

## Final Rule

LSA Document #15-200(F)

## DIGEST

Amends [560 IAC 2-1-2](#) concerning definitions applicable throughout this article. Adds [560 IAC 2-8](#) to explain and implement the compliance review of collective bargaining agreements between school employers and the exclusive representatives as required by [IC 20-29-6-6.1](#). Statutory authority: [IC 20-29-6-6.1](#). Effective 30 days after filing with the Publisher.

[560 IAC 2-1-2](#); [560 IAC 2-8](#)

SECTION 1. [560 IAC 2-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-1-2](#) Definitions

Authority: [IC 20-29-2](#); [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 4-21.5](#); [IC 20-28-9-1.5](#); [IC 20-29](#)

Sec. 2. The definitions in [IC 20-29-2](#) and the following apply throughout this article:

- (1) "Board" has the meaning set forth in [IC 20-29-2-3](#).
- (2) "Certificated employee" has the meaning set forth in [IC 20-29-2-4](#).
- (3) "Chairman" or "chairperson" means the full-time member of the board as defined in [IC 20-29-3-3](#) or such other board member who may perform such duties pro tempore.
- ~~(4) "Contract" means a written agreement reached through collective bargaining that is ratified by the governing body of the school corporation and the exclusive representative.~~
- (4) "Collective bargaining agreement" or "CBA" means any and all agreements between the school employer and exclusive representative on any subject of bargaining, including, but not limited to, the mandatory subjects of bargaining, a grievance procedure, a compensation plan, and any memorandum of understanding ratified subsequent to the collective bargaining agreement.**
- (5) "Compensation plan" means the local plan under which salary increases or increments will be determined pursuant to [IC 20-28-9-1.5\(b\)](#).**
- (6) "Compliance officer" means the staff member or ad hoc panel member appointed by the board pursuant to [IC 20-29-6-6.1\(b\)](#) to review a collective bargaining agreement and make a written recommendation regarding the collective bargaining agreement's compliance with [IC 20-29](#), including any penalty for noncompliance.**
- ~~(5)~~ **(7) "Days" means calendar days in accordance with the Trial Rules of the Indiana Rules of Trial Procedure.**
- ~~(6)~~ **(8) "Deficit financing" has the meaning set forth in [IC 20-29-2-6](#).**
- ~~(7)~~ **(9) "Exclusive representative" has the meaning set forth in [IC 20-29-2-9](#).**
- ~~(8)~~ **(10) "Hearing examiner" means the person conducting a hearing under [IC 20-29-7-4\(e\)](#) and includes any agent of the board, who may be a member of the board, when such agent conducts an unfair practice hearing.**
- ~~(9)~~ **(11) "Hearing officer" means any agent of the board conducting the hearing in a proceeding under [IC 20-29-5-1\(c\)](#).**
- ~~(10)~~ **(12) "IEERB" refers to the Indiana education employment relations board as established by [IC 20-29-3-1](#).**
- (13) "Memorandum of understanding" or "MOU" means any agreement ratified by the school employer and the exclusive representative, subsequent to a ratified collective bargaining agreement, that changes or modifies the collective bargaining agreement.**
- ~~(11)~~ **(14) "Party" means any school employer, school employee, or school employee organization with standing in a proceeding.**
- (15) "Salary and wage related fringe benefit" means a benefit, other than direct salary or compensation, received by a school employee from a school employer, including, but not limited to, health insurance, retirement plans, and paid time off.**
- (16) "Salary range" means the lowest and highest base salaries for full-time bargaining unit members on which any increase for the current year will be based.**
- ~~(12)~~ **(17) "School corporation" has the meaning set forth in [IC 20-29-2-12](#).**
- ~~(13)~~ **(18) "School employee" has the meaning set forth in [IC 20-29-2-13](#).**
- ~~(14)~~ **(19) "School employee organization" has the meaning set forth in [IC 20-29-2-14](#).**
- ~~(15)~~ **(20) "School employer" has the meaning set forth in [IC 20-29-2-15](#).**
- ~~(16)~~ **(21) "Strike" has the meaning set forth in [IC 20-29-2-16](#).**

~~(17)~~ **(22)** "Superintendent" has the meaning set forth in [IC 20-29-2-18](#).

(Indiana Education Employment Relations Board; [560 IAC 2-1-2](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 301; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.:

[20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#))

SECTION 2. [560 IAC 2-8](#) IS ADDED TO READ AS FOLLOWS:

## **Rule 8. Review of Collective Bargaining Agreements**

### **[560 IAC 2-8-1](#) Compliance rubric**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6](#)

**Sec. 1. The board shall do the following:**

(1) Develop a rubric for use in reviewing a CBA to determine its compliance with [IC 20-29-6](#).

(2) Publish the rubric on the board's website no later than July 1, 2015.

(3) Annually review and update the rubric as needed.

(4) Publish any updated rubric on the board's website no later than July 1 each year thereafter.

