

HOUSE BILL No. 1148

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-7.5-1; IC 20-15.

Synopsis: Collective bargaining for noncertificated employees. Allows noncertificated school employees to engage in collective bargaining. Provides certain procedural requirements before a noncertificated employee of a school corporation or an employee of a state institution may be discharged.

Effective: July 1, 1998.

Summers, Fry, T. Adams

January 8, 1998, read first time and referred to Committee on Labor and Employment.

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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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1148



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 20-7.5-1-1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. ~~Intent~~. The Indiana
 3 general assembly ~~hereby~~ declares that:
 4 (a) (1) the citizens of Indiana have a fundamental interest in the
 5 development of harmonious and cooperative relationships
 6 between school corporations and their ~~certificated~~ employees;
 7 (b) (2) recognition by school employers of the right of school
 8 employees to organize and acceptance of the principle and
 9 procedure of collective bargaining between school employers
 10 and school employee organizations can alleviate various forms
 11 of strife and unrest;
 12 (c) (3) the state has a basic obligation to protect the public by
 13 attempting to prevent any material interference with the normal
 14 public school educational process; **and**
 15 (d) (4) the relationship between school corporation employers
 16 and ~~certificated~~ school employees is not comparable to the
 17 ~~relation~~ **relationship** between private employers and employees



1 among others for the following reasons:

2 (i) (A) A public school corporation is not operated for profit
3 but to ~~insure~~ ensure the citizens of the state rights
4 guaranteed them by the ~~Indiana State~~ Constitution of the
5 **State of Indiana.**

6 (ii) (B) The obligation to educate children and the methods
7 by which such education is effected will change rapidly
8 with increasing technology, the needs of an advancing
9 civilization, and requirements for substantial educational
10 innovation.

11 (iii) (C) The Indiana general assembly has delegated the
12 discretion to carry out this changing and innovative
13 educational function to the local governing bodies of school
14 corporations, composed of citizens elected or appointed
15 under applicable law, a delegation which these bodies may
16 not and should not bargain away. ~~and~~

17 (iv) (D) Public school corporations have different
18 obligations with respect to ~~certificated~~ school employees
19 under constitutional and statutory requirements than private
20 employers have to their employees.

21 SECTION 2. IC 20-7.5-1-2 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. As used in this
23 chapter:

24 (a) "School corporation" means any local public school
25 corporation established under Indiana law and, in the case of public
26 vocational schools or schools for children with disabilities established
27 or maintained by two (2) or more school corporations, shall refer to
28 such schools.

29 (b) "Governing body" shall mean the board or commission charged
30 by law with the responsibility of administering the affairs of the school
31 corporation.

32 (c) "School employer" means the governing body of each school
33 corporation and any person or persons authorized to act for the
34 governing body of the school employer in dealing with its employees.

35 (d) "Superintendent" shall mean the chief administrative officer of
36 any school corporation or any person or persons designated by the
37 officer or by the governing body to act in the officer's behalf in dealing
38 with school employees.

39 (e) "School employee" means any full-time ~~certificated~~ person in
40 the employment of the school employer. A school employee shall be
41 considered full time even though the employee does not work during
42 school vacation periods and accordingly works less than a full year.



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1 There shall be excluded from the meaning of school employee
 2 supervisors, confidential employees, **and** employees performing
 3 security work. ~~and noncertificated employees.~~

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

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

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

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

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

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

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

24 (i) "Confidential employee" means a school employee whose
 25 unrestricted access to confidential personnel files or whose functional
 26 responsibilities or knowledge in connection with the issues involved in
 27 dealings between the school corporation and its employees would make
 28 the confidential employee's membership in a school employee
 29 organization incompatible with the employee's official duties.

30 (j) ~~"Employees "~~**Employee** performing security work" means any
 31 school employee whose primary responsibility is the protection of
 32 personal and real property owned or leased by the school corporation
 33 or who performs police or quasi-police powers.

34 (k) "School employee organization" means:

35 **(1) for certificated employees**, any organization which has
 36 school employees as members and one (1) of whose primary
 37 purposes is representing school employees in dealing with their
 38 school employer; and

39 **(2) for noncertificated employees, an organization that has**
 40 **school employees as members.**

41 **The term** includes any person or persons authorized to act on behalf
 42 of such organizations.

