial consultant, and potentially the Board can easily understand the LBO. As this process will take time, IEERB recommends that parties not wait until the last minute to start preparing their LBO. Moreover, such preparation may be helpful in negotiations, including at mediation.

Once you have exchanged LBOs, IEERB recommends reading and analyzing the other party's LBO not only to prepare for factfinding (explained in more detail below), but also to determine whether settlement is possible. There is no restriction in IC 20-29 or 560 IAC 2 on the parties settling and ratifying a CBA prior to the start of factfinding. Parties that do so (and submit the CBA to IEERB) will be issued an End of Impasse notice. IEERB rule 560 IAC 2-4-4(b) provides that parties settling during factfinding must submit identical LBOs to the factfinder. Each party's LBO must contain a verification statement as described above.

See 2012 LBO Requirements; IC 20-29-6-15.1; IC 20-29-8-7; and 560 IAC 2-4-3.1 for more information.

## Factfinding

### Overview

If mediation is unsuccessful, IEERB will appoint a factfinder within 15 days from the end of mediation, and factfinding will commence. The purpose of fact-finding is to provide a final solution on collective bargaining whenever the parties are unable by themselves, or through a mediator, to timely settle a CBA. The parties shall split the cost. Factfinding may not last longer than 15 days from the date of the factfinder appointment. **As such, it is extremely important**

**that the parties work with the factfinder and make their schedules available for a hearing. The factfinder may unilaterally set the hearing time and date.**

The factfinder may be aided in the factfinding process by a financial consultant appointed by IEERB. This consultant will have a background in finance, and aid the factfinder in the financial aspects of the parties' LBOs. The financial consultant will contact the parties through the factfinder and will not be making a separate determination or write a separate report.

At no cost to the parties, IEERB trains factfinders and financial consultants on the laws and rules of teacher collective bargaining. IEERB attempts to find a good fit between the parties and the factfinder and financial consultant based on several factors. Parties may jointly request a factfinder or financial consultant if they wish. A list of approved ad hoc panelists can be found at <http://www.in.gov/ieerb/2337.htm>. Such a request will be taken into consideration by IEERB, but may not be granted. IEERB strives to appoint quality ad hocs for the factfinding process. As such, IEERB depends on the parties to provide honest, detailed assessments of our ad hocs so that we can better train and place them. Any concerns should be addressed to IEERB. Evaluations will be dispersed at the end of factfinding.

The factfinder will conduct an investigation, which may include a public hearing, into the parties' LBOs. At the public hearing, the school corporation is responsible for providing a room for the fact-finding hearing and equipment and necessary materials for recording of the proceedings. Each party has a maximum of two hours to present in the fact-finding hearing and one hour for rebuttal. During the public hearing, each party shall present fully its LBO, including the fiscal rationale for the offer. For limitations on the sources of funding for LBOs, see the Financial Considerations section below.

The factfinder must select one party's LBO as the binding contract terms. The factfinder's order:

- 1) may be restricted to those issues the factfinder deems significant;
- 2) is restricted to only those items permitted to be bargained and included in the collective bargaining agreement;
- 3) must not put the employer in a position of deficit financing; and
- 4) may not impose terms beyond those proposed by the parties in their LBOs.

The factfinder may use evidence from the parties, the Board, the Board's staff, or any other state agency. The factfinder shall 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; and

- 4) the financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing.

The factfinder and financial consultant will submit their hours worked and expenses incurred during factfinding. The current hourly rate is \$1,200/7.5 for factfinders and \$500/7.5 for financial consultants. **IEERB will pay the bills, and then submit an invoice to the parties reflecting the total split cost. The invoice will be due 30 days after receipt. Failure to timely pay IEERB may result in legal action.** For more information on the collection process, please contact IEERB's conciliation director.

To obtain Board review of a fact-finding report, a request must be made by the school employer or the exclusive representative within 30 days after receipt of the report. The oral or written request must state the nature of the objection to the report. If the request is oral, a written confirmation of the request must be received by the board within two days. The appeal of a fact-finding report must be in writing, stating the specific nature of each objection to the report. Any party in opposition to the appeal may file an answering brief. Any answering brief must be filed within 10 days of service of the appeal and within 15 days of the filing of the appeal with the IEERB. No additional briefs may be filed unless requested by the board. The board will decide the matter upon the record, with or without oral argument. The appealing party must bear the cost for preparation of a hearing transcript.

Parties may appeal the Board's final order to a court of competent jurisdiction within the applicable statute of limitations.

See IC 20-29-6; IC 20-29-8; and 560 IAC 2-4 for more information.

### Preparing for Impasse Factfinding

Factfinding can be a time-consuming – and costly – process. The good news is that your LBO, which had to be exchanged prior to the start of factfinding, is the basis of the factfinding process. As such, assuming that you crafted a complete LBO that is easily understood by third parties, most of the legwork will have been done by the time factfinding has started.

As the LBO will already be prepared, perhaps the biggest preparation during factfinding will be the presentation at the hearing. Not only is this a chance to explain your case more thoroughly to the factfinder, but as you may not have seen the other party's LBO until yours was submitted, it may be the first chance you have to rebut the other party's LBO. As such, in the presentation, you will want to focus on the reasons your LBO should be accepted, as well as explaining why the other party's LBO should not be accepted. This argument should be based on the statutory factors a factfinder must consider, and be supported by evidence to the extent possible.

The takeaway: preparing for factfinding will help your case and reduce costs. Here are some tips to help you prepare:

The following packet is for GUIDANCE ONLY on collective bargaining and impasse pursuant to IC 20-29 and 560 IAC 2-4. IEERB is a neutral agency and cannot provide legal advice; nor does this Guide bind IEERB or its Board in any way.

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Read carefully and analyze the other party's LBO.
- Determine if there is a chance for settlement after reviewing the LBOs.
- Determine which issues are contested after reviewing each LBO.
- For each contested issue, determine the overall cost compared to the available revenue.
- For each contested issue, articulate the reason for your position and counter any reasons against it that will be offered by the other side.
- Be as flexible as possible with scheduling a hearing.

### **Financial Considerations**

#### **Deficit Financing**

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

It is unlawful for a school employer to enter into any agreement that would place it 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. 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.

See IC 20-29-2-6 and IC 20-29-6-3 for more information.

#### **Funding Estimates and Certifications**

Pursuant to IC 20-29-6-12.5, prior to August 1st of the first year of a State budget biennium, the Indiana Department of Education will provide the parties with an estimate of the general fund revenue available for bargaining. Within 30 days after the first ADM count in the first year of a State budget biennium, the DOE will provide a certification of estimated general fund revenue. If a school corporation has received additional funding through an approved general fund operating referendum, the corporation must have the amount certified by the Indiana Department of Local Government Finance before formal bargaining commences.

Regarding the financial basis of impasse determination, IC 20-29-6-12.5(b) provides that the Department of Education and Department of Local Government Finance certifications listed above will be the basis of impasse determinations; IC 20-29-8-7(f) provides that 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 funding for items during factfinding, unless the school funding formula allows other funds to be used for certain items.

See IC 20-29-6-12.5 and IC 20-29-8-7 for more information.

