

## SENATE BILL No. 138

---

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-1.5-2; IC 36-8.

**Synopsis:** Collective bargaining for firefighters. Provides that the firefighters of a unit (a county, city, town, or township) may bargain collectively with an employer through an exclusive representative. Requires the Indiana education employment relations board to implement the collective bargaining law. Specifies the rights and duties of employees and employers in collective bargaining. Provides for the recognition of exclusive representatives, payroll deductions, complaint proceedings before the board, judicial review of complaints, mediation, and arbitration. Prohibits lockouts and strikes. Provides that an agent appointed by a unit to conduct collective bargaining for the unit is not a governing body for open door law purposes. (Current law provides that the agent appointed by a school corporation to conduct collective bargaining is not a governing body for this purpose.)

**Effective:** July 1, 1998.

---

---

## Craycraft

---

---

January 6, 1998, read first time and referred to Committee on Pensions and Labor.

---

---



Introduced

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.

## SENATE BILL No. 138

---

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

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

- 1           SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.50-1995,  
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]: Sec. 2. For the purposes of this chapter:  
4           (a) "Public agency" means the following:  
5               (1) Any board, commission, department, agency, authority, or  
6               other entity, by whatever name designated, exercising a portion  
7               of the executive, administrative, or legislative power of the state.  
8               (2) Any county, township, school corporation, city, town,  
9               political subdivision, or other entity, by whatever name  
10              designated, exercising in a limited geographical area the  
11              executive, administrative, or legislative power of the state or a  
12              delegated local governmental power.  
13              (3) Any entity which is subject to either:  
14                    (A) budget review by either the state board of tax  
15                    commissioners or the governing body of a county, city,  
16                    town, township, or school corporation; or  
17                    (B) audit by the state board of accounts.

1998

IN 138—LS 6268/DI 79+



- 1 (4) Any building corporation of a political subdivision of the  
 2 state of Indiana that issues bonds for the purpose of constructing  
 3 public facilities.
- 4 (5) Any advisory commission, committee, or body created by  
 5 statute, ordinance, or executive order to advise the governing  
 6 body of a public agency, except medical staffs or the committees  
 7 of any such staff.
- 8 (6) The Indiana gaming commission established by IC 4-33,  
 9 including any department, division, or office of the commission.
- 10 (7) The Indiana horse racing commission established by IC 4-31,  
 11 including any department, division, or office of the commission.
- 12 (b) "Governing body" means two (2) or more individuals who are:
- 13 (1) a public agency that:
- 14 (A) is a board, a commission, an authority, a council, a  
 15 committee, a body, or other entity; and
- 16 (B) takes official action on public business;
- 17 (2) the board, commission, council, or other body of a public  
 18 agency which takes official action upon public business; or
- 19 (3) any committee appointed directly by the governing body or  
 20 its presiding officer to which authority to take official action  
 21 upon public business has been delegated. An agent or agents  
 22 appointed by a school corporation **or a unit (as defined in**  
 23 **IC 36-1-2-23)** to conduct collective bargaining on behalf of that  
 24 school corporation **or the unit** does not constitute a governing  
 25 body for purposes of this chapter.
- 26 (c) "Meeting" means a gathering of a majority of the governing  
 27 body of a public agency for the purpose of taking official action upon  
 28 public business. It does not include:
- 29 (1) any social or chance gathering not intended to avoid this  
 30 chapter;
- 31 (2) any on-site inspection of any project or program;
- 32 (3) traveling to and attending meetings of organizations devoted  
 33 to betterment of government; or
- 34 (4) a caucus.
- 35 (d) "Official action" means to:
- 36 (1) receive information;
- 37 (2) deliberate;
- 38 (3) make recommendations;
- 39 (4) establish policy;
- 40 (5) make decisions; or
- 41 (6) take final action.
- 42 (e) "Public business" means any function upon which the public



1 agency is empowered or authorized to take official action.

2 (f) "Executive session" means a meeting from which the public is  
3 excluded, except the governing body may admit those persons  
4 necessary to carry out its purpose.

5 (g) "Final action" means a vote by the governing body on any  
6 motion, proposal, resolution, rule, regulation, ordinance, or order.

7 (h) "Caucus" means a gathering of members of a political party or  
8 coalition which is held for purposes of planning political strategy and  
9 holding discussions designed to prepare the members for taking official  
10 action.

11 (i) "Deliberate" means a discussion which may reasonably be  
12 expected to result in official action (defined under subsection (d)(3),  
13 (d)(4), (d)(5), or (d)(6)).

14 (j) "News media" means all newspapers qualified to receive legal  
15 advertisements under IC 5-3-1, all news services (as defined in  
16 IC 34-4-15-3), and all licensed commercial or public radio or television  
17 stations.

18 (k) "Person" means an individual, a corporation, a limited liability  
19 company, a partnership, an unincorporated association, or a  
20 governmental entity.

