

January 29, 1998

HOUSE BILL No. 1278

DIGEST OF HB 1278 (Updated January 28, 1998 12:30 pm - DI 96)

Citations Affected: IC 20-6.1; IC 20-7.5.

Synopsis: Education personnel issues. Adds final offer mediation-arbitration as an alternative method of collective bargaining for education personnel. Includes certain state educational institutions in school units required to bargain collectively with employees. Authorizes the Indiana education employment relations board to issue certain orders and impose certain requirements on a person who commits an unfair practice. Permits a permanent teacher to elect either binding arbitration on the issue of cancellation of the teacher's indefinite teaching contract or to have the school board determine the issue. Provides a notice and hearing procedure for the nonrenewal of a nonpermanent teacher.

Effective: July 1, 1998.

Liggett

January 13, 1998, read first time and referred to Committee on Labor and Employment.
January 28, 1998, amended, reported — Do Pass.

HB 1278—LS 6653/DI 71



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January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1278

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-6.1-4-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) An indefinite
3 contract with a permanent or semi-permanent teacher may be canceled
4 only in the following manner:
5 (1) the teacher shall be notified in writing of the date, time, and
6 place for the consideration by the school corporation of the
7 cancellation of the contract; this notification must occur not
8 more than forty (40) days nor less than thirty (30) days before the
9 consideration;
10 (2) the teacher shall be furnished, within five (5) days after a
11 written request, a written statement of the reasons for the
12 consideration;
13 (3) the teacher may file a written request for a hearing within
14 fifteen (15) days after receipt of the notice of this consideration;
15 (4) when the request for a hearing is filed, the teacher shall be
16 given a hearing before the governing body on a day no earlier
17 than five (5) days after filing;

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- 1 (5) the teacher shall be given not less than five (5) days' notice
 2 of the time and place of the hearing;
 3 (6) at the hearing, the teacher is entitled:
 4 (A) to a full statement of the reasons for the proposed
 5 cancellation of the contract; and
 6 (B) to be heard, to present the testimony of witnesses and
 7 other evidence bearing on the reasons for the proposed
 8 cancellation of the contract;
 9 (7) a contract may not be canceled until:
 10 (A) the date set for consideration of the cancellation of the
 11 contract;
 12 (B) after a hearing is held, if a hearing is requested by the
 13 teacher; and
 14 (C) the superintendent has given his recommendations on
 15 the contract; on five (5) days written notice to him by the
 16 school corporation, the superintendent shall present his
 17 recommendation on each contract, except on a
 18 superintendent's contract;
 19 (8) pending a decision on the cancellation of a teacher's contract,
 20 the teacher may be suspended from duty; and
 21 (9) after complying with section 10 of this chapter in the case of
 22 permanent teachers, or section 10.5 of this chapter in the case of
 23 semi-permanent teachers, and this section, the governing body
 24 of the school corporation may cancel an indefinite contract with
 25 a teacher by a majority vote evidenced by a signed statement in
 26 the minutes of the board; the decision of the governing board is
 27 final.
- 28 The vote to cancel a contract described in subdivision (9) must be
 29 taken by the governing body on the date and at the time and place
 30 specified in subdivision (1).
- 31 (b) If a permanent or semi-permanent teacher is suspended under
 32 subsection (a)(8), and except as provided in IC 20-6.1-5-11, the
 33 governing body may not (while the teacher is suspended) withhold
 34 from the teacher salary payments or other employment related benefits
 35 that before the suspension the teacher was entitled to receive.
- 36 (c) The governing body may appoint an agent (who is not an
 37 employee of the school corporation, but who may be a member of the
 38 governing body or an attorney retained to administer the hearing
 39 proceedings under this section) for the purpose of issuing subpoenas
 40 for the attendance of witnesses for either party at the hearing. A
 41 subpoena issued under this section shall be:
 42 (1) served by the party who seeks to compel the attendance of a

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1 witness; and

2 (2) upon application to the court by the party, enforced in the
3 manner provided by law for the service and enforcement of
4 subpoenas in a civil action.

5 **(d) Instead of the cancellation procedure provided in**
6 **subsection (a), a permanent teacher's contract may be canceled as**
7 **provided in section 11.1 of this chapter.**

8 SECTION 2. IC 20-6.1-4-11.1 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 1998]: **Sec. 11.1. (a) Instead of the**
11 **cancellation procedure provided in section 11(a) of this chapter, a**
12 **permanent teacher's contract may be canceled as provided in this**
13 **section.**

14 **(b) A teacher must be notified in writing of the date, time, and**
15 **place for consideration by a school corporation of the cancellation**
16 **of the teacher's contract. The notification must be delivered not**
17 **more than forty (40) days and at least thirty (30) days before the**
18 **consideration.**

19 **(c) The teacher must be furnished, within five (5) days after**
20 **the teacher's written request, a statement of the reasons for the**
21 **consideration.**

22 **(d) The teacher may file a written request for binding**
23 **arbitration on the matter of contract cancellation within fifteen**
24 **(15) days after receipt of the notification required by subsection**
25 **(b).**