### **Conclusion**

The law on teacher collective bargaining in Indiana changed in 2011. The new law brought many changes, including bargaining timelines and mandatory impasse procedures. IEERB encourages all practitioners to become familiar with the law and rules regarding collective bargaining, and to be prepared for – and take seriously – bargaining, mediation, and factfinding.

## Bargaining and Impasse Glossary

- Bargain Collectively** – The performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, incorporating any agreement relating to the mandatory subjects of bargaining. 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. See IC 20-29-2-2; IC 20-29-6-1; IC 20-29-6-4; and IC 20-29-6-6.
- Bargaining Unit** – A group of school employees that the employer has recognized or IEERB has certified as appropriate to be represented by an employee organization for the purpose of collective bargaining. See IC 20-29-5-1; 560 IAC 2-2-1.
- Collective Bargaining (mandatory subjects of)** – Salary; wages; and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11. 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. See IC 20-29-6-4.
- Collective Bargaining Agreement** – A written agreement encompassing all agreed-upon mandatory subjects of bargaining that has been ratified by the governing body of the school corporation and the exclusive representative. Once a CBA has been ratified, it must be sent to IEERB and posted on the school corporation's website. See IC 20-29-6; 560 IAC 2-5-1.
- Committee Appointments** – The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. This requirement does not apply to the bargaining team for the exclusive representative, and such a committee may not address subjects of bargaining. See IC 20-29-5-7.
- Deficit Financing** – Actual expenditures exceeding the employer's current year actual general fund revenue for a budget year. It is unlawful for a school employer to enter into any agreement that would place it 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. 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. See IC 20-29-2-6 and IC 20-29-6-3.
- Discussion** – The performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to

discuss, provide meaningful input, or exchange points of view, with respect to the following subjects: 1) curriculum development and revision; 2) textbook selection; 3) teaching methods; 4) hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; 5) student discipline; 6) expulsion or supervision of students; 7) pupil/teacher ratio; 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; and 10) hours. 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 mandatory subjects of discussion. See IC 20-29-2-7; IC 20-29-6-7; and IC 20-29-6-8.

**Employee Rights** – School employees may: form, join, or assist employee organizations; participate in collective bargaining with school employers through representatives of their own choosing; and engage in other activities, individually or in concert; to establish, maintain, or improve salaries, wages, salary and wage related fringe benefits, and other matters set forth in IC 20-29-6-4 and IC 20-29-6-5. Additionally, school employees may not be required to join or financially support a school employee organization through the payment of fair share fees, representation fees, professional fees, or other fees. See IC 20-29-4-1 and IC 20-29-4-2.

**Employer responsibilities and authority** – 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 the 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; 3) hire, promote, demote, transfer, assign, and retain employees; 4) suspend or discharge employees in accordance with applicable law through procedures established 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; and 7) take actions necessary to carry out the mission of the public school as provided by law. See IC 20-29-4-3.

**Exclusive Representative** – The school employee organization that has been certified by IEERB, or voluntarily recognized by the school employer, to be the exclusive representative of the school employees in the appropriate bargaining unit, or persons authorized to act on the organization's behalf. See IC 20-29-2-9.

**Expiration (of Collective Bargaining Agreement)** – Collective bargaining agreements may not extend past the end of a state budget biennium. 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 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. 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, the parties shall continue 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 period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute. Only certain parts of the contract must continue. See IC 20-29-6-4.7; IC 20-29-6-16.

**Factfinder** – The individual appointed by IEERB to conduct the factfinding process.

**Factfinding** – Mandatory impasse process that will provide a final solution when parties cannot timely settle their collective bargaining agreement on their own or with the help of mediation. The factfinder, appointed by IEERB, will conduct an investigation, which may include a public hearing, into the parties' Last, Best Offers. The factfinder must then select one party's LBO as the binding contract terms. The factfinder's order is restricted to only those items permitted to be bargained and included in the collective bargaining agreement. The order must not put the employer in a position of deficit financing and may not impose terms beyond those proposed by the parties in their LBOs. The factfinder shall consider the following factors: past memoranda of agreements and contracts between the parties; 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; the public interest; and the financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing. The parties will split the cost. Factfinding may not last longer than 15 days. See IC 20-29-6-15.1; IC 20-29-8; 560 IAC 2-4.

**Financial Consultant** – The individual appointed by IEERB to aid the factfinder in the financial aspects of the factfinding process.

**Impasse** – When the parties are unable by themselves to timely settle and ratify a collective bargaining agreement. IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. See IC 20-29-6-13 and 560 IAC 2-4-1.

**Last, Best Offer (LBO)** – The contract terms a party would like to have as the parties' CBA, as well as supporting documents and information. If parties at impasse do not settle during mediation, they must exchange LBOs and send a copy to IEERB. The factfinder, appointed by IEERB, will conduct an investigation, which may include a public hearing, into the parties' LBO. The factfinder must then select one party's LBO as the binding contract terms. The factfinder's order is

restricted to only those items permitted to be bargained and included in the collective bargaining agreement. The order must not put the employer in a position of deficit financing and may not impose terms beyond those proposed by the parties in their LBO. LBO requirements for any given year will be posted on IEERB's website prior to October 1<sup>st</sup> and will be sent to parties upon declaration of impasse. See IC 20-29-6; IC 20-29-8; 560 IAC 2-4.

**Mediation** – An attempt by an impartial third party, called a mediator, to help school employers and their exclusive representatives settle disputes. Mediation is mandatory in impasse cases. In impasse cases, mediation will last up to 30 days, the cost will be split by the parties, and the mediation will result in either a ratified collective bargaining agreement or the exchange by the parties of their LBO. See IC 20-29-6-13; 560 IAC 2-4-3; 560 IAC 2-4-3.1.

**Mediator** – An impartial third party who helps school employers and their exclusive representatives settle disputes.

**Negotiator** – An individual 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.

**Ratification** – Formal approval of a newly negotiated collective bargaining agreement. Agreements reached through collective bargaining under IC 20-29 are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. See IC 20-29-6-6.

**School Corporation** – A local public school corporation established under Indiana law. The term includes any: school city, school town, school township, consolidated school corporation, metropolitan school district, township school corporation, county school corporation, united school corporation, community school corporation, and public career and technical education center or school or school for children with disabilities established or maintained by two or more school corporations. See IC 20-29-2-12.