21 SECTION 2. IC 36-8-20 IS ADDED TO THE INDIANA CODE  
22 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 1998]:

24 **Chapter 20. Collective Bargaining Between Local Government**  
25 **Employers and Firefighters; Definitions**

26 **Sec. 1. The definitions in this chapter apply throughout this**  
27 **chapter, IC 36-8-21, IC 36-8-22, IC 36-8-23, and IC 36-8-24.**

28 **Sec. 2. "Bargain collectively" means to perform the obligation**  
29 **of an employer (through the employer's executive or the**  
30 **executive's designee) and of the designee of the exclusive**  
31 **representative to do the following:**

32 **(1) Meet at reasonable times, including meetings in advance**  
33 **of the budget making process.**

34 **(2) Negotiate in good faith concerning the following:**

35 **(A) Wages.**

36 **(B) Salaries.**

37 **(C) Hours.**

38 **(D) Salary and wage related benefits.**

39 **(E) All other terms and conditions of employment,**  
40 **including health and safety conditions.**

41 **(3) Execute a written contract incorporating an agreement,**  
42 **if a written contract is requested by either party.**



1           **Sec. 3. "Bargaining unit"** means the full-time employees of a  
 2 fire department. The term does not include a person in an upper  
 3 level policy making position (as defined in IC 36-8-1-12), except a  
 4 person in an upper level policy making position included in an  
 5 agreement in effect on July 1, 1998.

6           **Sec. 4. "Board"** refers to the Indiana education employment  
 7 relations board established by IC 20-7.5-1-9.

8           **Sec. 5. "Complainant"** means an employer, employee,  
 9 employee organization, or exclusive representative that files a  
 10 complaint with the board under IC 36-8-22.

11           **Sec. 6. "Employee"** means a person who may be in a  
 12 bargaining unit.

13           **Sec. 7. "Employee organization"** means an organization in  
 14 which an employee participates and that exists to deal with an  
 15 employer concerning any of the following:

- 16           (1) Grievances.
- 17           (2) Labor disputes.
- 18           (3) Wages.
- 19           (4) Rates of pay.
- 20           (5) Hours of employment.
- 21           (6) Employment conditions.

22           **Sec. 8. "Employer"** means the following:

- 23           (1) A unit to which IC 36-8-21 applies.
- 24           (2) A person designated by the unit to act in the unit's  
 25 interests in dealing with employees.

26           **Sec. 9. "Exclusive representative"** means an employee  
 27 organization that has been:

- 28           (1) certified under IC 36-8-21 by the board; or
- 29           (2) recognized by the employer as the exclusive  
 30 representative of the employees in a bargaining unit.

31           **Sec. 10. "Respondent"** means a person against whom a  
 32 complainant files a complaint under IC 36-8-22.

33           **Sec. 11. "Strike"** includes concerted:

- 34           (1) willful absence from the employee's position;
- 35           (2) stoppage of work; or
- 36           (3) abstinence in whole or in part from the full and proper  
 37 performance of the duties of employment.

38           SECTION 3. IC 36-8-21 IS ADDED TO THE INDIANA CODE  
 39 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 1998]:

41           **Chapter 21. Collective Bargaining Between Local Government**  
 42 **Employers and Firefighters; Employee Organizations**



1           **Sec. 1. This chapter, IC 36-8-22, IC 36-8-23, and IC 36-8-24**  
 2 **apply to all units.**

3           **Sec. 2. The board shall implement this chapter, IC 36-8-22,**  
 4 **IC 36-8-23, and IC 36-8-24. Powers granted to the board under**  
 5 **IC 20-7.5-1-9 are extended to the administration of this chapter,**  
 6 **IC 36-8-22, IC 36-8-23, and IC 36-8-24.**

7           **Sec. 3. Employees may do the following:**

- 8           (1) **Form, join, or participate in employee organizations.**  
 9           (2) **Participate in collective bargaining with the employer**  
 10 **through representatives of the employee's own choosing.**  
 11           (3) **Engage in other activities, individually or in concert, to**  
 12 **establish, maintain, or improve the following:**  
 13               (A) **Salaries.**  
 14               (B) **Wages.**  
 15               (C) **Hours.**  
 16               (D) **Salary and wage related fringe benefits.**  
 17               (E) **All other terms and conditions of employment,**  
 18 **including health and safety conditions.**

19           **Sec. 4. An employer shall manage and direct the employer's**  
 20 **operations and activities to the full extent authorized by law.**

21           **Sec. 5. An employer may do the following:**

- 22           (1) **Direct the work of an employee, except where otherwise**  
 23 **provided by law.**  
 24           (2) **Establish policy.**  
 25           (3) **Hire, promote, demote, transfer, assign, and retain an**  
 26 **employee, in accordance with law and collective bargaining**  
 27 **agreements.**  
 28           (4) **Suspend or discharge an employee in accordance with**  
 29 **law.**  
 30           (5) **Maintain the efficiency of governmental operations.**  
 31           (6) **Take action necessary to carry out the missions of the fire**  
 32 **department.**  
 33           (7) **Protect the fiscal soundness and assure the continuation**  
 34 **of vital public safety services.**  
 35           (8) **Take actions necessary to carry out the employer's**  
 36 **responsibilities in emergencies.**