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

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

9 (n) "Bargain collectively" means the performance of the mutual
 10 obligation of the school employer and the exclusive representative to
 11 meet at reasonable times to negotiate in good faith with respect to items
 12 enumerated in section 4 of this chapter and to execute a written
 13 contract incorporating any agreement relating to such matters. Such
 14 obligation shall not include the final approval of any contract
 15 concerning these or any other items. Agreements reached through
 16 collective bargaining are binding as a contract only if ratified by the
 17 governing body of the school corporation and the exclusive
 18 representative. The obligation to bargain collectively does not require
 19 the school employer or the exclusive representative to agree to a
 20 proposal of the other or to make a concession to the other.

21 (o) "Discuss" means the performance of the mutual obligation of
 22 the school corporation through its superintendent and the exclusive
 23 representative to meet at reasonable times to discuss, to provide
 24 meaningful input, **and** to exchange points of view, with respect to items
 25 enumerated in section 5 of this chapter. This obligation shall not,
 26 however, require either party to enter into a contract, to agree to a
 27 proposal, or to require the making of a concession. A failure to reach
 28 an agreement on any matter of discussion shall not require the use of
 29 any part of the impasse procedure, as provided in section 13 of this
 30 chapter. Neither the obligation to bargain collectively nor to discuss
 31 any matter shall prevent any school employee from petitioning the
 32 school employer, the governing body, or the superintendent for a
 33 redress of the employee's grievances either individually or through the
 34 exclusive representative, nor shall either such obligation prevent the
 35 school employer or the superintendent from conferring with any
 36 citizen, taxpayer, student, school employee, or other person considering
 37 the operation of the schools and the school corporation.

38 (p) "Strike" means concerted failure to report for duty, willful
 39 absence from one's position, stoppage of work, or abstinence in whole
 40 or in part from the full, faithful, and proper performance of the duties
 41 of employment, without the lawful approval of the school employer, or
 42 in any concerted manner interfering with the operation of the school



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1 employer for any purpose.

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

4 SECTION 3. IC 20-7.5-1-5 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) A school
6 employer shall discuss with the exclusive representative of certificated
7 employees and may but shall not be required to bargain collectively,
8 negotiate, or enter into a written contract concerning or be subject to or
9 enter into impasse procedures on the following matters:

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

12 (2) Curriculum development and revision.

13 (3) Textbook selection.

14 (4) Teaching methods.

15 (5) Hiring, promotion, demotion, transfer, assignment, and
16 retention of certificated employees, and changes to any of the
17 requirements set forth in IC 20-6.1-4.

18 (6) Student discipline.

19 (7) Expulsion or supervision of students.

20 (8) Pupil-teacher ratio.

21 (9) Class size or budget appropriations.

22 However, any items included in the 1972-1973 agreements between
23 any employer school corporation and the employee organization shall
24 continue to be bargainable.

25 **(b) A school employer shall discuss with the exclusive**
26 **representative of noncertificated employees and may (but is not**
27 **required to) bargain collectively, negotiate, be subject to, or enter**
28 **into impasse procedures or enter into a written contract**
29 **concerning the following matters:**

30 (1) Working conditions, other than those provided in section
31 4 of this chapter.

32 (2) Selection, assignment, or promotion of personnel.

33 **Any items included in the 1997-1998 agreements between an**
34 **employer school corporation and an employee organization**
35 **continue to be bargainable.**

36 ~~(b)~~ (c) Nothing shall prevent a superintendent or his designee from
37 making recommendations to the school employer.

38 ~~(c)~~ (d) This chapter may not be construed to limit the rights of the
39 school employer and the exclusive representative to mutually agree to
40 the matters authorized under IC 20-6.1-4-14.5.