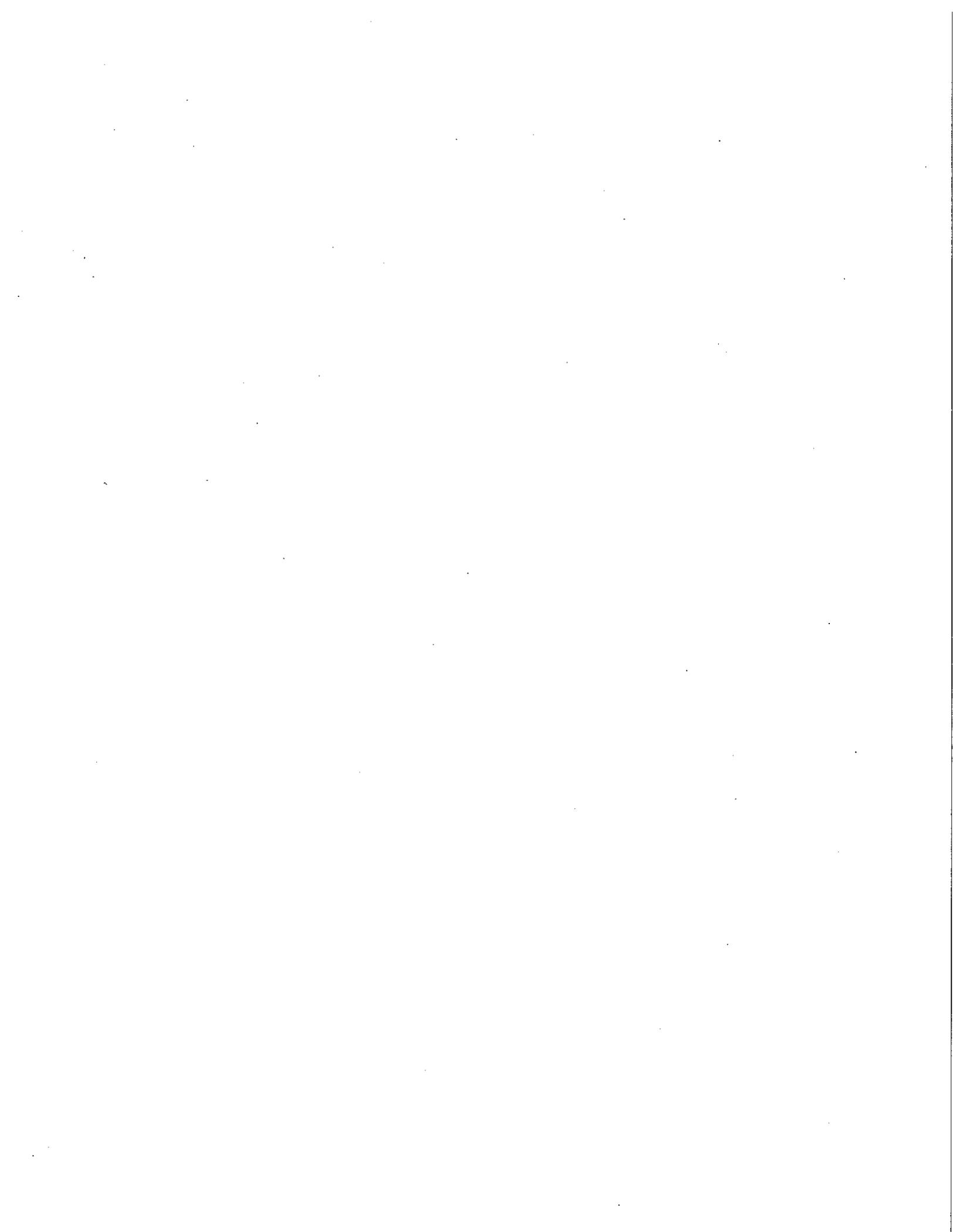
**School Employee** – A full-time certificated person in the employment of a school employer, but not including supervisors, confidential employees, employees performing security work, and noncertificated employees. A certificated employee means a person whose contract with the school corporation requires that the person hold a license or permit from the division of professional standards of the department of education under IC 20-28; or who is employed as a teacher by a charter school established under IC 20-24. See IC 20-29-2-4 and IC 20-29-2-13.

**School Employee Organization** – An organization that has school employees as members and one of its primary purposes is representing school employees in dealing with their school employer. See IC 20-29-2-14.

**School Employer** – The governing body of a school corporation or charter school established under IC 20-24, and a person or persons authorized to act for the governing body of the school employer in dealing with its employees. Governing body is defined as township trustee and the township board of a school township; a county board of education; a board of school commissioners; a metropolitan board of education; a board of trustees; any other board or commission charged by law with the responsibility of administering the affairs of a school corporation; or the body that administers a charter school established under IC 20-24. See IC 20-29-2-10 and IC 20-29-2-15.

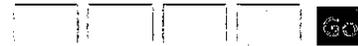
**Scope (of bargaining)** – The range of issues made bargainable by IC 20-29-6.

**Term (of a CBA)** – The dates a collective bargaining agreement is in effect. A CBA may not extend past the end of a state budget biennium. See IC 20-29-6-4.7(b).



**2013 IEERB Practitioner's Guide to Bargaining & Impasse**

APPENDIX



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**Information Maintained by the Office of Code Revision Indiana Legislative Services Agency**  
**IC 20-29-2**

**Chapter 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"**

Sec. 6. "Deficit financing" for a budget year means actual

expenditures exceeding the employer's current year actual general fund revenue.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.7.*

#### **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.

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*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.

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*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****Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**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);

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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.*

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**Information Maintained by the Office of Code Revision Indiana Legislative Services Agency  
IC 20-29-6**

**Chapter 6. Collective Bargaining**

**IC 20-29-6-1**

**Duty to bargain collectively and discuss**

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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.11.*

**IC 20-29-6-2**

**Contracts**

Sec. 2. (a) Any contract 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;
- (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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.12.*

**IC 20-29-6-3**

**Unlawful deficit financing**

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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.13.*

**IC 20-29-6-4**

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**Subjects of bargaining**

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

(1) Salary.

(2) Wages.

(3) Salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11.

(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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.14.*

#### **IC 20-29-6-4.5**

##### **Prohibited subjects of collective bargaining**

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.

*As added by P.L.48-2011, SEC.15.*

#### **IC 20-29-6-4.7**

##### **Bargaining on teacher evaluation procedures and criteria prohibited; duration of contract**

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.

*As added by P.L.48-2011, SEC.16.*

#### **IC 20-29-6-5**

##### **Grievance procedure**

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Sec. 5. A contract entered into under this chapter may contain a grievance procedure.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.17.*

#### **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**

Sec. 7. A school employer shall discuss with the exclusive representative of certificated employees the following items:

- (1) Curriculum development and revision.
- (2) Textbook selection.
- (3) Teaching methods.
- (4) Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees.
- (5) Student discipline.
- (6) Expulsion or supervision of students.
- (7) Pupil/teacher ratio.
- (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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.18.*

### **IC 20-29-6-8**

#### **Contract, agreement, or concession not required**

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 allow the use of any part of the impasse procedure under IC 20-29-8.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.19.*

### **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**

#### **Repealed**

*(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)*

### **IC 20-29-6-12**

#### **Commencement of collective bargaining**

Sec. 12. Formal collective bargaining between a school corporation and the exclusive representative shall not begin 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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.20; P.L.229-2011, SEC.178.*

### **IC 20-29-6-12.5**

#### **Certification of estimated available revenue**

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.

*As added by P.L.48-2011, SEC.21. Amended by P.L.229-2011,*

*SEC.179.*

### **IC 20-29-6-13**

#### **Appointment of mediator**

Sec. 13. (a) If, at any time after at least sixty (60) days following the beginning of formal bargaining collectively between the parties, an impasse is declared, the board shall appoint a mediator from the board's staff or an ad hoc panel.