37           **Sec. 6. The board shall investigate a petition that has been filed**  
 38 **with the board in accordance with rules adopted by the board**  
 39 **under IC 4-22-2 by an:**

- 40           (1) **employee organization alleging that thirty percent (30%)**  
 41 **of the employees in the appropriate bargaining unit wish to**  
 42 **be represented for collective bargaining purposes by an**



1 exclusive representative;

2 (2) employer alleging that at least one (1) employee  
3 organization has presented a claim to be recognized as the  
4 exclusive representative in an appropriate bargaining unit;

5 or

6 (3) employee or a group of employees alleging that thirty  
7 percent (30%) of the employees assert that the designated  
8 exclusive representative is no longer the representative of the  
9 majority of employees in the bargaining unit.

10 **Sec. 7.** If the board has reasonable cause to believe that a  
11 question of representation exists, the board shall conduct a hearing  
12 within thirty (30) days after a petition has been filed with the  
13 board. If the board finds upon the record of the hearing that a  
14 question of representation exists, the board shall do the following:

15 (1) Direct an election by secret ballot within thirty (30) days  
16 after the hearing.

17 (2) Certify the results within ten (10) days after the election.

18 **Sec. 8.** The parties may waive a hearing for a consent election.

19 **Sec. 9.** The board shall determine who is eligible to vote in the  
20 election and shall establish rules governing the election, subject to  
21 the following conditions:

22 (1) An employee organization must be designated by more  
23 than ten percent (10%) of the employees in the unit to be  
24 placed on the ballot.

25 (2) If none of the choices on the ballot receives a majority in  
26 an election but a majority of all votes cast are for  
27 representation by some employee organization, the board  
28 shall conduct a runoff election.

29 (3) An employee organization that receives the majority of  
30 the votes cast in an election shall be certified by the board as  
31 the exclusive representative.

32 **Sec. 10.** An election may not be directed in a bargaining unit  
33 or in a subdivision of a bargaining unit within which a valid  
34 election has been held in the preceding twelve (12) months.

35 **Sec. 11.** Notwithstanding sections 6 through 10 of this chapter,  
36 an employer shall recognize as the exclusive representative of the  
37 employees within an appropriate bargaining unit an employee  
38 organization that presents to the employer evidence that the  
39 employee organization represents a majority of the employees  
40 within the unit, unless an employee organization or a group of  
41 employees representing employees within the bargaining unit files  
42 a written objection to recognition with the employer or the board.



1           **Sec. 12.** In the absence of an objection, the board is not  
2 required to hold a hearing or to direct an election.

3           **Sec. 13.** Before recognizing an exclusive representative under  
4 section 11 of this chapter, the employer must post a written public  
5 notice of the employer's intention to recognize the employee  
6 organization as the exclusive representative of the employees  
7 within the unit. The notice must be posted for at least thirty (30)  
8 days immediately preceding recognition.

9           **Sec. 14.** In a case:

- 10           (1) involving a historical pattern of recognition; and  
11           (2) where the employer has recognized an employee  
12 organization as the sole and exclusive bargaining agent for  
13 an existing bargaining unit;

14 the board shall find that the employees in the bargaining unit are  
15 represented by that employee organization and recognize the  
16 employee organization as the exclusive representative.

17           **Sec. 15.** A determination made under this chapter that an  
18 employee organization has been chosen as the exclusive  
19 representative by a majority of the employees in an appropriate  
20 bargaining unit is subject to judicial review under IC 36-8-22-12  
21 through IC 36-8-22-22. The record of the determination of the  
22 appropriate bargaining unit and the exclusive representative may  
23 be a part of the transcript of a proceeding under this section.

24           **Sec. 16.** An employer shall, on receipt of a written  
25 authorization from an employee subject to this chapter, do the  
26 following:

- 27           (1) Deduct from the pay of the employee the dues, fees, or  
28 assessments designated or certified by the appropriate  
29 officer of an employee organization.  
30           (2) Remit those amounts to the employee organization.

31           **Sec. 17.** A collective bargaining agreement with an exclusive  
32 representative may include a provision requiring an employee  
33 covered by the agreement who is not a member of the organization  
34 to pay a proportionate share of the costs of the collective  
35 bargaining process, contract administration, and matters affecting  
36 wages, hours, and conditions of employment. This proportionate  
37 share may not exceed the amount of dues uniformly required of  
38 members.

39           **Sec. 18.** The organization shall certify to an employer the  
40 amount constituting each nonmember employee's proportionate  
41 share. The employer shall deduct the proportionate share payment  
42 from the earnings of a nonmember employee and pay the amount



1 to the employee organization.

2 **Sec. 19. Only the exclusive representative may negotiate**  
 3 **provisions in a collective bargaining agreement providing for the**  
 4 **payroll deduction of any of the following:**

- 5 (1) Labor organization dues.  
 6 (2) Fair share payment.  
 7 (3) Initiation fees.  
 8 (4) Assessments.