41 SECTION 4. IC 20-15 IS ADDED TO THE INDIANA CODE AS
42 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,



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1 1998]:

2 **ARTICLE 15. EMPLOYMENT PROTECTION FOR**
 3 **EDUCATIONAL EMPLOYEES**

4 **Chapter 1. Definitions**

5 **Sec. 1. The definitions in this chapter apply throughout this**
 6 **article.**

7 **Sec. 2. "Board" refers to the Indiana education employment**
 8 **relations board established by IC 20-7.5-1-9.**

9 **Sec. 3. "Classification seniority" means the length of the most**
 10 **recent continuous service in an employee's classification with a**
 11 **single employer.**

12 **Sec. 4. "Employee" refers to either of the following:**

13 (1) **An employee of a school corporation (as defined in**
 14 **IC 20-8.1-1-1) whose employment is not dependent upon the**
 15 **holding of a license or permit as described in IC 20-6.1.**

16 (2) **An employee of a state educational institution (as defined**
 17 **in IC 20-12-0.5-1).**

18 **Sec. 5. "Employer" means the following:**

19 (1) **For an employee of a school corporation, the term has the**
 20 **meaning set forth in IC 20-7.5-1-2.**

21 (2) **For an employee of a state educational institution, the**
 22 **term means the state educational institution.**

23 **Sec. 6. "Just cause", as the term pertains to the discipline of**
 24 **employees, includes any of the following:**

25 (1) **Falsification of an employment application to obtain**
 26 **employment through subterfuge.**

27 (2) **Knowing violation of a reasonable and uniformly**
 28 **enforced rule of an employer.**

29 (3) **Unsatisfactory attendance, if the employee is unable to**
 30 **show good cause for the employee's absences or tardiness.**

31 (4) **Damaging the employer's property through willful**
 32 **negligence.**

33 (5) **Refusing to obey lawful instructions.**

34 (6) **Reporting to work under the influence of alcohol or drugs**
 35 **or consuming alcohol or drugs on the employer's premises or**
 36 **while operating the employer's vehicles during work hours.**

37 (7) **Conduct endangering the safety of the employee or any**
 38 **other employees.**

39 (8) **Incarceration in jail following a conviction of a**
 40 **misdemeanor or felony by a court with jurisdiction or for**
 41 **any breach of duty in connection with the employee's**
 42 **employment that is reasonably owed the employer by an**



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1 employee.

2 **Chapter 2. Classification**

3 **Sec. 1. An employee may not attain classification seniority**
 4 **until completion of a probationary period of thirty (30) days, at**
 5 **which time classification seniority relates back to the employee's**
 6 **date of hire.**

7 **Sec. 2. If a permanent or prolonged reduction within any**
 8 **classification of employees is determined to be necessary by an**
 9 **employer, classification seniority shall be the determining factor in**
 10 **making the reduction and any subsequent recall from reduction.**

11 **Chapter 3. Representation**

12 **Sec. 1. An employee is entitled to representation by an**
 13 **employee organization or legal counsel, or both during any**
 14 **proceeding under this article.**

15 **Chapter 4. Discipline and Discharge of Employees**

16 **Sec. 1. An employee may be disciplined in the following**
 17 **manner and only for just cause:**

18 **(1) Before suspension or discharge, the employee must be:**
 19 **(A) informed in writing of all details of any offense or**
 20 **violation:**

21 **(i) with which the employee is charged; and**
 22 **(ii) that would constitute just cause for discipline;**
 23 **and**

24 **(B) given a reasonable time to correct the behavior**
 25 **constituting the identified offense or violation described**
 26 **in clause (A).**

27 **(2) If the employee fails to correct the behavior within a**
 28 **reasonable time after an official written warning, the**
 29 **employee may be suspended without pay for not longer than**
 30 **thirty (30) days. In this case, the employee must be given:**

31 **(A) written notice of all offenses or violations for which**
 32 **the employee is being suspended; and**

33 **(B) the opportunity to meet and discuss with the**
 34 **employer the proposed disciplinary action at least**
 35 **forty-eight (48) hours before the employee's suspension.**

36 **(3) If the employee fails to correct the behavior within a**
 37 **reasonable time after the employee's suspension, the**
 38 **employee may be discharged by the employer.**

39 **Sec. 2. A discharge may not take effect unless at least ten (10)**
 40 **days before the effective date of the dismissal, the employer:**

41 **(1) provides the employee with written notice of all offenses**
 42 **or violations for which the employee is being discharged; and**

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1 (2) affords the employee an opportunity to request, in
2 writing, a hearing before an impartial hearing examiner as
3 set forth in IC 20-15-5.