26 **(e) If the teacher requests binding arbitration, the matter shall**
27 **be submitted to the American Arbitration Association. The**
28 **American Arbitration Association shall, not more than ten (10)**
29 **days following the date of receipt of the request, furnish from a**
30 **listing of the membership of the National Academy of Arbitrators**
31 **the names of three (3) members of the National Academy. The**
32 **teacher and the governing body shall each strike an arbitrator**
33 **from the list. The remaining arbitrator shall conduct the**
34 **arbitration.**

35 **(f) An arbitration under this section must be conducted in**
36 **accordance with the rules and procedures of the American**
37 **Arbitration Association.**

38 **(g) The decision of an arbitrator is final and binding upon the**
39 **parties. The arbitrator may order the teacher's reinstatement with**
40 **or without back pay. The school corporation and the teacher shall**
41 **each pay one-half (1/2) of the arbitrator's compensation and**
42 **expenses of arbitration under this section. Pending a decision on**



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1 **the cancellation of a permanent teacher's contract, the teacher may**
 2 **be suspended from duty.**

3 SECTION 3. IC 20-6.1-4-14, AS AMENDED BY P.L.155-1996,
 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 1998]: Sec. 14. (a) Each contract entered into by a
 6 nonpermanent teacher and a school corporation continues in force on
 7 the same terms and for the same wages, unless increased by
 8 IC 20-6.1-5-1, for the next school term following the date of
 9 termination set in the contract. However, the contract does not continue
 10 if any of the following occur:

11 ~~(1) On or before May 1, the school corporation notifies the~~
 12 ~~teacher that the contract will not continue for the next school~~
 13 ~~term. This notification must be:~~

14 ~~(A) written; and~~

15 ~~(B) delivered in person or mailed by registered or certified~~
 16 ~~mail to the teacher at the teacher's last known address:~~

17 **The school corporation refuses continuation of the contract**
 18 **in accordance with subsections (b) through (h).**

19 (2) The teacher delivers or mails by registered or certified mail
 20 to the school corporation the teacher's written resignation.

21 (3) The contract is replaced by another contract agreed to by the
 22 parties.

23 (b) Before a teacher is refused continuation of the contract under
 24 subsection (a), the teacher has the following rights, which shall be
 25 strictly construed:

26 ~~(1) Upon the request of the teacher, and within fifteen (15) days~~
 27 ~~of the receipt of the notice of contract nonrenewal, the governing~~
 28 ~~body or the superintendent of the school corporation shall~~
 29 ~~provide the teacher with a written statement which may be~~
 30 ~~developed in an executive session and which is not a public~~
 31 ~~document, giving the reasons for the noncontinuation of the~~
 32 ~~teacher's contract.~~

33 ~~(2)~~ (1) The principal of the school at which the teacher teaches
 34 shall provide the teacher with an annual written evaluation of the
 35 teacher's performance before January 1 of each year. Upon the
 36 request of a nonpermanent teacher, delivered in writing to the
 37 principal within thirty (30) days after the teacher receives the
 38 evaluation required by this section, the principal shall provide
 39 the teacher with an additional written evaluation.

40 (2) **On or before May 1, the school corporation shall notify**
 41 **the teacher that the governing body will consider nonrenewal**
 42 **of the teacher's contract for the next school term. The**

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1 **notification must be:**

2 **(A) written; and**

3 **(B) delivered:**

4 **(i) in person;**

5 **(ii) by registered mail; or**

6 **(iii) by certified mail;**

7 **to the teacher at the teacher's last known address.**

8 **(3) Upon the request of the teacher, and within fifteen (15)**
 9 **days after the teacher's receipt of the notice of the school**
 10 **corporation's consideration of contract nonrenewal, the**
 11 **governing body or the superintendent of the school**
 12 **corporation shall provide the teacher with a written**
 13 **statement of the reasons for considering the proposed**
 14 **nonrenewal of the teacher's contract. The statement:**

15 **(A) may be developed in an executive session; and**

16 **(B) is not a public document.**

17 (c) A conference shall be held with the governing body, or at the
 18 direction of the governing body, with the superintendent or the
 19 superintendent's designee, not more than ten (10) days following the
 20 day the governing body receives the request **under subsection (b)**. If
 21 the first conference is not with the governing body, **the teacher may**
 22 **request** a second conference ~~shall~~ **that must** be held with the
 23 governing body **at a time:**

24 **(1) mutually agreeable to both parties; and**

25 **(2) not more than twenty (20) days following the day the**
 26 **governing body receives the request for a second conference, or**
 27 **before the end of the school year, whichever is earlier.**

28 (d) The governing body may, in addition to a conference, require
 29 that the superintendent or the superintendent's designee and the teacher
 30 summarize in writing the position of each party with respect to the
 31 continuation of the contract.

32 (e) At any conference:

33 (1) the governing body, the superintendent, or the
 34 superintendent's designee shall provide full and complete
 35 information supporting the reasons given for noncontinuance;
 36 and

37 (2) the teacher shall provide any information demonstrating that
 38 noncontinuance of the contract is improper.

39 (f) The conference with the governing body shall be in executive
 40 session unless the teacher requests a public conference. The teacher
 41 may have a representative at any conference.