9 **Sec. 20. Except as provided in sections 17 and 18 of this**  
 10 **chapter, deductions may be made only upon an employee's written**  
 11 **authorization and shall be continued until:**

- 12 (1) revoked in writing; or  
 13 (2) the termination date of an applicable collective  
 14 bargaining agreement.

15 **Sec. 21. An agreement containing a fair share agreement must**  
 16 **safeguard the right of nonassociation based upon bona fide**  
 17 **religious tenets of an employee. An affected employee may be**  
 18 **required to pay an amount equal to the employee's fair share,**  
 19 **determined under a lawful fair share agreement, to a nonreligious**  
 20 **charitable organization agreed upon by the employee and the**  
 21 **exclusive representative to which the employee would otherwise**  
 22 **pay the service fee.**

23 **Sec. 22. If an affected employee and the exclusive**  
 24 **representative are unable to agree on a payment under section 21**  
 25 **of this chapter, the board may establish an approved list of**  
 26 **charitable organizations to which the payments may be made.**

27 **Sec. 23. It is an unfair labor practice for an employer to do any**  
 28 **of the following:**

- 29 (1) Interfere with, restrain, or coerce an employee in the  
 30 exercise of the rights guaranteed in this chapter, IC 36-8-22,  
 31 IC 36-8-23, or IC 36-8-24.  
 32 (2) Dominate, interfere, or assist in the formation or  
 33 administration of an employee organization or contribute  
 34 financial or other support to the employee organization.  
 35 (3) Discriminate in regard to:  
 36 (A) hiring practices;  
 37 (B) tenure of employment; or  
 38 (C) a term or condition of employment;  
 39 to encourage or discourage membership in an employee  
 40 organization.  
 41 (4) Discharge or otherwise discriminate against an employee  
 42 because that employee has:



- 1 (A) filed a complaint, an affidavit, or a petition; or  
 2 (B) given information or testimony under this chapter or  
 3 IC 36-8-22.  
 4 (5) Refuse to bargain collectively in good faith with an  
 5 exclusive representative concerning the following:  
 6 (A) Wages.  
 7 (B) Rates of pay.  
 8 (C) Hours.  
 9 (D) Working conditions.  
 10 (E) All other terms or conditions of employment.  
 11 (6) Fail or refuse to comply with this chapter, IC 36-8-22,  
 12 IC 36-8-23, or IC 36-8-24.

13 **Sec. 24. It is an unfair labor practice for an employee**  
 14 **organization to do any of the following:**

- 15 (1) Interfere with, restrain, or coerce:  
 16 (A) an employee in the exercise of the rights guaranteed  
 17 in this chapter, IC 36-8-22, IC 36-8-23, or IC 36-8-24; or  
 18 (B) an employer in the selection of an exclusive  
 19 representative for collective bargaining or the  
 20 adjustment of grievances.  
 21 (2) Cause or attempt to cause an employer to discriminate  
 22 against an employee in violation of section 23 of this chapter.  
 23 (3) Refuse to bargain collectively in good faith with an  
 24 employer if the employee organization is the exclusive  
 25 representative.  
 26 (4) Engage in a strike.  
 27 (5) Fail to comply with this chapter, IC 36-8-22, IC 36-8-23,  
 28 or IC 36-8-24.  
 29 (6) Perform a practice listed in IC 20-7.5-1-7.

30 **Sec. 25. It is not an unfair labor practice for an employer to**  
 31 **confer with an employee without loss of time or pay by the**  
 32 **employee during working hours.**

33 **Sec. 26. It is not an unfair labor practice for an employee**  
 34 **organization to adopt rules concerning the acquisition or retention**  
 35 **of membership in the employee organization.**

36 SECTION 4. IC 36-8-22 IS ADDED TO THE INDIANA CODE  
 37 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 1998]:

39 **Chapter 22. Collective Bargaining Between Local Government**  
 40 **Employers and Firefighters; Complaints**

41 **Sec. 1. (a) An employer, employee, employee organization, or**  
 42 **exclusive representative who is aggrieved by an unfair labor**



1 practice may file a complaint with the board.

2 (b) The board shall serve a copy of the complaint on the person  
3 complained of and notify the respondent of the date and place of a  
4 hearing on the complaint.

5 Sec. 2. (a) A hearing may not be held less than five (5) days or  
6 more than thirty (30) days after a complaint is served.

7 (b) A notice of a hearing may not be issued based upon an  
8 unfair labor practice occurring more than ninety (90) days before  
9 the filing of the complaint, unless the complainant was prevented  
10 from filing the complaint because of service in the armed forces. In  
11 that event, the ninety (90) day period is computed from the date of  
12 the complainant's discharge.

13 Sec. 3. (a) A complaint may be amended by the complainant at  
14 any time before the issuance of an order by the board if the  
15 respondent is not unfairly prejudiced.

16 (b) The respondent shall file an answer to the original or  
17 amended complaint. The complainant and the respondent are  
18 parties and are entitled to appear in person or otherwise give  
19 testimony at the hearing. At the discretion of the board, an  
20 interested person may be allowed to intervene in the hearing and  
21 present testimony.