(b) The mediator shall begin mediation within 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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.22; P.L.229-2011, SEC.180; P.L.6-2012, SEC.139.*

### **IC 20-29-6-14**

#### **Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

### **IC 20-29-6-15**

#### **Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

### **IC 20-29-6-15.1**

#### **Initiation of factfinding**

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.

*As added by P.L.229-2011, SEC.181.*

### **IC 20-29-6-16**

#### **Continuation of existing agreement; circumstances**

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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, the parties shall continue 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 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) 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 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 under this section are the items contained in the contract and listed in section 4 of this chapter.

(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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.24; P.L.229-2011, SEC.182.*

### **IC 20-29-6-17**

#### **Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

### **IC 20-29-6-18**

#### **Appeal of factfinder's decision**

Sec. 18. (a) Either party may appeal the decision of the factfinder under IC 20-29-6-15.1. 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.

*As added by P.L.48-2011, SEC.25. Amended by P.L.6-2012, SEC.140.*

### **IC 20-29-6-19**

#### **Internet posting of collective bargaining agreement provisions**

Sec. 19. Not later than fourteen (14) business days after the

parties have reached an agreement under this chapter, the school employer shall post the contract upon which the parties have agreed on the school employer's Internet web site.

*As added by P.L.148-2012, SEC.4.*

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**Information Maintained by the Office of Code Revision Indiana Legislative Services Agency**  
**IC 20-29-8**

**Chapter 8. Impasse Procedures**

**IC 20-29-8-1**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-2**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-3**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-4**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-5**

**Purpose of factfinding**

Sec. 5. The purpose of factfinding is to 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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.27.*

**IC 20-29-8-6**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-7**

**Appointment of factfinder**

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 funding for items, unless the school funding formula allows other funds to be used for certain items.

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

(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.

(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.

(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.

(k) The board shall make the findings and recommendations described in subsection (j) available to the public not later than ten (10) days after the findings and recommendations are delivered to the board. *As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.28; P.L.229-2011, SEC.183.*

## **IC 20-29-8-8**

### **Factors considered by factfinder**

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.
- As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.29.*

## **IC 20-29-8-9**

### **Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

## **IC 20-29-8-10**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-10.1****Prohibition; serving as mediator and factfinder**

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.

*As added by P.L.229-2011, SEC.184.*

**IC 20-29-8-11****Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-12 Version a****Payment of expenses by board**

*Note: This version of section amended by P.L.48-2011, SEC.31. See also following version of this section repealed by P.L.229-2011, SEC.274.*

Sec. 12. The board shall pay 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.

*As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.31.*

**IC 20-29-8-12 Version b****Repealed**

*(Repealed by P.L.229-2011, SEC.274.)*

*Note: This section repealed by P.L.229-2011, SEC.274. See also preceding version of this section amended by P.L.48-2011, SEC.31.*

**IC 20-29-8-13**

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**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

**IC 20-29-8-13.1****Findings and recommendations of factfinder; distribution; review**

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.

*As added by P.L.229-2011, SEC.185.*

**IC 20-29-8-14**

**Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

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**Information Maintained by the Office of Code Revision Indiana Legislative Services Agency  
IC 20-28-9**

**Chapter 9. Salary and Related Payments**

**IC 20-28-9-0.2**

**Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 20-6.1-5-14 (before its repeal, now codified at section 20 of this chapter) by P.L.46-1985 do not affect contracts entered into before, and in effect on, July 1, 1986. *As added by P.L.220-2011, SEC.335.*

**IC 20-28-9-1 Version a**

**Teacher's minimum salary; basis**

*Note: This version of section amended by P.L.229-2011, SEC.175. See also following repeal of this section by P.L.48-2011, SEC.39.*

Sec. 1. (a) This subsection takes effect July 1, 2012, or upon the expiration of a contract in existence on July 1, 2011, whichever is earlier, and governs salary increases for a teacher employed by a school corporation on or after the date this subsection takes effect. Compensation attributable to additional degrees or graduate credits earned before the effective date of the local salary schedule created under this chapter shall continue. Compensation attributable to additional degrees for which a teacher has started course work before July 1, 2011, and completed course work before September 2, 2014, shall also continue.

(b) Increases or increments in a local salary scale must be based upon a combination of the following factors:

(1) A combination of the following factors taken together may account for not more than thirty-three percent (33%) of the calculation used to determine a teacher's increase or increment:

(A) The number of years of a teacher's experience.

(B) The attainment of either:

(i) additional content area degrees beyond the requirements for employment; or

(ii) additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29.

(2) The results of an evaluation conducted under IC 20-28-11.5.

(3) The assignment of instructional leadership roles, including the responsibility for conducting evaluations under IC 20-28-11.5.

(4) The academic needs of students in the school corporation.

(c) A teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the criteria in subsection (b).

(d) A teacher who does not receive a raise or increment under

subsection (c) may file a request with the superintendent or superintendent's designee not later than five (5) days after receiving notice that the teacher received a rating of ineffective. The teacher is entitled to a private conference with the superintendent or superintendent's designee.

(e) Not later than January 31, 2012, the department shall publish a model salary schedule that a school corporation may adopt.

(f) Each school corporation shall submit its local salary schedule to the department. The department shall publish the local salary schedules on the department's Internet web site.

(g) The department shall report any noncompliance of this section to the state board.

(h) The state board shall take appropriate action to ensure compliance with this section.

(i) This chapter may not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be made solely to conform to the new salary scale.

*As added by P.L.1-2005, SEC.12. Amended by P.L.246-2005, SEC.165; P.L.90-2011, SEC. 32; P.L.229-2011, SEC.175.*

#### **IC 20-28-9-1 Version b**

##### **Repealed**

*(Repealed by P.L.48-2011, SEC.39.)*

*Note: This version of section repealed by P.L.48-2011, SEC.39. See also preceding version of this section amended by P.L.229-2011, SEC.175.*

#### **IC 20-28-9-2**

##### **Repealed**

*(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)*

#### **IC 20-28-9-3**

##### **Repealed**

*(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)*

#### **IC 20-28-9-4**

##### **Repealed**

*(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)*

#### **IC 20-28-9-5**

##### **Computation of annual salary of teacher or distribution of state funds; rounding to nearest dollar**

Sec. 5. In computing the annual salary of a teacher or when distributing state funds, an amount of less than fifty cents (\$0.50) is dropped while an amount of fifty cents (\$0.50) or more is rounded up to the next whole dollar.

*As added by P.L.1-2005, SEC.12.*

#### **IC 20-28-9-6**

##### **Substitute teachers; wages; no written contract required**

Sec. 6. (a) The governing body shall fix wages for substitute teachers.

(b) A substitute teacher may be engaged without a written contract.