42 (g) The time periods set out in subsection (c) shall be extended for

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- 1 a reasonable period:
- 2 (1) when a teacher or school official is ill or absent from the
- 3 school corporation;
- 4 (2) when the teacher requests a public conference, but a public
- 5 conference held within the time periods of subsection (c)
- 6 violates IC 5-14-1.5-5; or
- 7 (3) for other reasonable cause,
- 8 (h) The governing body shall ~~affirm or reverse its position~~ **vote** on
- 9 **the** continuation of the teacher's contract not more than ten (10) days
- 10 after the conference.
- 11 (i) The governing body of a school corporation may decide not to
- 12 continue a teacher's contract under this section:
- 13 (1) for any reason considered relevant to the school corporation's
- 14 interest; or
- 15 (2) because of a teacher's inability to perform the teacher's
- 16 teaching duties.
- 17 SECTION 4. IC 20-7.5-1-2 IS AMENDED TO READ AS
- 18 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. As used in this
- 19 **chapter: article:**
- 20 (a) "School corporation" means **any the following:**
- 21 (1) A local public school corporation established under Indiana
- 22 law. ~~and; in the case of~~
- 23 (2) A public vocational ~~schools~~ **school** or ~~schools~~ **school** for
- 24 children with disabilities established or maintained by two (2) or
- 25 more school corporations. ~~shall refer to such schools:~~
- 26 (3) **The board of trustees of Ivy Tech State College**
- 27 **(IC 20-12-61-1.2).**
- 28 (4) **The state of Indiana or a department of the state to the**
- 29 **extent the state or the department employs teachers at any of**
- 30 **the following:**
- 31 (A) **The department of correction, for its academic and**
- 32 **vocational education program under IC 11-10-5.**
- 33 (B) **A special institution under IC 16-19-6-5.**
- 34 (C) **A state institution under IC 12-24-3-4.**
- 35 (b) "Governing body" shall mean the board or commission charged
- 36 by law with the responsibility of administering the affairs of the school
- 37 corporation.
- 38 (c) "School employer" means the governing body of each school
- 39 corporation and any person or persons authorized to act for the
- 40 governing body of the school employer in dealing with its employees.
- 41 (d) "Superintendent" shall mean the chief administrative officer of
- 42 any school corporation, or any person or persons designated by the



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1 officer or by the governing body to act in the officer's behalf in dealing
2 with school employees.

3 (e) "School employee" means any full-time certificated person in
4 the employment of the school employer. A school employee shall be
5 considered full time even though the employee does not work during
6 school vacation periods, and accordingly works less than a full year.
7 There shall be excluded from the meaning of school employee
8 supervisors, confidential employees, employees performing security
9 work, and noncertificated employees.

10 (f) "Certificated employee" means a person whose contract with
11 the school corporation requires that he hold a license or permit from the
12 **Indiana** state board of education or a commission thereof as provided
13 in IC 20-6.1.

14 (g) "Noncertificated employee" means any school employee whose
15 employment is not dependent upon the holding of a license or permit
16 as provided in IC 20-6.1.

17 (h) "Supervisor" means any individual who has:

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

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

23 (3) responsibility to effectively recommend the action described
24 in ~~subsections~~ **subdivisions** (1) through (2);

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

30 (i) "Confidential employee" means a school employee whose
31 unrestricted access to confidential personnel files or whose functional
32 responsibilities or knowledge in connection with the issues involved in
33 dealings between the school corporation and its employees would make
34 the confidential employee's membership in a school employee
35 organization incompatible with the employee's official duties.

36 (j) "Employees performing security work" means any school
37 employee whose primary responsibility is the protection of personal
38 and real property owned or leased by the school corporation or who
39 performs police or quasi-police powers.

40 (k) "School employee organization" means any organization which
41 has school employees as members and one (1) of whose primary
42 purposes is representing school employees in dealing with their school

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1 employer, and includes any person or persons authorized to act on
2 behalf of such organizations.

3 (l) "Exclusive representative" means the school employee
4 organization which has been certified for the purposes of this chapter
5 by the board or recognized by a school employer as the exclusive
6 representative of the employees in an appropriate unit as provided in
7 section 10 of this chapter, or the person or persons duly authorized to
8 act on behalf of such representative.

9 (m) "Board" means the Indiana education employment relations
10 board provided by this chapter.

11 (n) "Bargain collectively" means the performance of the mutual
12 obligation of the school employer and the exclusive representative to
13 meet at reasonable times to negotiate in good faith with respect to items
14 enumerated in section 4 of this chapter and to execute a written
15 contract incorporating any agreement relating to such matters. Such
16 obligation shall not include the final approval of any contract
17 concerning these or any other items. Agreements reached through
18 collective bargaining are binding as a contract only if ratified by the
19 governing body of the school corporation and the exclusive
20 representative. The obligation to bargain collectively does not require
21 the school employer or the exclusive representative to agree to a
22 proposal of the other or to make a concession to the other, **except that**
23 **this obligation is subject to the final offer process if**
24 **mediation-arbitration under IC 20-7.5-2 is elected under section**
25 **11.5 of this chapter.**

26 (o) "Discuss" means the performance of the mutual obligation of
27 the school corporation through its superintendent and the exclusive
28 representative to meet at reasonable times to discuss, to provide
29 meaningful input, to exchange points of view, with respect to items
30 enumerated in section 5 of this chapter. This obligation shall not,
31 however, require either party to enter into a contract, to agree to a
32 proposal, or to require the making of a concession. A failure to reach
33 an agreement on any matter of discussion shall not require the use of
34 any part of the impasse procedure, as provided in section 13 of this
35 chapter, **unless the exclusive representative has elected under**
36 **section 11.5 of this chapter the mediation-arbitration procedure set**
37 **forth in IC 20-7.5-2.** Neither the obligation to bargain collectively nor
38 to discuss any matter shall prevent any school employee from
39 petitioning the school employer, the governing body, or the
40 superintendent for a redress of the employee's grievances either
41 individually or through the exclusive representative, nor shall either
42 such obligation prevent the school employer or the superintendent from

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1 conferring with any citizen, taxpayer, student, school employee, or
 2 other person considering the operation of the schools and the school
 3 corporation.