22 Sec. 4. The board is not bound by the rules of evidence in  
23 conducting a hearing. Testimony received at a hearing shall be  
24 reduced to writing and filed with the board. After receiving the  
25 testimony, the board may take further testimony or hear  
26 arguments upon notice to the parties.

27 Sec. 5. (a) The board shall make a determination based on the  
28 preponderance of evidence received.

29 (b) If the board determines that the respondent was or is  
30 engaged in an unfair labor practice, the board shall state the  
31 findings of fact and serve on the respondent an order requiring  
32 that the respondent cease the unfair labor practice and take  
33 affirmative actions, including reinstatement of an employee with  
34 or without back pay, to carry out IC 36-8-21, IC 36-8-23,  
35 IC 36-8-24, and this chapter. The order may further require that  
36 the respondent make reports showing the extent of the  
37 respondent's compliance with the order.

38 Sec. 6. If the board determines that a respondent:

39 (1) did not engage in; or

40 (2) is not engaging in;

41 an unfair labor practice, the board shall state the findings of fact  
42 and dismiss the complaint.



1           **Sec. 7.** A hearing may be conducted by a member of the board  
 2 or by a hearing examiner or an agency designated by the board,  
 3 instead of the full board. However, after the hearing the member,  
 4 hearing examiner, or agency shall serve on the parties and file with  
 5 the board proposed findings and a recommended order.

6           **Sec. 8.** If an exception is not filed by a party:

7           (1) within twenty (20) days after service on the parties; or

8           (2) within a period authorized by the board;

9 the recommended order becomes the order of the board.

10          **Sec. 9.** If an exception is filed, the board shall grant review if  
 11 the board determines that the exception raises a substantial issue  
 12 of fact or law.

13          **Sec. 10.** If the board determines that the exception does not  
 14 raise a substantial issue of fact or law, the recommended order  
 15 becomes the order of the board.

16          **Sec. 11.** An order of the board under sections 7 through 10 of  
 17 this chapter is a final order and binding on the parties to the  
 18 complaint, subject to judicial review under sections 12 through 22  
 19 of this chapter.

20          **Sec. 12.** Within thirty (30) days after service of the board's  
 21 order under:

22           (1) IC 36-8-21-6 through IC 36-8-21-15; or

23           (2) sections 1 through 11 of this chapter;

24 on the complainant and respondent, the board or the complainant  
 25 may petition the circuit or superior court of a county in which the  
 26 unit is located for the enforcement of the board's order and for  
 27 appropriate relief.

28          **Sec. 13.** A party aggrieved by the board's order may petition  
 29 the court for a review of the order and for appropriate relief. If a  
 30 petition is not filed within the thirty (30) day period, the order may  
 31 not be reviewed. The board shall then file a petition with the court  
 32 to enforce the order.

33          **Sec. 14.** The commencement of proceedings after the filing of  
 34 a petition does not, unless specifically ordered by the court, operate  
 35 as a stay of the board's order.

36          **Sec. 15.** After a petition is filed, the court shall have notice  
 37 served upon the parties of the petition and send a copy to the  
 38 board.

39          **Sec. 16.** An objection that was not made at the hearing may not  
 40 be considered by the court, unless the failure to make the objection  
 41 is excused because of extraordinary circumstances.

42          **Sec. 17.** If either party to the petition applies to the court for



1 leave to introduce additional evidence and shows to the satisfaction  
2 of the court that:

- 3 (1) the additional evidence is material; and  
4 (2) there were reasonable grounds for the failure to  
5 introduce the evidence in the hearing;

6 the court may order the additional evidence to be taken by the  
7 board and made a part of the record.

8 **Sec. 18. The board:**

- 9 (1) may modify the findings of fact by reason of the  
10 additional evidence; and  
11 (2) shall file the modified findings and the recommendations  
12 for a modification or setting aside of the original order with  
13 the court.

14 **Sec. 19. The petitioner shall file a record of the hearing,**  
15 **certified by the board, with the court. Until a record of the hearing**  
16 **is filed, the board may, at any time upon reasonable notice, modify**  
17 **or set aside all or part of a finding or an order made or issued by**  
18 **the board.**

19 **Sec. 20. After the record is filed, the jurisdiction of the court**  
20 **to modify, set aside, or enforce a board's order and to grant other**  
21 **appropriate relief is exclusive and the court's judgment and decree**  
22 **are final, subject to review in accordance with the rules of court.**

23 **Sec. 21. Petitions filed under section 12 of this chapter shall be**  
24 **heard within sixty (60) days after the petitions have been docketed.**  
25 **The petition takes precedence over all other civil matters except**  
26 **earlier matters of the same character.**

27 **Sec. 22. The original or modified findings of fact by the board**  
28 **with respect to questions of fact, if supported by substantial**  
29 **evidence on the record considered as a whole, are conclusive.**

30 SECTION 5. IC 36-8-23 IS ADDED TO THE INDIANA CODE  
31 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 1998]:

33 **Chapter 23. Collective Bargaining Between Local Government**  
34 **Employers and Firefighters; Mediation and Arbitration**

35 **Sec. 1. Employers and employees shall bargain collectively.**  
36 **The parties shall enter into a contract embodying the matters on**  
37 **which the parties have agreed during the collective bargaining**  
38 **process.**

39 **Sec. 2. A contract may not include provisions in conflict with**  
40 **any of the following:**

- 41 (1) A right or benefit established by federal or state law.  
42 (2) Employee rights described in this article.