*As added by P.L.1-2005, SEC.12.*

#### **IC 20-28-9-7**

##### **Substitute teachers; certain licenses; pay schedule**

Sec. 7. (a) An individual who:

(1) holds:

(A) a professional license;

(B) a provisional license;

(C) a limited license; or

(D) an equivalent license issued by the department; and

(2) serves as an occasional substitute teacher;

## **IC 20-28-9-1 Version a**

### **Teacher's minimum salary; basis**

*Note: This version of section amended by P.L.229-2011, SEC.175. See also following repeal of this section by P.L.48-2011, SEC.39.*

Sec. 1. (a) This subsection takes effect July 1, 2012, or upon the expiration of a contract in existence on July 1, 2011, whichever is earlier, and governs salary increases for a teacher employed by a school corporation on or after the date this subsection takes effect. Compensation attributable to additional degrees or graduate credits earned before the effective date of the local salary schedule created under this chapter shall continue. Compensation attributable to additional degrees for which a teacher has started course work before July 1, 2011, and completed course work before September 2, 2014, shall also continue.

(b) Increases or increments in a local salary scale must be based upon a combination of the following factors:

(1) A combination of the following factors taken together may account for not more than thirty-three percent (33%) of the calculation used to determine a teacher's increase or increment:

(A) The number of years of a teacher's experience.

(B) The attainment of either:

(i) additional content area degrees beyond the requirements for employment; or

(ii) additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29.

(2) The results of an evaluation conducted under IC 20-28-11.5.

(3) The assignment of instructional leadership roles, including the responsibility for conducting evaluations under IC 20-28-11.5.

(4) The academic needs of students in the school corporation.

(c) A teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the criteria in subsection (b).

(d) A teacher who does not receive a raise or increment under subsection (c) may file a request with the superintendent or superintendent's designee not later than five (5) days after receiving notice that the teacher received a rating of ineffective. The teacher is entitled to a private conference with the superintendent or superintendent's designee.

(e) Not later than January 31, 2012, the department shall publish a model salary schedule that a school corporation may adopt.

(f) Each school corporation shall submit its local salary schedule to the department. The department shall publish the local salary schedules on the department's Internet web site.

(g) The department shall report any noncompliance of this section to the state board.

(h) The state board shall take appropriate action to ensure compliance with this section.

(i) This chapter may not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be made solely to conform to the new salary scale.

*As added by P.L.1-2005, SEC.12. Amended by P.L.246-2005, SEC.165; P.L.90-2011, SEC. 32; P.L.229-2011, SEC.175.*

## **Rule 4. Impasse Procedures**

### **560 IAC 2-4-1 Resolution of an impasse; petition for assistance**

Authority: IC 20-29-3-11; IC 20-29-6-13

Affected: IC 20-29-6

Sec. 1. (a) The IEERB shall declare impasse after September 30 if either:

(1) the parties notify the board of impasse; or

(2) the parties are, or are supposed to be under the terms of their contract, in collective bargaining for all or part of a contract and have not submitted a contract to the IEERB.

(b) Upon the declaration of impasse, each party is required to provide the IEERB with the name, position, address, e-mail address, and phone number of its chief spokesperson, and of the individual to whom billing invoices should be submitted. Each party is required to immediately submit a change in contact information occurring during a mediation or fact-finding process.

(c) Unless otherwise indicated in these rules, all correspondence for impasse procedures shall be via e-mail. Parties or the IEERB may, in addition to e-mail, correspond via mail, facsimile, or hand delivery. Receipt of an e-mail will be presumed upon dispatch. (*Indiana Education Employment Relations Board; 560 IAC 2-4-1; filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: 20071226-IR-560070368RFA; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR-560120112FRA*)

### **560 IAC 2-4-2 "Conciliator" defined (Repealed)**

Sec. 2. (*Repealed by Indiana Education Employment Relations Board; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR- 560120112FRA*)

### **560 IAC 2-4-3 Appointment of mediator**

Authority: IC 20-29-3-11; IC 20-29-6-13

Affected: IC 20-29-6

Sec. 3. Upon a declaration of impasse, a mediator shall be appointed by the board. (*Indiana Education Employment Relations Board; 560 IAC 2-4-3; filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: 20071226-IR-560070368RFA; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR-560120112FRA*)

### **560 IAC 2-4-3.1 Last best offer**

Authority: IC 20-29-3-11; IC 20-29-6-15.1

Affected: IC 20-29-6

Sec. 3.1. (a) The last best offer (LBO) shall be presented to the opposing party at the end of mediation. The LBO must be submitted to the IEERB electronically within two (2) days after mediation has ended. The LBO submitted to IEERB must be identical to the LBO presented to the opposing party at the end of mediation.

(b) Each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not 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. The LBO shall:

(1) be submitted in the format required by the IEERB; and

(2) include all information and documents required by the IEERB.

Prior to October 1st of each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties upon declaration of impasse.

(c) The LBO shall be submitted to IEERB electronically. If the large size of any supporting documentation precludes electronic delivery, the supporting documentation may be submitted to IEERB in hard copy or an electronic format within twenty-four (24) hours of the submission of the LBO.

(d) IEERB shall review the LBOs to ensure that the LBO is in the required format and contains the required information and documents. Failure to substantially comply with the requirements of an LBO could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

(e) If a party has substantially complied with the LBO requirements, IEERB will notify the submitting party, who will have twenty-four (24) hours to provide the requested format, information, or documents. Failure to submit an LBO as requested by IEERB could result in rejection of the submitted LBO and acceptance of the opposing party's LBO. (*Indiana Education Employment Relations Board; 560 IAC 2-4-3.1; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR-560120112FRA*)

#### **560 IAC 2-4-4 Fact-finding**

Authority: IC 20-29-3-11; IC 20-29-6-15.1; IC 20-29-8-7

Affected: IC 20-29-6-4; IC 20-29-8

Sec. 4. (a) Parties at impasse must engage in at least one (1) mediation session prior to the initiation of fact-finding.

(b) If parties in the fact-finding process are able to reach a settlement, they shall submit identical LBOs to the fact-finder, and the fact-finder shall impose the terms of the joint LBO as the contract. Each party's LBO must contain a verification statement, as required by section 3.1 of this rule.

(c) The school corporation is responsible for providing a room for the fact-finding hearing and equipment and necessary materials for recording of the proceedings. Each party has a maximum of two (2) hours to present in the fact-finding hearing and one (1) hour for rebuttal.

(d) The purpose of fact-finding is to 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.

(e) If no request for review has reached the board within five (5) days after the parties have received the fact-finding report under section 6 of this rule, the fact-finding report will be delivered to the board, and it will be released to the public within ten (10) days after delivery to the board. (*Indiana Education Employment Relations Board; 560 IAC 2-4-4; filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: 20071226-IR-560070368RFA; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR-560120112FRA*)