4 (p) "Strike" means concerted ~~failure~~ **refusal** to report for ~~duty;~~
 5 ~~willful absence from one's position; stoppage of work. or abstinence in~~
 6 ~~whole or in part from the full, faithful, and proper performance of the~~
 7 ~~duties of employment; without the lawful approval of the school~~
 8 ~~employer; or in any concerted manner interfering with the operation of~~
 9 ~~the school employer for any purpose.~~

10 (q) "Deficit financing" with respect to any budget year shall mean
 11 expenditures in excess of money legally available to the employer.

12 (r) **"Submission date" means the first date for the legal notice**
 13 **of a budget fixed by the school employer under IC 6-1.1-17-5.**

14 SECTION 5. IC 20-7.5-1-9 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. (a) There is created
 16 an Indiana education employment relations board which shall consist
 17 of three (3) members appointed by the governor to serve at the
 18 governor's pleasure. One (1) member shall be designated by the
 19 governor as chairman. Not more than two (2) members of the board
 20 shall be members of the same political party. Each member shall be
 21 appointed for a term of four (4) years. A member appointed to fill a
 22 vacancy shall be appointed for the unexpired term of the member
 23 whom the appointed member is to succeed.

24 (b) Members shall hold no other public office or employment by
 25 the state or other public agency or public employer, or be an officer or
 26 employee of any school employee organization or any of its affiliates,
 27 or represent any school employer or school employee organization, or
 28 its affiliates.

29 (c) Subsection (b) does not apply to persons on the teaching staff
 30 of a university who are knowledgeable in public administration or labor
 31 law so long as they are not actively engaged, other than as a member,
 32 with any labor or employee organization. This subsection shall be
 33 construed liberally to effectuate the intent of the general assembly.

34 (d) The chairman shall give full time to the chairman's duties. The
 35 chairman of the board shall not engage in any other business, vocation,
 36 or employment. The members of the board other than the chairman
 37 receive as compensation payment equal to that of the chairman,
 38 computed on a daily rate and paid for every day actually spent serving
 39 on the board.

40 (e) A majority of the members of the board constitutes a quorum.

41 (f) To accomplish the objectives and to carry out the duties
 42 prescribed in this chapter the board shall have the following powers:



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- 1 (1) To adopt an official seal and prescribe the purposes for
- 2 which it shall be used.
- 3 (2) To hold hearings and make inquiries as it deems necessary to
- 4 carry out properly its functions and powers.
- 5 (3) To establish a principal office in the city of Indianapolis.
- 6 (4) To meet and exercise its powers at any other place in Indiana.
- 7 (5) To conduct in any part of Indiana a proceeding, hearing,
- 8 investigation, inquiry, or election necessary to the performance
- 9 of its functions. For any such purpose, the board may designate
- 10 one (1) of its members, or an agent or agents, as hearing
- 11 examiners. The board may utilize voluntary and uncompensated
- 12 services as may be needed.
- 13 (6) To appoint staff and attorneys as it may find necessary for the
- 14 proper performance of its duties. The attorneys appointed under
- 15 this section may, at the direction of the board, appear for and
- 16 represent the board in court.
- 17 (7) To pay the reasonable and necessary traveling and other
- 18 expenses of any employee, member, or agent of the board.
- 19 (8) To subpoena witnesses and issue subpoenas requiring the
- 20 production of books, papers, records, and documents which may
- 21 be needed as evidence in any matter under inquiry, and to
- 22 administer oaths and affirmations. In cases of neglect or refusal
- 23 to obey a subpoena issued to any person, the circuit or superior
- 24 court of the county in which the investigations or the public
- 25 hearings are taking place, upon application by the board, shall
- 26 issue an order requiring the person to appear before the board
- 27 and produce evidence about the matter under investigation. A
- 28 failure to obey the order may be punished by the court as a
- 29 contempt. Any subpoena, notice of hearing, or other process of
- 30 the board issued under this chapter shall be served in the manner
- 31 prescribed by the Indiana Rules of Trial Procedure.
- 32 (9) To adopt, promulgate, amend, or rescind rules it deems
- 33 necessary and administratively feasible to carry out this chapter
- 34 in accordance with IC 4-22-2.
- 35 (10) To request from any public agency the assistance, services,
- 36 and data as will enable the board properly to carry out its
- 37 functions and powers.
- 38 (11) To publish and report in full an opinion in every case
- 39 decided by it.
- 40 (g) The board shall organize its staff to provide for the functions
- 41 of unit determination, unfair labor practice processing, conciliation and
- 42 mediation, factfinding, **mediation-arbitration under IC 20-7.5-2**, and

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1 research. In connection with any conciliation and mediation, ~~or~~
 2 factfinding, ~~it or mediation-arbitration under IC 20-7.5-2, the board~~
 3 may use either full-time employees or appoint employees for specific
 4 cases from a panel which it establishes. Its research division shall be
 5 organized to provide statistical data on the resources of each school
 6 corporation, the substance of any agreements reached by each school
 7 corporation, and other relevant data.