1           **(3) Employer rights described in this article.**

2           **Sec. 3. A collective bargaining contract may be in effect for**  
3 **more than one (1) year.**

4           **Sec. 4. The contract must contain a grievance resolution**  
5 **procedure that applies to all employees in the bargaining unit. This**  
6 **procedure must provide for the final and binding arbitration of**  
7 **disputes concerning the administration or interpretation of the**  
8 **contract. The arbitration provisions of the contract are subject to**  
9 **IC 34-4-1.**

10          **Sec. 5. Collective bargaining must begin before May 1 of the**  
11 **year in which a collective bargaining agreement is to expire. The**  
12 **parties shall inform the board of the results of collective**  
13 **bargaining.**

14          **Sec. 6. If the exclusive representative and the employer have**  
15 **not agreed on a contract within forty-five (45) days after collective**  
16 **bargaining begins, either party may:**

17           **(1) notify the board of the inability to reach an agreement;**

18           **and**

19           **(2) ask the board for mediation to begin.**

20          **Sec. 7. The board shall make a mediator available to the**  
21 **parties at the board's expense within seven (7) days after the board**  
22 **is notified under section 6 of this chapter.**

23          **Sec. 8. The mediator shall communicate with both the**  
24 **employer and the exclusive representative and aid the employer**  
25 **and exclusive representative in making a settlement so that the**  
26 **parties may enter into a contract.**

27          **Sec. 9. If a dispute has not been resolved within twenty-one**  
28 **(21) days after either party makes a request for mediation under**  
29 **section 6 of this chapter, the employer or exclusive representative**  
30 **shall submit a written request for arbitration to the board.**

31          **Sec. 10. Within ten (10) days after the request must be filed**  
32 **under section 9 of this chapter, the employer shall select a member**  
33 **and the exclusive representative shall select a member to a panel**  
34 **of arbitration. The employer and exclusive representative shall**  
35 **advise each other and the board of the selections.**

36          **Sec. 11. Within seven (7) days after the request of either party**  
37 **under section 9 of this chapter, the board shall select from the**  
38 **employees' labor mediation roster five (5) persons as nominees to**  
39 **serve as impartial arbitrators on the arbitration panel. Within five**  
40 **(5) days after the selection, the parties shall each alternately strike**  
41 **the name of two (2) of the nominees, with the first person to**  
42 **request a mediator under section 9 of this chapter striking first.**



1           **Sec. 12.** The remaining member and the members selected by  
 2 the employer and the exclusive representative constitute the panel.  
 3 The panel member not struck under section 11 of this chapter is  
 4 the chairman of the arbitration panel.

5           **Sec. 13.** The chairman of the arbitration panel shall schedule  
 6 a hearing to begin within fifteen (15) days after the panel's  
 7 membership is selected and give reasonable notice of the time and  
 8 place of the hearing to the parties. The hearing shall be held at the  
 9 location the board considers appropriate. The chairman shall  
 10 preside over the hearing and take testimony.

11           **Sec. 14.** Oral or documentary evidence and other data  
 12 considered relevant by the arbitration panel may be received in  
 13 evidence. The hearing shall be informal and the rules of evidence  
 14 do not apply. A verbatim record of a hearing shall be made. The  
 15 arbitrator shall arrange for the necessary recording service.  
 16 Transcripts may be ordered at the expense of the party ordering  
 17 the transcripts, but the transcripts are not necessary for a decision  
 18 by the arbitration panel.

19           **Sec. 15.** If a panel member is a public officer or employee, the  
 20 public officer or employee continues on the payroll of the employer  
 21 without loss of pay.

22           **Sec. 16.** A hearing conducted by an arbitration panel may be  
 23 adjourned periodically, but, unless otherwise agreed to by the  
 24 parties, must be concluded within thirty (30) days after the date of  
 25 commencement. Arbitration proceedings under this chapter may  
 26 not be interrupted or terminated by an unfair labor practice  
 27 charge filed by either party at any time.

28           **Sec. 17.** An arbitration panel may do the following:

29           (1) Administer oaths.

30           (2) Require the attendance of witnesses and the production  
 31 of evidence considered material to a just determination of an  
 32 issue in dispute.

33           **Sec. 18.** A panel may issue a subpoena for the purposes set  
 34 forth in section 17 of this chapter.

35           **Sec. 19.** If:

36           (1) a person refuses to obey a subpoena or to be sworn or to  
 37 testify; or

38           (2) a witness, a party, or an attorney is guilty of contempt at  
 39 a hearing;

40 the arbitration panel may request a circuit court with jurisdiction  
 41 where the hearing is held to issue an appropriate order.

