HOUSE BILL No. 1278

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-7.5-1; IC 20-7.5-2.

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.

Effective: July 1, 1998.

Liggett

January 13, 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 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:

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

(a) "School corporation" means ~~any~~ **the following:**

(1) A local public school corporation established under Indiana law. ~~and, in the case of~~

(2) A public vocational ~~schools~~ **school** or ~~schools~~ **school** for children with disabilities established or maintained by two (2) or more school corporations. ~~shall refer to such schools.~~

(3) The board of trustees of Ivy Tech State College (IC 20-12-61-1.2).

(4) The state of Indiana or a department of the state to the extent the state or the department employs teachers at any of the following:

(A) The department of correction, for its academic and vocational education program under IC 11-10-5.

(B) A special institution under IC 16-19-6-5.

(C) A state institution under IC 12-24-3-4.

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

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

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

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

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

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

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

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

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

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

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

(i) "Confidential employee" means a school employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees would make

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

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

(k) "School employee organization" means any organization which has school employees as members and one (1) of whose primary purposes is representing school employees in dealing with their school employer, and includes any person or persons authorized to act on behalf of such organizations.

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

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

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

(o) "Discuss" means the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss, to provide meaningful input, to exchange points of view, with respect to items enumerated in section 5 of this chapter. This obligation shall not, however, require either party to enter into a contract, to agree to a proposal, or to require the making of a concession. A failure to reach an agreement on any matter of discussion shall not require the use of

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any part of the impasse procedure, as provided in section 13 of this chapter**, unless the exclusive representative has elected under section 11.5 of this chapter the mediation-arbitration procedure set forth in IC 20-7.5-2.** Neither the obligation to bargain collectively nor to discuss any matter shall prevent any school employee from petitioning the school employer, the governing body, or the superintendent for a redress of the employee's grievances either individually or through the exclusive representative, nor shall either such obligation prevent the school employer or the superintendent from conferring with any citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

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

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

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

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

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

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

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

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

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

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

(2) To hold hearings and make inquiries as it deems necessary to carry out properly its functions and powers.

(3) To establish a principal office in the city of Indianapolis.

(4) To meet and exercise its powers at any other place in Indiana.

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

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

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

(8) To subpoena witnesses and issue subpoenas requiring the production of books, papers, records, and documents which may be needed as evidence in any matter under inquiry, and to administer oaths and affirmations. In cases of neglect or refusal to obey a subpoena issued to any person, the circuit or superior court of the county in which the investigations or the public hearings are taking place, upon application by the board, shall issue an order requiring the person to appear before the board and produce evidence about the matter under investigation. A failure to obey the order may be punished by the court as a contempt. Any subpoena, notice of hearing, or other process of the board issued under this chapter shall be served in the manner prescribed by the Indiana Rules of Trial Procedure.

(9) To adopt, promulgate, amend, or rescind rules it deems necessary and administratively feasible to carry out this chapter

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in accordance with IC 4-22-2.

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

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

(g) The board shall organize its staff to provide for the functions of unit determination, unfair labor practice processing, conciliation and mediation, factfinding, **mediation-arbitration under IC 20-7.5-2,** and research. In connection with any conciliation and mediation, ~~or~~ factfinding, ~~it~~ **or mediation-arbitration under IC 20-7.5-2, the board** may use either full-time employees or appoint employees for specific cases from a panel which it establishes. Its research division shall be organized to provide statistical data on the resources of each school corporation, the substance of any agreements reached by each school corporation, and other relevant data.

SECTION 3. IC 20-7.5-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) Unfair practices shall be remediable in the manner provided in this section. Any school employer or any school employee who believes he is aggrieved by an unfair practice may file a complaint under oath to such effect, setting out a summary of the facts involved and specifying the section of this chapter alleged to have been violated.

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

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

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

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

(1) shall:

(A) state its findings of fact and conclusions of law; and

(B) issue an order requiring the person to cease the

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unfair practice; and

(2) may:

(A) take other appropriate action, including ordering the reinstatement with back pay of an employee; and

(B) require the person who has engaged in the unfair practice to report to the board concerning compliance with the board's order.