8 SECTION 6. IC 20-7.5-1-11 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) Unfair practices
 10 shall be remediable in the manner provided in this section. Any school
 11 employer or any school employee who believes he is aggrieved by an
 12 unfair practice may file a complaint under oath to such effect, setting
 13 out a summary of the facts involved and specifying the section of this
 14 chapter alleged to have been violated.

15 (b) ~~Thereafter,~~ The board shall give notice to the person or
 16 organization against whom the complaint is directed and shall
 17 determine the matter raised in the complaint, and appeals may be taken
 18 in accordance with IC 4-21.5-3.

19 (c) Testimony may be taken and findings and conclusions may be
 20 made by a hearing examiner or ~~an~~ agent of the board who may be a
 21 member ~~thereof.~~ **of the board.**

22 (d) The board, but not a hearing examiner or ~~an~~ agent ~~thereof,~~ **of**
 23 **the board,** may enter ~~such an~~ interlocutory ~~orders~~ **order** after
 24 summary hearing as it ~~deems necessary in carrying to carry~~ out the
 25 intent of this chapter.

26 (e) **If, at the conclusion of the hearing, the board, hearing**
 27 **examiner, or agent of the board determines, based on a**
 28 **preponderance of the evidence admitted at the hearing, that the**
 29 **person named in the complaint has engaged in an unfair practice**
 30 **under section 7 of this chapter, the board:**

31 (1) **shall:**

- 32 (A) **state its findings of fact and conclusions of law; and**
 33 (B) **issue an order requiring the person to cease the**
 34 **unfair practice; and**

35 (2) **may:**

- 36 (A) **take other appropriate action, including ordering**
 37 **the reinstatement with back pay of an employee; and**
 38 (B) **require the person who has engaged in the unfair**
 39 **practice to report to the board concerning compliance**
 40 **with the board's order.**

41 (f) **If, at the conclusion of the hearing, the board, hearing**
 42 **examiner, or agent of the board determines, based on a**

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1 preponderance of the evidence admitted at the hearing, that the
 2 person named in the complaint has not engaged in an unfair
 3 practice under section 7 of this chapter, the board shall:

- 4 (1) state its findings of fact and conclusions of law; and
 5 (2) dismiss the complaint.

6 (g) If, at the conclusion of the hearing, the board, hearing
 7 examiner, or agent of the board determines that an employee was
 8 dismissed or suspended for cause, an order reinstating the
 9 employee or awarding the employee back pay may not be issued.

10 SECTION 7. IC 20-7.5-1-11.5 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 1998]: **Sec. 11.5.** An exclusive representative
 13 may begin collective bargaining by notifying the board and the
 14 employer on or before one hundred eighty (180) days before the
 15 submission date that the exclusive representative intends to use
 16 either of the following procedures:

- 17 (1) The collective bargaining procedure set forth in section
 18 12 of this chapter.
 19 (2) The mediation and final offer selection procedure set
 20 forth in IC 20-7.5-2.

21 SECTION 8. IC 20-7.5-2 IS ADDED TO THE INDIANA CODE
 22 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 1998]:

24 **Chapter 2. Mediation; Final Offer Selection**

25 **Sec. 1.** An alternative method of collective bargaining is
 26 provided by this chapter because experience has demonstrated that
 27 harmonious and cooperative relationships between school
 28 employers and their employees can best be accomplished by a
 29 collective bargaining and discussion impasse procedure that ends
 30 in binding resolution of disputes. The public interest will be served
 31 by an effective, efficient resolution of disputes within the public
 32 schools of Indiana.

33 **Sec. 2.** This chapter applies to collective bargaining in which
 34 the exclusive representative has elected to proceed under this
 35 chapter and has so notified the employer and the board as
 36 provided in IC 20-7.5-1-11.5.

37 **Sec. 3.** A school corporation and the exclusive representative
 38 shall begin to bargain collectively at least ninety (90) days before
 39 the submission date, unless the exclusive representative has elected
 40 to proceed under IC 20-7.5-1-12.

41 **Sec. 4.** In addition to the impasse procedures specified in this
 42 chapter, a school employer and an exclusive representative may



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1 agree in writing to a dispute settlement procedure. A copy of the
2 agreement shall be filed by the parties with the board. If the parties
3 agree to a form of binding arbitration, the arbitrator shall give
4 weight to the factors listed in section 12 of this chapter. The
5 arbitration award is subject to appeal under sections 16 through 19
6 of this chapter.

7 **Sec. 5.** If the parties have not reached an agreement at least
8 sixty (60) days before the submission date, the parties shall notify
9 the board that an impasse exists, and the board shall initiate
10 mediation-arbitration.