42           **Sec. 20.** The failure to obey the order may be punished by the



1 court as contempt.

2       **Sec. 21.** Before an award is made, the chairman of an  
3 arbitration panel may remand the dispute to the parties for further  
4 collective bargaining for a period not to exceed two (2) weeks. If  
5 the dispute is remanded, the time provisions of this chapter are  
6 extended for a period equal to that of the remand. The chairman  
7 of the arbitration panel shall notify the board of a remand under  
8 this section.

9       **Sec. 22.** Not later than the conclusion of a hearing held under  
10 section 13 of this chapter, the arbitration panel shall identify the  
11 economic issues in dispute and direct each of the parties to submit  
12 to the arbitration panel and to each other, within the time limit the  
13 panel prescribes, each party's last offer of settlement on each  
14 economic issue. The determination of an arbitration panel is  
15 conclusive concerning the issues in dispute and the issues that are  
16 economic.

17       **Sec. 23.** The arbitration panel shall make written findings of  
18 fact and adopt a written opinion within thirty (30) days after the  
19 conclusion of a hearing or any further additional periods to which  
20 the parties agree. The arbitration panel shall mail a copy of the  
21 opinion to the parties, the representatives of the parties, and the  
22 board.

23       **Sec. 24.** The arbitration panel shall adopt the last offer of  
24 settlement on an issue by issue basis that, in the opinion of the  
25 arbitration panel, more nearly complies with the applicable factors  
26 prescribed in section 25 of this chapter with regard to economic  
27 issues. The findings, opinions, and order as to all other issues shall  
28 also be based upon the applicable factors prescribed in section 25  
29 of this chapter.

30       **Sec. 25.** If there is no agreement between the parties, or if  
31 there is an agreement but the parties have begun negotiations or  
32 discussions for a new agreement or an amendment of the existing  
33 agreement, and wage rates or other conditions of employment  
34 under the proposed new or amended agreement are in dispute, the  
35 arbitration panel shall base the findings, opinions, and order upon  
36 the following factors:

- 37       (1) The lawful authority of the employer.  
38       (2) Stipulations of the parties.  
39       (3) The interests and welfare of the public and the financial  
40 ability of the employer to meet the costs.  
41       (4) Comparison of the wages, hours, and conditions of  
42 employment of the employees involved in the arbitration



1 proceeding with the wages, hours, and conditions of  
 2 employment of employees performing similar services and  
 3 with other employees generally in comparable communities.

4 (5) The average consumer prices for goods and services.

5 (6) The overall compensation currently received by the  
 6 employees, including the following:

7 (A) Direct wage compensation, vacations, holidays, and  
 8 other excused time.

9 (B) Insurance, pension, medical, and hospitalization  
 10 benefits.

11 (C) The continuity and stability of employment.

12 (7) Changes in any of the circumstances during the  
 13 arbitration proceedings.

14 (8) Other factors normally or traditionally taken into  
 15 consideration in the determination of wages, hours, and  
 16 conditions of employment through voluntary collective  
 17 bargaining, mediation, fact finding, or arbitration between  
 18 parties in public or private employment.

19 **Sec. 26. If a fiscal year begins:**

20 (1) after the initiation of arbitration procedures; and

21 (2) before the arbitration decision or enforcement of the  
 22 decision;

23 this occurrence does not render a dispute moot or impair the  
 24 jurisdiction or authority of the arbitration panel or the decision.

25 **Sec. 27. An increase in rates of compensation awarded by an  
 26 arbitration panel is effective at the beginning of the employer's  
 27 fiscal year beginning on or after the date of the arbitration award.**

28 **Sec. 28. If a fiscal year begins after the initiation of arbitration  
 29 procedures, section 27 of this chapter does not apply. An awarded  
 30 increase may be retroactive to the beginning of the fiscal year.**

31 **Sec. 29. The parties may, by stipulation, amend or modify an  
 32 award of arbitration.**

33 **Sec. 30. An order of an arbitration panel is reviewable, upon  
 34 petition by either the employer or the exclusive representative, by  
 35 the circuit court with jurisdiction in the county in which the  
 36 dispute arose or in which a majority of the affected employees  
 37 reside, but only if:**

38 (1) the arbitration panel was without authority or exceeded  
 39 the panel's authority;

40 (2) the order is arbitrary or capricious; or

41 (3) the order was procured by fraud, collusion, or unlawful  
 42 means.



1           **Sec. 31.** A petition for review under section 30 of this chapter  
 2 must be filed with the circuit court within ninety (90) days after the  
 3 issuance of the arbitration order. The pendency of the proceeding  
 4 for review does not automatically stay the order of the arbitration  
 5 panel.

6           **Sec. 32.** If the court finds the appeal or petition frivolous, the  
 7 party against whom the final decision of the court is adverse shall  
 8 pay reasonable attorney's fees and costs to the successful party.

9           **Sec. 33.** If the court's decision affirms the award of money, the  
 10 award, if retroactive, bears interest at the rate of twelve percent  
 11 (12%) annually from the effective retroactive date.