4 **Sec. 3.** A request for a hearing under IC 20-15-5 must be made
5 by an employee before the effective date of the discharge. If the
6 employee fails to request the hearing, the employee is considered
7 discharged on the effective date of the employer's written notice.

8 **Sec. 4.** If the employee requests a hearing under IC 20-15-5,
9 the employer may suspend the employee with pay upon the
10 effective date of discharge, pending the determination of the
11 hearing examiner.

12 **Sec. 5.** The employer may suspend with pay an employee
13 without notice pending discharge if the employer reasonably
14 believes the nature of the employee's misconduct warrants
15 immediate suspension. In this case, the employer shall afford to the
16 employee, after the suspension, the formal procedures offered in
17 section 1 of this chapter.

18 **Chapter 5. Hearings**

19 **Sec. 1.** Upon receipt of a written request by an employee
20 subject to discharge as described in IC 20-15-4-2, the employer
21 shall request the board to appoint a hearing examiner to preside
22 over the hearing.

23 **Sec. 2.** The hearing examiner has the following duties:

- 24 (1) To give the notice provided in section 3 of this chapter.
25 (2) To schedule the hearing at a specified date, time, and
26 place with the authority to postpone the date and time or
27 change the place for any good cause.
28 (3) To take full charge of the hearing in accordance with
29 IC 4-21.5-3-25 and IC 4-21.5-3-26, subject to this chapter.
30 (4) To render a written decision in the matter, including
31 findings of fact and conclusions of law, that is binding on all
32 parties as of the date of the decision and that must contain a
33 notice of the right to seek review of the decision before the
34 board.
35 (5) To file the original of the hearing examiner's findings,
36 conclusions, and decision, along with the record in the case,
37 with the board.
38 (6) To cause a copy of the hearing examiner's findings,
39 conclusions, and decision to be served upon each of the
40 parties.

41 **Sec. 3.** The following constitutes the hearing procedures by
42 which an employee may be discharged:



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1 (1) The hearing examiner, not more than five (5) days after
 2 the hearing examiner's appointment, shall send notice to the
 3 parties of the date, time, and location set for the hearing.

4 (2) The hearing examiner shall conduct the hearing under
 5 IC 4-21.5-3-25 and IC 4-21.5-3-26.

6 **Sec. 4.** Any party to the hearing who is aggrieved by the
 7 decision of the hearing examiner may appeal the decision to the
 8 board as follows:

9 (1) Not more than twenty (20) days after the date the hearing
 10 examiner files the hearing examiner's findings, conclusions,
 11 and decision, the party aggrieved by the decision may file a
 12 petition for review of the hearing examiner's findings,
 13 conclusions, and decision. The filing and pendency of a
 14 petition for review shall operate to stay the effectiveness of
 15 the decision unless otherwise ordered by the board.

16 (2) The petition for review must be in writing and be filed
 17 with the board. At the same time, a copy of the petition for
 18 review must also be filed with the opposing party. The
 19 petition must specifically set forth the reasons for the
 20 objections of the aggrieved party to the decision of the
 21 hearing examiner.

22 (3) Not more than ten (10) days after the date on which the
 23 petition for review is filed with the board, any party to the
 24 proceeding before the hearing officer may file a reply to the
 25 petition for review on the board with simultaneous service
 26 upon the opposing party. The reply must specifically set
 27 forth the party's reply to the objections of the aggrieved
 28 party to the decision of the hearing examiner.

29 (4) Not more than fifteen (15) days after the filing of a reply
 30 to the petition for review, if any, the board shall render a
 31 final decision consisting of the board's findings of fact,
 32 conclusions of law, and final order in the matter.

33 (5) A party to the board's final decision may seek judicial
 34 review under IC 4-21.5-5.

35 **Sec. 5.** The board is authorized to enforce the board's orders
 36 and to take other appropriate action, including reinstating an
 37 employee with back pay.

38 **Chapter 6. Construction**

39 **Sec. 1.** This article may not be construed to limit the
 40 application of an agreement negotiated between an employer and
 41 the recognized representative of employees with a particular
 42 employer.



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