(f) If, at the conclusion of the hearing, the board, hearing examiner, or agent of the board determines, based on a preponderance of the evidence admitted at the hearing, that the person named in the complaint has not engaged in an unfair practice under section 7 of this chapter, the board shall:

(1) state its findings of fact and conclusions of law; and

(2) dismiss the complaint.

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

SECTION 4. IC 20-7.5-1-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 11.5. An exclusive representative may begin collective bargaining by notifying the board and the employer on or before one hundred eighty (180) days before the submission date that the exclusive representative intends to use either of the following procedures:**

(1) The collective bargaining procedure set forth in section 12 of this chapter.

(2) The mediation and final offer selection procedure set forth in IC 20-7.5-2.

SECTION 5. IC 20-7.5-2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

Chapter 2. Mediation; Final Offer Selection

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

Sec. 2. This chapter applies to collective bargaining in which

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the exclusive representative has elected to proceed under this chapter and has so notified the employer and the board as provided in IC 20-7.5-1-11.5.

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

Sec. 4. In addition to the impasse procedures specified in this chapter, a school employer and an exclusive representative may agree in writing to a dispute settlement procedure. A copy of the agreement shall be filed by the parties with the board. If the parties agree to a form of binding arbitration, the arbitrator shall give weight to the factors listed in section 12 of this chapter. The arbitration award is subject to appeal under sections 16 through 19 of this chapter.

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

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

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

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

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

(d) Upon receipt of notice from the parties or after the board

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makes a selection, the board shall formally appoint the mediator-arbitrator and submit to the mediator-arbitrator the final offers and joint stipulation of the parties.

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

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

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

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

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

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

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

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

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

(2) Comparison of wages, hours, terms of employment, and conditions of employment of the school employees involved with those of other employees doing comparable work, giving consideration to factors peculiar to the work involved.

(3) Comparison of wages, hours, terms of employment, and conditions of employment with similar employment in private business and industry.

(4) The average consumer prices for goods and services, commonly known as the cost of living.

(5) The impact on the educational atmosphere or environment.

Sec. 13. (a) A mediator-arbitrator may not be employed on a full-time or part-time basis by:

(1) a public school employer that is a school corporation;

(2) an organization of public employees, public employers, or their affiliates; or

(3) a firm that represents employers or employees in the implementation of this article.

(b) The board shall pay the compensation and expenses of a mediator-arbitrator.

Sec. 14. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the submission date, the parties shall continue the status quo, and the employer may issue tentative individual contracts and prepare a budget based on the individual contracts.

(b) During the status quo period, in order to permit the successful resolution of the dispute, the employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(c) This section does not relieve the school employer or the school employee organization from the duty to follow the procedures set forth in this chapter.

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

Sec. 16. Not later than fifteen (15) days after the

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

(1) illegal;

(2) in excess of the mediator-arbitrator's power; or

(3) procured by fraud, bribery, or corruption.

Sec. 17. If a court sets aside a final offer selection because of illegality or excess of power, the selection shall be remanded to the same mediator-arbitrator who heard the selection the first time, subject to the right of a party to appeal an adverse ruling of the court. The mediator-arbitrator has the following choices on remand:

(1) Affirm the earlier final offer selection minus any items set aside by the court.

(2) Make a new determination on the original final offers proposed by the parties after a new hearing or argument, at the discretion of the mediator-arbitrator.

Sec. 18. If a court sets aside a final offer selection because of fraud, bribery, or corruption, the selection shall be remanded to the board for an expedited hearing before a new mediator-arbitrator, selected in the same manner as the original mediator-arbitrator, subject to the right of a party to appeal an adverse ruling of the court.

Sec. 19. An appeal under section 17 or 18 of this chapter shall be taken in the manner and to the same extent as orders or judgments are taken in a civil action. Because of the appeal's public importance, the appeal shall be advanced on the docket for the consideration of the court.

Sec. 20. A party who:

(1) fails to implement a final offer selection; or

(2) appeals a final offer selection and does not ultimately prevail in court;

is liable for reasonable attorney's fees, interest on delayed monetary benefits, and other costs incurred in the action.

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