12           **Sec. 34.** During the pendency of proceedings before an  
 13 arbitration panel, currently applicable wages, hours, and other  
 14 conditions of employment may not be changed by either party  
 15 without the consent of the other. However, a party may consent to  
 16 a change without prejudice to the party's rights or position under  
 17 IC 36-8-21 or this chapter.

18           **Sec. 35.** An employee covered by IC 36-8-21 and this chapter  
 19 may not withhold services.

20           **Sec. 36.** An employer may not lock out or prevent an employee  
 21 from performing services.

22           **Sec. 37.** (a) All terms decided upon by an arbitration panel  
 23 must be included in an agreement to be submitted to the  
 24 employer's legislative body for ratification and:

25                   (1) adoption by ordinance if the unit is a county or  
 26                   municipality; or

27                   (2) passage of a resolution if the unit is a township.

28           (b) The legislative body of the unit shall review each term  
 29 decided by an arbitration panel.

30           **Sec. 38.** If the legislative body of a unit does not reject at least  
 31 one (1) term of an arbitration panel's decision by a vote of at least  
 32 sixty percent (60%) of all the members of the body within twenty  
 33 (20) days after the issuance of the decision, the term becomes a  
 34 part of the collective bargaining agreement.

35           **Sec. 39.** If the legislative body of a unit rejects at least one (1)  
 36 term of the arbitration panel's decision, the legislative body must  
 37 issue written reasons for the rejection of each term to the parties  
 38 within twenty (20) days after the rejection. The parties shall then  
 39 return to the arbitration panel within thirty (30) days after the  
 40 issuance of the reason for rejection for further proceedings and the  
 41 issuance of a supplemental decision with respect to the rejected  
 42 terms.



1           **Sec. 40.** A supplemental decision by an arbitration panel or  
 2 other decision maker selected by the parties must be submitted to  
 3 the legislative body of a unit for ratification in accordance with  
 4 sections 37 through 39 of this chapter.

5           **Sec. 41.** The voting requirements of section 38 of this chapter  
 6 apply to all disputes submitted to arbitration, notwithstanding  
 7 inconsistent voting requirements contained in a collective  
 8 bargaining agreement between the parties.

9           **Sec. 42.** The employer shall pay all reasonable costs of a  
 10 supplemental proceeding, including the exclusive representative's  
 11 reasonable attorney's fees, as established by the board.

12           **Sec. 43.** The employer and exclusive representative may agree  
 13 to submit unresolved disputes concerning wages, hours, terms, and  
 14 conditions of employment to an alternative form of impasse  
 15 resolution without regard to this chapter.

16           **Sec. 44.** Except as provided in sections 7 and 42 of this chapter,  
 17 the entire cost of procedures under this chapter as determined by  
 18 the board shall be paid equally by the parties. The board shall  
 19 establish a complete procedure for the collection and payment of  
 20 the cost.

21           **Sec. 45.** After the exhaustion of an arbitration mandated by  
 22 this chapter or procedures mandated by a collective bargaining  
 23 agreement, a civil action for the violation of an agreement between  
 24 an employer and a labor organization representing employees may  
 25 be brought by either party to the agreement in the circuit or  
 26 superior court of a county in which the employer:

- 27           (1) transacts business; or
- 28           (2) has the employer's principal office.

29           SECTION 6. IC 36-8-24 IS ADDED TO THE INDIANA CODE  
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 1998]:

32           **Chapter 24. Collective Bargaining Between Local Government**  
 33 **Employers and Firefighters; Miscellaneous Provisions**

34           **Sec. 1.** If IC 36-8-21, IC 36-8-22, IC 36-8-23, or this chapter  
 35 conflicts with an Indiana statute, rule, or executive order relating  
 36 to wages, hours, and conditions of employment and employment  
 37 relations, IC 36-8-21, IC 36-8-22, IC 36-8-23, or this chapter  
 38 prevails.

39           **Sec. 2.** For purposes of IC 36-1-3-6:

- 40           (1) IC 36-8-21;
- 41           (2) IC 36-8-22;
- 42           (3) IC 36-8-23; and



1           **(4) this chapter;**  
2           **provide the exclusive manner for a unit to exercise the power to**  
3           **bargain collectively with the unit's employees.**  
4           **Sec. 3. An employee or exclusive representative may not**  
5           **participate in a strike against an employer.**  
6           **Sec. 4. An employee engaging in a strike is subject to discharge**  
7           **by the employer as provided in IC 36-8-3-4.**  
8           **Sec. 5. An exclusive representative that engages in or sanctions**  
9           **a strike loses the right to represent the employees for one (1) year**  
10           **from the date of the action.**  
11           **Sec. 6. An employer may not pay an employee for days the**  
12           **employee was engaged in a strike.**  
13           **SECTION 7. [EFFECTIVE JULY 1, 1998] (a) This act does not:**  
14           **(1) apply to or abrogate a contract or an agreement in effect**  
15           **on June 30, 1998; or**  
16           **(2) preclude arbitration on a provision in the contract or**  
17           **agreement.**  
18           **(b) This SECTION expires July 1, 2001.**