11 **Sec. 6.** Not later than fifteen (15) days after the receipt of a
12 notice of an impasse, each party shall submit to the board and
13 exchange with the other party its final offer on each item
14 remaining at impasse that is also an item listed in IC 20-7.5-1-4 and
15 IC 20-7.5-1-5. The parties shall also file with the board a joint
16 stipulation with respect to all matters that have been previously
17 agreed on for inclusion in the new or amended collective
18 bargaining agreement. All final offers and joint stipulations filed
19 with the board are open to public inspection.

20 **Sec. 7. (a)** Not later than three (3) days after the receipt of a
21 notice of an impasse from the parties, the board shall submit to the
22 parties a list of five (5) competent and experienced
23 mediator-arbitrators who must be representatives of the interests
24 of the public, but who may not be employees of the board.

25 **(b)** Not later than five (5) days after the receipt of the list, the
26 parties shall agree on a name or alternately strike a name from the
27 list until one (1) name remains. The parties shall determine by lot
28 who strikes the first name. The parties shall notify the board of the
29 mediator-arbitrator chosen.

30 **(c)** If a mediator-arbitrator has not been chosen through
31 agreement or striking names within the five (5) day limit, the board
32 shall select a mediator-arbitrator from the list.

33 **(d)** Upon receipt of notice from the parties or after the board
34 makes a selection, the board shall formally appoint the
35 mediator-arbitrator and submit to the mediator-arbitrator the
36 final offers and joint stipulation of the parties.

37 **Sec. 8.** A mediator-arbitrator shall begin mediation not later
38 than ten (10) days after appointment. The final offers of the
39 parties, as transmitted by the board to the mediator-arbitrator,
40 must serve as the mutual basis for mediation and continued
41 negotiations between the parties with regard to issues in dispute
42 that have not been agreed upon by the parties. All mediation

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1 sessions must be private.

2 **Sec. 9. (a) For seven (7) successive days after the first**
 3 **mediation session, the mediator-arbitrator shall mediate the**
 4 **dispute and encourage a voluntary and mutual settlement by the**
 5 **parties. During the first five (5) days of the seven (7) successive day**
 6 **period, either party may unilaterally modify in writing any item in**
 7 **its final offers. At the end of the five (5) day period, each party**
 8 **shall certify in writing to the board the changes that have been**
 9 **made in its final offers during mediation, with a copy sent to the**
 10 **mediator-arbitrator and to the other party. During the last two (2)**
 11 **days of the seven (7) successive day period, a modification of either**
 12 **party's final offer may be made only with the consent of the other**
 13 **party.**

14 **(b) Any modifications made shall be certified by the parties to**
 15 **the board, with a copy sent to the mediator-arbitrator.**

16 **Sec. 10. (a) If the parties have failed to reach a voluntary and**
 17 **mutual settlement during the seven (7) successive day mediation**
 18 **period, the dispute shall be resolved by final offer item by item**
 19 **selections.**

20 **(b) Not later than five (5) days after the end of the mediation**
 21 **period and before selecting the final offers, the mediator-arbitrator**
 22 **shall conduct a public hearing for the purpose of providing an**
 23 **opportunity to both parties to present evidence and argument in**
 24 **support of their final offers.**

25 **(c) Not later than ten (10) days after the completion of the**
 26 **hearing, the mediator-arbitrator shall in writing select the final**
 27 **offer that, in the mediator-arbitrator's judgment, is the more**
 28 **reasonable and shall in writing state reasons for the selection. The**
 29 **mediator-arbitrator's selection and the reasons shall be delivered**
 30 **to the board and to each party. The final offers selected, along with**
 31 **the stipulation of items already agreed to, become the agreement**
 32 **between the parties and are final and binding upon the parties,**
 33 **subject to sections 11 and 16 through 19 of this chapter.**

34 **Sec. 11. The parties may voluntarily and mutually agree upon**
 35 **the terms and conditions of a contract at any time.**

36 **Sec. 12. In making a decision under the final offer selection**
 37 **procedures authorized by section 10 of this chapter, a**
 38 **mediator-arbitrator shall give weight to the following factors:**

39 **(1) Past memoranda of agreement and contracts between the**
 40 **parties.**

41 **(2) Comparison of wages, hours, terms of employment, and**
 42 **conditions of employment of the school employees involved**

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1 with those of other employees doing comparable work, giving
 2 consideration to factors peculiar to the work involved.
 3 (3) Comparison of wages, hours, terms of employment, and
 4 conditions of employment with similar employment in
 5 private business and industry.
 6 (4) The average consumer prices for goods and services,
 7 commonly known as the cost of living.
 8 (5) The impact on the educational atmosphere or
 9 environment.

10 **Sec. 13. (a) A mediator-arbitrator may not be employed on a**
 11 **full-time or part-time basis by:**
 12 (1) a public school employer that is a school corporation;
 13 (2) an organization of public employees, public employers, or
 14 their affiliates; or
 15 (3) a firm that represents employers or employees in the
 16 implementation of this article.
 17 (b) The board shall pay the compensation and expenses of a
 18 mediator-arbitrator.

19 **Sec. 14. (a) If an agreement has not been reached on the items**
 20 **to be bargained collectively fourteen (14) days before the**
 21 **submission date, the parties shall continue the status quo, and the**
 22 **employer may issue tentative individual contracts and prepare a**
 23 **budget based on the individual contracts.**
 24 (b) During the status quo period, in order to permit the
 25 successful resolution of the dispute, the employer may not
 26 unilaterally change the terms or conditions of employment that are
 27 issues in dispute.
 28 (c) This section does not relieve the school employer or the
 29 school employee organization from the duty to follow the
 30 procedures set forth in this chapter.