#### **560 IAC 2-4-5 Initiation of mediation or fact-finding**

Authority: IC 20-29-3-11; IC 20-29-6-13; IC 20-29-6-15.1

Affected: IC 20-29-6

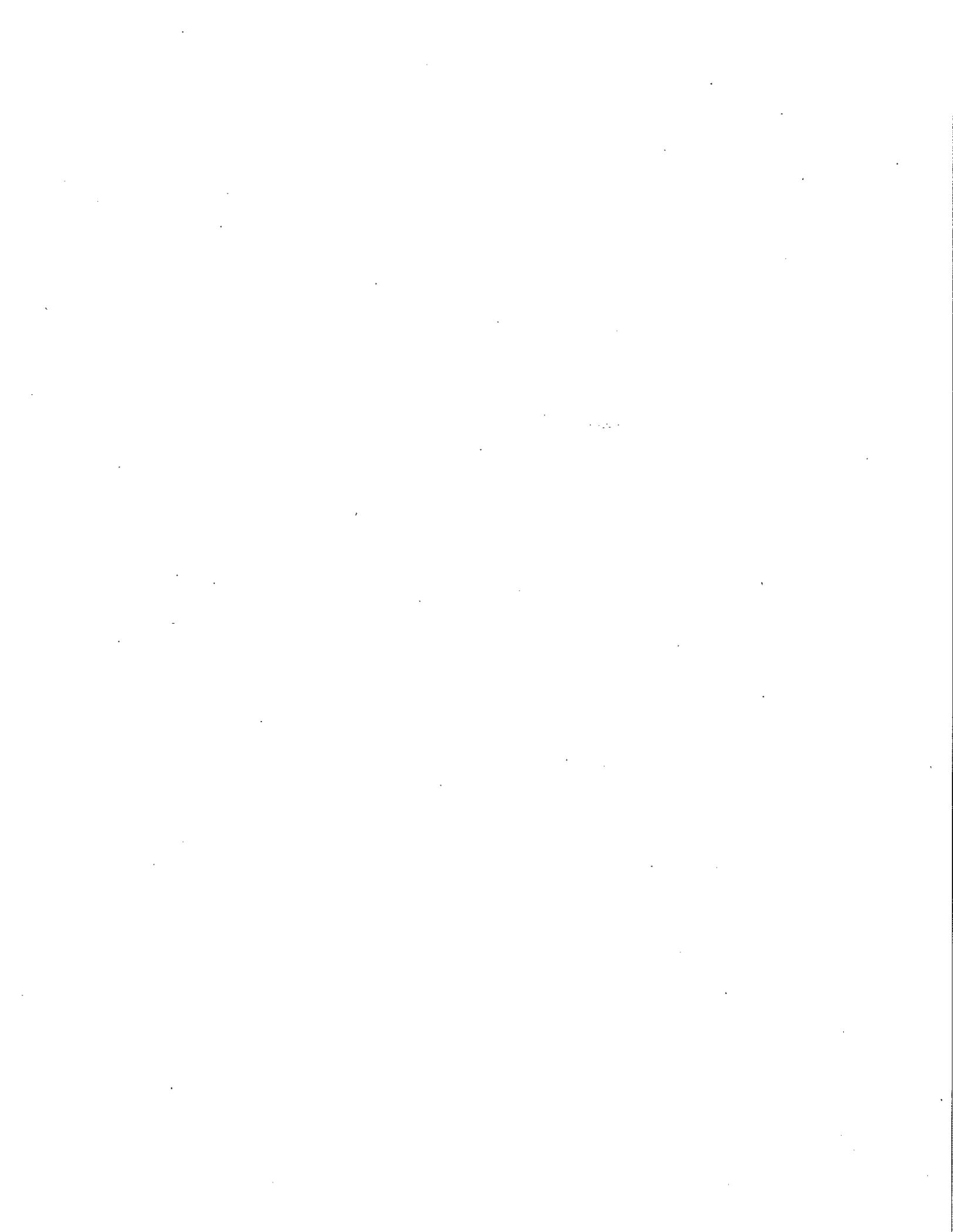
Sec. 5. The chairman or chairperson or his or her designee shall initiate mediation pursuant to 560 IAC 2-4-1 and 560 IAC 2-4-3, regardless of whether the parties have requested it. The chairman or chairperson or his or her designee shall initiate the fact-finding process if mediation does not result in a contract. (*Indiana Education Employment Relations Board; 560 IAC 2-4-5; filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: 20071226-IR-560070368RFA; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR-560120112FRA*)

## 560 IAC 2-4-6 Appeal of fact-finding reports

Authority: IC 20-29-3-11; IC 20-29-6-18

Affected: IC 20-29-6

Sec. 6. To obtain board review of a fact-finding report, a request must be made by the school employer or the exclusive representative within thirty (30) days after receipt of the report. The oral or written request must state the nature of the objection to the report. If the request is oral, a written confirmation of the request must be received by the board within two (2) days. The appeal of a fact-finding report must be in writing, stating the specific nature of each objection to the report. Any party in opposition to the appeal may file an answering brief. Any answering brief must be filed within ten (10) days of service of the appeal and within fifteen (15) days of the filing of the appeal with the IEERB. No additional briefs may be filed unless requested by the board. The board will decide the matter upon the record, with or without oral argument. The appealing party must bear the cost for preparation of a hearing transcript. (*Indiana Education Employment Relations Board; 560 IAC 2-4-6; filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: 20071226-IR-560070368RFA; filed Aug 28, 2012, 2:06 p.m.: 20120926-IR-560120112FRA*)



## 2013 BARGAINING/IMPASSE TIMELINE

*\*\*These dates will not be altered for individual school calendars.\*\**

Pre 8/1	Informal negotiations may be held
8/1	DOE Estimate of General Fund
8/1	<b><u>FORMAL COLLECTIVE BARGAINING PERIOD BEGINS</u></b>
~9/14	Fall ADM count
10/1	<b><u>IMPASSE PERIOD BEGINS</u></b>
10/1	Bargaining Status Forms Due to <a href="mailto:impasse@ieerb.in.gov">impasse@ieerb.in.gov</a> – bargaining parties who have not settled will be sent to <a href="mailto:impasse@ieerb.in.gov">impasse@ieerb.in.gov</a>
10/10	Settled CBAs must be ratified, signed and sent to <a href="mailto:ratifiedcontract@ieerb.in.gov">ratifiedcontract@ieerb.in.gov</a> to avoid declaration of impasse
~10/14	DOE Certification of Bargaining Revenue
12/31	<b><u>IMPASSE PERIOD ENDS</u></b>

*For more information, visit [www.in.gov/ieerb](http://www.in.gov/ieerb)*



# STATE OF INDIANA

Mitchell E. Daniels, Jr.  
Governor

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## LBO Requirements for 2012-2013 Bargaining Season

### **I. Format (may add sections, but the sections below are *mandatory*)** **see also sample below**

- A. Last, Best Offer
  - 1. Amount
  - 2. DOE Certification of General Fund Revenue Amount
  - 3. DLGF Certification of General Fund Operating Referendum Amount (if applicable)
  - 4. Proposed Contract Terms
- B. Narrative Supporting LBO
  - 1. Fiscal rationale for LBO
  - 2. Policy rationale for LBO
- C. Supporting Documentation List (attach documents)
- D. Proof of Service

### **II. Information**

- A. Required Information
  - 1. LBO amount
  - 2. DOE certification of general fund revenue amount
  - 3. DLGF certification of general fund operating referendum amount (if applicable)
  - 4. Proposed contract terms
  - 5. Fiscal rationale for the Last, Best Offer
  - 6. Policy rationale for LBO (four factors listed in IC 20-29-8-8)
- B. Recommended Information
  - 1. All items included in LBO amount (e.g., health benefits, salary, etc.)
  - 2. Description of unique features of district/budget
  - 3. % of DOE certification amount in LBO
  - 4. Number of bargaining unit members
  - 5. Estimated number of bargaining unit members whose wages, salary, or wage and salary related fringe benefits are or will be paid in total by funds external to the General Fund for the term of the LBO
  - 6. Estimated number of bargaining unit members whose wages, salary, or wage and salary related fringe benefits are or will be partially paid by funds external to the General Fund for the term of the LBO

### **III. Documents**

#### **A. Required Documents**

1. DOE certification of general fund revenue
2. DLGF certification of general fund operating referendum (if applicable)
3. Proposed contract
4. Scattergram of identified bargaining unit employees
5. Verification regarding deficit financing
6. Current & projected costs from the General Fund for bargaining unit members, including wages/salary and wage and salary related benefits.

#### **B. Recommended Documents**

1. Projected effects of multiple count days on DOE revenue estimate
2. Annual budget by line item for 2011, 2012, 2013
3. Current & project costs for all employees, including wages/salary and wage and salary related benefits, and the source of funding
4. Utility costs
5. Comparison of prior year's budget
6. Three year+ history of revenues/expenditures
7. ADM for last three years & projected ADM for next two years
8. Form 30
9. Certificate of miscellaneous revenue
10. State Support worksheet
11. Prior Collective Bargaining Agreements
12. Other past agreements between the parties
13. Data showing wages of other employees doing comparable work

This is a sample Last Best Offer (LBO) based upon the law and rules regulating Last, Best Offers, and has been designed by IERB to provide guidance to parties. It is not intended to take the place of careful review of IC 20-29 or 560 IAC 2, or as a substitute for legal advice.

**SAMPLE LBO**

**SCHOOL'S/EXCLUSIVE REPRESENTATIVE'S LAST BEST OFFER TO SETTLE  
THE 2012-2013 MASTER AGREEMENT**

This Last Best Offer (LBO) is submitted by the *(insert name)* to settle the 2012-2013 Master Contract between the *(insert name)* and the *(insert name)*. With this offer, the *(insert name)* certifies the school corporation will not be in deficient financing for 2013 if this LBO is accepted. All previous offers made by the Board/Exclusive Representative are rescinded and replaced by this LBO.

The *(insert name)* submits the attached proposal which covers the complete salary, wages, and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off for bargaining unit members. The complete cost of the proposal, covering *(insert number)* members of the bargaining unit identified in the LBO, is \$ *(insert dollar value)*. This represents a *(identify the percentage)* of a total DOE certification of available funds of *(insert the DOE certification of funds available.)*

**(INSERT NAME) LAST, BEST OFFER**

1. **Amount:** \$ ( \_\_\_\_\_ )
2. **DOE Certification** of General Fund Revenue is (\$ \_\_\_\_\_). See Exhibit 1.
3. **DLGF Certification** of General Fund Operating Referendum is (\$ \_\_\_\_\_). See Exhibit 2.
4. **Proposed Contract Terms:** See Exhibit 3. This LBO will cover \_\_\_\_ bargaining unit employees. See Exhibit 4.

**NARRATIVE SUPPORTING (INSERT NAME) LAST, BEST OFFER**

**1. Fiscal Rationale for LBO**

The *(insert name)* attests this LBO will not place the school corporation in deficit financing as defined by IC 20-29. See Exhibit 5.

*(Provide a narrative for the fiscal rationale for the submitted LBO.)*

See Exhibits 6-16.

This is a sample Last Best Offer (LBO) based upon the law and rules regulating Last, Best Offers, and has been designed by IEERB to provide guidance to parties. It is not intended to take the place of careful review of IC 20-29 or 560 IAC 2, or as a substitute for legal advice.

## 2. Policy Rationale for LBO

- a. The *(insert name)* LBO is consistent with the past memoranda of agreements and contracts between the parties.

*(Explain "why" and "how" it is consistent)*

See Exhibits 17-18.

- b. The *(insert name)* LBO is consistent with comparables

*(Explain and demonstrate the "comparables": (i.e. nearby school districts, other professional entities, etc. Perhaps include a comparison of work days/benefits/salaries))*

See Exhibit 19.

- c. The *(insert name)* LBO is in the public interest.

*(Explain why the submitted LBO is in the best public interest.)*

- d. The *(insert name)* LBO's financial impact on the school corporation.

*(Explain the financial impact of the LBO on the school corporation.)*

See Exhibits 5-16.

### **SUPPORTING DOCUMENTS (ATTACHED)**

1. DOE certification of general fund revenue
2. DLGF certification of general fund operating referendum (if applicable)
3. Proposed Contract
4. Scattergram of identified bargaining unit employees
5. Verification regarding deficit financing
6. Current & projected costs from the General Fund for bargaining unit members, including wages/salary and wage and salary related benefits.
7. Projected effects of multiple count days on DOE revenue estimate
8. Annual budget by line item for 2011, 2012, 2013
9. Current & project costs for all employees, including wages/salary and wage and salary related benefits, and the source of funding
10. Utility costs
11. Comparison of prior year's budget
12. Three year+ history of revenues/expenditures
13. ADM for last three years & projected ADM for next two years
14. Form 30

This is a sample Last Best Offer (LBO) based upon the law and rules regulating Last, Best Offers, and has been designed by IEERB to provide guidance to parties. It is not intended to take the place of careful review of IC 20-29 or 560 IAC 2, or as a substitute for legal advice.

15. Certificate of miscellaneous revenue
16. State Support worksheet
17. Prior Collective Bargaining Agreements
18. Other past agreements between the parties
19. Data showing wages of other employees doing comparable work

### SUMMARY

*This is an opportunity for the School/Exclusive Representative to summarize their position for the LBO. Perhaps an explanation of why this LBO should be selected, and what could possibly happen if the LBO is/is not selected.*

### PROOF OF SERVICE

This LBO was hand delivered by the undersigned to \_\_\_\_\_, a representative of the *(insert name)*, on \_\_\_\_\_, and will be sent via email to the IEERB at [impasse@icerb.in.gov](mailto:impasse@icerb.in.gov) by \_\_\_\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DEFICIT FINANCING VERIFICATION**

As (position) \_\_\_\_\_ for the (name of party) \_\_\_\_\_,  
I verify that:

1. To the best of my knowledge, all information submitted in our Last, Best Offer is correct.
2. Our Last Best Offer does not place the school corporation in a position of deficit financing due to a reduction in the school corporation's actual general Fund revenue or an increase in the school corporation's expenditures when the expenditures exceed the school corporation's current year actual General Fund revenue.

I declare and affirm under penalty of perjury under the laws of Indiana that the foregoing is true and correct.

Executed on this (date) \_\_\_\_\_ day of (month) \_\_\_\_\_, (year) \_\_\_\_\_, at  
(city) \_\_\_\_\_, (state) \_\_\_\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

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**COLLECTIVE BARGAINING AGREEMENTS**

Please be advised that IC 20-29-6-4.5 prohibits collective bargaining agreements between school corporations and their exclusive representatives from containing "...Any subject not expressly listed in section 4" of IC 20-29-6. Section 4 requires a school employer to bargain collectively with the exclusive representative on salary, wages, and "salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11."