31 **Sec. 15. The board shall adopt rules under IC 4-22-2 to**
 32 **implement this chapter.**

33 **Sec. 16. Not later than fifteen (15) days after the**
 34 **mediator-arbitrator's final offer selection, either party may**
 35 **petition the circuit or superior court of Marion County to set the**
 36 **final offer selection aside. Any time after the fifteen (15) day**
 37 **period, either party may petition the circuit or superior court of**
 38 **Marion County to enforce a final offer selection. The court shall**
 39 **hear these matters on an expedited basis and not later than thirty**
 40 **(30) days after the filing of a petition. The court must enforce the**
 41 **final offer selection unless the court finds by a preponderance of**
 42 **the evidence that the decision is:**

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1 (1) illegal;
 2 (2) in excess of the mediator-arbitrator's power; or
 3 (3) procured by fraud, bribery, or corruption.
 4 **Sec. 17. If a court sets aside a final offer selection because of**
 5 **illegality or excess of power, the selection shall be remanded to the**
 6 **same mediator-arbitrator who heard the selection the first time,**
 7 **subject to the right of a party to appeal an adverse ruling of the**
 8 **court. The mediator-arbitrator has the following choices on**
 9 **remand:**
 10 (1) Affirm the earlier final offer selection minus any items set
 11 aside by the court.
 12 (2) Make a new determination on the original final offers
 13 proposed by the parties after a new hearing or argument, at
 14 the discretion of the mediator-arbitrator.
 15 **Sec. 18. If a court sets aside a final offer selection because of**
 16 **fraud, bribery, or corruption, the selection shall be remanded to**
 17 **the board for an expedited hearing before a new**
 18 **mediator-arbitrator, selected in the same manner as the original**
 19 **mediator-arbitrator, subject to the right of a party to appeal an**
 20 **adverse ruling of the court.**
 21 **Sec. 19. An appeal under section 17 or 18 of this chapter shall**
 22 **be taken in the manner and to the same extent as orders or**
 23 **judgments are taken in a civil action. Because of the appeal's public**
 24 **importance, the appeal shall be advanced on the docket for the**
 25 **consideration of the court.**
 26 **Sec. 20. A party who:**
 27 (1) fails to implement a final offer selection; or
 28 (2) appeals a final offer selection and does not ultimately
 29 prevail in court;
 30 **is liable for reasonable attorney's fees, interest on delayed**
 31 **monetary benefits, and other costs incurred in the action.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1278, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 20-6.1-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) An indefinite contract with a permanent or semi-permanent teacher may be canceled only in the following manner:

- (1) the teacher shall be notified in writing of the date, time, and place for the consideration by the school corporation of the cancellation of the contract; this notification must occur not more than forty (40) days nor less than thirty (30) days before the consideration;
- (2) the teacher shall be furnished, within five (5) days after a written request, a written statement of the reasons for the consideration;
- (3) the teacher may file a written request for a hearing within fifteen (15) days after receipt of the notice of this consideration;
- (4) when the request for a hearing is filed, the teacher shall be given a hearing before the governing body on a day no earlier than five (5) days after filing;
- (5) the teacher shall be given not less than five (5) days' notice of the time and place of the hearing;
- (6) at the hearing, the teacher is entitled:
 - (A) to a full statement of the reasons for the proposed cancellation of the contract; and
 - (B) to be heard, to present the testimony of witnesses and other evidence bearing on the reasons for the proposed cancellation of the contract;
- (7) a contract may not be canceled until:
 - (A) the date set for consideration of the cancellation of the contract;
 - (B) after a hearing is held, if a hearing is requested by the teacher; and
 - (C) the superintendent has given his recommendations on the contract; on five (5) days written notice to him by the school corporation, the superintendent shall present his recommendation on each contract, except on a superintendent's contract;

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(8) pending a decision on the cancellation of a teacher's contract, the teacher may be suspended from duty; and

(9) after complying with section 10 of this chapter in the case of permanent teachers, or section 10.5 of this chapter in the case of semi-permanent teachers, and this section, the governing body of the school corporation may cancel an indefinite contract with a teacher by a majority vote evidenced by a signed statement in the minutes of the board; the decision of the governing board is final.

The vote to cancel a contract described in subdivision (9) must be taken by the governing body on the date and at the time and place specified in subdivision (1).

(b) If a permanent or semi-permanent teacher is suspended under subsection (a)(8), and except as provided in IC 20-6.1-5-11, the governing body may not (while the teacher is suspended) withhold from the teacher salary payments or other employment related benefits that before the suspension the teacher was entitled to receive.

(c) The governing body may appoint an agent (who is not an employee of the school corporation, but who may be a member of the governing body or an attorney retained to administer the hearing proceedings under this section) for the purpose of issuing subpoenas for the attendance of witnesses for either party at the hearing. A subpoena issued under this section shall be:

(1) served by the party who seeks to compel the attendance of a witness; and

(2) upon application to the court by the party, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(d) Instead of the cancellation procedure provided in subsection (a), a permanent teacher's contract may be canceled as provided in section 11.1 of this chapter.