IC 20-29-6-4.5(b) states that a subject "that may not be bargained collectively may not be included in an agreement entered into under this article." SBOA will review school corporations' collective bargaining agreements during the audit process to determine whether the agreements contained prohibited subjects of bargaining. The following is the rubric that our examiners will use to identify prohibited subjects. Financial losses related to a corporation's inclusion of prohibited subjects may be the personal obligation of the responsible school official or employee. (Accounting and Uniform Compliance Guidelines Manual for Indiana Public School Corporations, Chapter 9)

School Corporation: \_\_\_\_\_

Contract "entered into" date: \_\_\_\_\_

Date reviewed: \_\_\_\_\_

- Contracts entered into pre-April 21, 2011: 575 does not apply; contract terms govern until the contract expires.
- Contracts entered into between April 21, 2011 – July 1, 2011: (1) may not contain language regarding "evaluation criteria and procedures" and (2) may not extend past the date of a state budget biennium.
- Contracts entered into on or after July 1, 2011:
  - ✓ May contain only the following terms:
    - Salary.
    - Wages.
    - Salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11.
      - 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.
    - A grievance procedure, but the procedure cannot culminate in binding arbitration (authorized by IC 20-29-6-5).

**COLLECTIVE BARGAINING AGREEMENTS**  
(Continued)

- ✓ May not contain the following terms or subjects:
  - A term that extends beyond the biennium (June 30, 2013).
  - Any item of discussion, including
    - Curriculum development and revision.
    - Textbook selection.
    - Teaching methods.
    - Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees.
    - Student discipline.
    - Expulsion or supervision of students.
    - Pupil/teacher ratio.
    - Class size or budget appropriations.
    - Safety issues for students and employees.
    - Hours. (The words "hour" and "hours" should not appear in the contract unless their inclusion is necessary to list an hourly wage such as \$15 per hour, \$20 per hour, etc.)
  - The school calendar.
  - Teacher dismissal procedures and criteria.
  - 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.
  - 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.
  - Teaching/working conditions (e.g., conference/preparation time).
  - Unpaid leave.
  - Management rights.
  - Exclusive representative rights.
  - Teacher rights (or "professional advantages" clauses).
  - Language providing for or requiring binding arbitration.
  - Reductions in force.
  - Due process.
  - Negotiation/discussion procedures.
  - Impasse procedures.
  - Paycheck deductions.

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COLLECTIVE BARGAINING AGREEMENTS  
(Continued)

- A wage payment arrangement detailing the number and frequency of wage payments to school employees (such agreements are authorized by IC 20-26-5-32.2, but they should not appear in the collective bargaining agreement).
- Reimbursements (however, reimbursements or allowances that function as compensation may be included in the contract; for example, mileage reimbursements that exceed the IRS standard mileage rate).
- Boilerplate contract terms not authorized by statute, such as
  - Supremacy (supersedes any other agreements);
  - Amendment to agreement ;
  - Severability clause (a/k/a conformity to law clause, savings clause, etc.); or
  - Incorporation of individual teacher contracts into CBA.
- Any other term that is not a salary, wage, or fringe benefit:
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

Notes:

\_\_\_\_\_

<sup>i</sup> If a contract does not contain an "entered into" date, the signature date is considered the entered into date. If the contract contains neither an entered into date nor a signature date, the effective date serves as the entered into date.



## COMPENSATION GUIDANCE: SALARY SCALE COMPLIANCE CHECKLIST

This checklist was designed as a way for schools to better understand the law with respect to teacher compensation and to serve as a mechanism by which parties can self-monitor the compliance of their local salary scale. This document summarizes Indiana Code 20-28-9, which is the law that establishes compensation requirement. To find additional resources and information for each legal requirement, please see Compensation Guidance: Resource Map on the Indiana Department of Education's Compensation Systems web page: <http://www.doe.in.gov/improvement/educator-effectiveness/compensation>.

### LOCAL SALARY SCALE FACTORS

Check "Yes" if your system is in compliance.

Check "No" if your system is not in compliance.

Please see Compensation Guidance: Resource Map for additional guidance.

Factors			
	Yes?	No?	Comments
1. A local salary scale must include <u>a combination of two or more</u> of the following factors to determine salary increments, increases, or raises: <ul style="list-style-type: none"> <li>a. Experience and/or education</li> <li>b. Performance evaluation results</li> <li>c. Assignment of instructional leadership roles</li> <li>d. The academic needs of students in the school corporation</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	

**The following requirements must be met for each factor included in the local salary scale:**

Check "Yes" if the factor is included in your system AND is in compliance.

Check "No" if the factor is included in your system AND is not in compliance.

Check "N/A" if the factor is NOT included in your system.

Please see Compensation Guidance: Resource Map for additional guidance.

<b>Experience and/or Education</b>				
	Yes?	No?	N/A	Comments
1. A teacher's experience, education, or combination of the two may account for <u>no more than 33%</u> of the <u>calculation used to determine</u> a salary increase or increment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. If education is included, only degrees and/or credit hours attained beyond the requirements for employment <u>in the teacher's content area</u> may be recognized.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Assignment of instructional leadership roles</b>				
	Yes?	No?	N/A	Comments
1. Local salary scales must <u>include a definition</u> for "assignment of instructional leadership roles."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>The academic needs of students in the school corporation</b>				
	Yes?	No?	N/A	Comments
1. Local salary scales must <u>include a definition</u> for "the academic needs of students in the school corporation."	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Performance evaluation results</b>				
	Yes?	No?	N/A	Comments
1. Teacher performance evaluation results used to inform local salary scales must be conducted under IC 20-28-11.5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**All salary scales, regardless of the factors they use to determine salary increments, increases, or raises, must meet the following requirements:**

Check "Yes" if your system is in compliance.

Check "No" if your system is not in compliance.

Please see Compensation Guidance: Resource Map for additional guidance.

<b>Performance Evaluation Results</b>			
	Yes?	No?	Comments
1. <u>Cannot allocate any salary raise, or increment in the following year to teachers rated ineffective or improvement necessary by an evaluation conducted under IC 20-28-11.5.</u>	<input type="checkbox"/>	<input type="checkbox"/>	
2. <u>Must allocate dollar amounts otherwise allocated to salary increases of teachers rated as ineffective or improvement necessary to the compensation of all teachers rated effective and highly effective under IC 20-28-11.5.</u>	<input type="checkbox"/>	<input type="checkbox"/>	
3. <u>Must incorporate a process allowing for a teacher who did not receive a raise or increment due to performance evaluation results to request for (and subsequently attend) a private conference with his or her superintendent or designee.</u>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Pay</b>			
	Yes?	No?	Comments
1. <u>Cannot decrease a salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be made solely to conform to the new salary scale</u>	<input type="checkbox"/>	<input type="checkbox"/>	
2. <u>Must continue compensation attributable to additional degrees or graduate credits earned before July 1, 2011.</u>	<input type="checkbox"/>	<input type="checkbox"/>	
3. <u>Must allow compensation attributable to additional degrees for which a teacher has started course work prior to July 1, 2011 and completed before September 2, 2014 to be allocated per the local salary scale in place on June 30, 2011.</u>	<input type="checkbox"/>	<input type="checkbox"/>	