SECTION 2. IC 20-6.1-4-11.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 11.1. (a) Instead of the cancellation procedure provided in section 11(a) of this chapter, a permanent teacher's contract may be canceled as provided in this section.**

(b) A teacher must be notified in writing of the date, time, and place for consideration by a school corporation of the cancellation of the teacher's contract. The notification must be delivered not more than forty (40) days and at least thirty (30) days before the consideration.



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(c) The teacher must be furnished, within five (5) days after the teacher's written request, a statement of the reasons for the consideration.

(d) The teacher may file a written request for binding arbitration on the matter of contract cancellation within fifteen (15) days after receipt of the notification required by subsection (b).

(e) If the teacher requests binding arbitration, the matter shall be submitted to the American Arbitration Association. The American Arbitration Association shall, not more than ten (10) days following the date of receipt of the request, furnish from a listing of the membership of the National Academy of Arbitrators the names of three (3) members of the National Academy. The teacher and the governing body shall each strike an arbitrator from the list. The remaining arbitrator shall conduct the arbitration.

(f) An arbitration under this section must be conducted in accordance with the rules and procedures of the American Arbitration Association.

(g) The decision of an arbitrator is final and binding upon the parties. The arbitrator may order the teacher's reinstatement with or without back pay. The school corporation and the teacher shall each pay one-half (1/2) of the arbitrator's compensation and expenses of arbitration under this section. Pending a decision on the cancellation of a permanent teacher's contract, the teacher may be suspended from duty.

SECTION 3. IC 20-6.1-4-14, AS AMENDED BY P.L.155-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) Each contract entered into by a nonpermanent teacher and a school corporation continues in force on the same terms and for the same wages, unless increased by IC 20-6.1-5-1, for the next school term following the date of termination set in the contract. However, the contract does not continue if any of the following occur:

(1) On or before May 1, the school corporation notifies the teacher that the contract will not continue for the next school term. This notification must be:

(A) written; and

(B) delivered in person or mailed by registered or certified mail to the teacher at the teacher's last known address.

The school corporation refuses continuation of the contract in accordance with subsections (b) through (h).



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(2) The teacher delivers or mails by registered or certified mail to the school corporation the teacher's written resignation.

(3) The contract is replaced by another contract agreed to by the parties.

(b) Before a teacher is refused continuation of the contract under subsection (a), the teacher has the following rights, which shall be strictly construed:

~~(1) Upon the request of the teacher, and within fifteen (15) days of the receipt of the notice of contract nonrenewal, the governing body or the superintendent of the school corporation shall provide the teacher with a written statement which may be developed in an executive session and which is not a public document, giving the reasons for the noncontinuation of the teacher's contract.~~

~~(2) (1) The principal of the school at which the teacher teaches shall provide the teacher with an annual written evaluation of the teacher's performance before January 1 of each year. Upon the request of a nonpermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.~~

(2) On or before May 1, the school corporation shall notify the teacher that the governing body will consider nonrenewal of the teacher's contract for the next school term. The notification must be:

(A) written; and

(B) delivered:

(i) in person;

(ii) by registered mail; or

(iii) by certified mail;

to the teacher at the teacher's last known address.

(3) Upon the request of the teacher, and within fifteen (15) days after the teacher's receipt of the notice of the school corporation's consideration of contract nonrenewal, the governing body or the superintendent of the school corporation shall provide the teacher with a written statement of the reasons for considering the proposed nonrenewal of the teacher's contract. The statement:

(A) may be developed in an executive session; and

(B) is not a public document.

(c) A conference shall be held with the governing body, or at the direction of the governing body, with the superintendent or the

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superintendent's designee, not more than ten (10) days following the day the governing body receives the request **under subsection (b)**. If the first conference is not with the governing body, **the teacher may request** a second conference ~~shall~~ **that must** be held with the governing body **at a time:**

(1) **mutually agreeable to both parties; and**

(2) not more than twenty (20) days following the day the governing body receives the request for a second conference, or before the end of the school year, whichever is earlier.

(d) The governing body may, in addition to a conference, require that the superintendent or the superintendent's designee and the teacher summarize in writing the position of each party with respect to the continuation of the contract.

(e) At any conference:

(1) the governing body, the superintendent, or the superintendent's designee shall provide full and complete information supporting the reasons given for noncontinuance; and

(2) the teacher shall provide any information demonstrating that noncontinuance of the contract is improper.

(f) The conference with the governing body shall be in executive session unless the teacher requests a public conference. The teacher may have a representative at any conference.

(g) The time periods set out in subsection (c) shall be extended for a reasonable period:

(1) when a teacher or school official is ill or absent from the school corporation;

(2) when the teacher requests a public conference, but a public conference held within the time periods of subsection (c) violates IC 5-14-1.5-5; or

(3) for other reasonable cause,

(h) The governing body shall ~~affirm or reverse its position~~ **vote on the** continuation of the teacher's contract not more than ten (10) days after the conference.

(i) The governing body of a school corporation may decide not to continue a teacher's contract under this section:

(1) for any reason considered relevant to the school corporation's interest; or

(2) because of a teacher's inability to perform the teacher's teaching duties."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to House Bill 1278 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 5.

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