(Indiana Education Employment Relations Board; [560 IAC 2-8-1](#); filed Jan 7, 2016, 8:13 a.m.:

[20160203-IR-560150200FRA](#))

### **[560 IAC 2-8-2](#) Submission of ratified collective bargaining agreement; compliance officer appointment**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

**Sec. 2. (a)** As soon as practicable after ratification by both parties, the school employer shall submit a copy of the ratified CBA (as defined in [560 IAC 2-1-2](#)) to the board in the manner prescribed by the board.

**(b)** The board chair shall appoint a staff member or ad hoc panel member to serve as the compliance officer to review the CBA using the rubric described in section 1 of this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-8-2](#); filed Jan 7, 2016, 8:13 a.m.:

[20160203-IR-560150200FRA](#))

### **[560 IAC 2-8-3](#) Compliance officer's review and report**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

**Sec. 3. (a)** If the compliance officer needs to clarify or request additional information about the CBA or an MOU, the compliance officer shall contact both the school employer and the exclusive representative.

**(b)** Upon completion of the review of a CBA, the compliance officer shall prepare a written compliance report and recommendation (report).

**(c)** Upon completion of the review of an MOU, the compliance officer shall prepare a written addendum to the original report.

**(d)** The report or addendum shall, as applicable:

(1) identify and describe any and all noncompliant items; and

(2) recommend a penalty for such noncompliance that may include one (1) or more of the following:

(A) Ordering the parties to cease and desist from all identified areas of noncompliance.

(B) Requiring the parties to obtain written approval from the board or board's agent prior to ratifying

any subsequent CBA or MOU.

(C) Requiring any other action deemed appropriate by the compliance officer as authorized by state law.

(Indiana Education Employment Relations Board; [560 IAC 2-8-3](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#))

#### **[560 IAC 2-8-4](#) Memorandum of understanding; compliance review**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 4. (a) Any MOU as defined in [560 IAC 2-1-2](#) is subject to review by a compliance officer pursuant to this rule.

(b) Any MOU not submitted as required by this rule constitutes a failure to submit a complete CBA and may result in a finding of noncompliance with a penalty of requiring board approval prior to ratifying any subsequent CBA or MOU.

(c) Any MOU ratified by the parties outside the bargaining timelines, except to the extent permitted by this section, is noncompliant.

(d) Notwithstanding subsection (c), the following may constitute an exception to a finding of noncompliance for bargaining outside the allowable bargaining timelines:

(1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA.

(2) Nonrule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.

(e) Within two (2) business days of ratification of the MOU by both parties, the school employer shall submit a copy of the ratified MOU and a written explanation of the need for the MOU to the board in the manner prescribed by the board.

(f) Upon receipt of a ratified MOU, and to the extent practicable, the board chair shall appoint the original compliance officer to review the MOU.

(g) The compliance officer shall review the MOU and accompanying documentation to determine if an exception to a finding of noncompliance is warranted.

(h) The compliance officer shall issue an addendum as described in section 3 of this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-8-4](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#))

#### **[560 IAC 2-8-5](#) Compliance officer's report or addendum to parties**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 5. (a) The board or its agent will provide the parties with a copy of the compliance officer's report or addendum via e-mail to each party's contact information on file with the board.

(b) Unless otherwise indicated in this rule, all correspondence for CBA and MOU compliance reviews, including approval or denial of approval to ratify as described in section 8 of this rule, shall be via e-mail. Receipt of an e-mail will be presumed upon dispatch.

(Indiana Education Employment Relations Board; [560 IAC 2-8-5](#); filed Jan 7, 2016, 8:13 a.m.):

**[560 IAC 2-8-6](#) Appeal of findings of noncompliance or penalty**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 6. (a) Parties have fifteen (15) days from the date the report or addendum is issued to appeal:

- (1) a finding of noncompliance;
- (2) a recommended penalty; or
- (3) both a finding of noncompliance and a recommended penalty.

(b) The appeal must:

- (1) be in writing;
- (2) state the basis of the appeal with reasonable particularity; and
- (3) be filed with the board electronically.

(c) Upon the timely filing of an appeal, the board shall review the appeal and issue a final order.

(d) As part of its review, the board may:

- (1) decide the appeal without briefs or oral argument;
- (2) receive briefs from the parties;
- (3) hear oral argument; or
- (4) both receive briefs and hear oral argument.

(e) The board may stay impasse proceedings pending the board's final order in an appeal under this section.

(Indiana Education Employment Relations Board; [560 IAC 2-8-6](#); filed Jan 7, 2016, 8:13 a.m.:  
[20160203-IR-560150200FRA](#))

**[560 IAC 2-8-7](#) Board order on appeal**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 7. (a) The board shall issue a final order within thirty (30) days of the later of the following:

- (1) The timely filing of an appeal.
- (2) Receipt of the last brief from the parties.
- (3) Conclusion of oral argument.

(b) In the event no timely appeal is filed, the compliance officer's report or addendum shall become the final order of the board.

(Indiana Education Employment Relations Board; [560 IAC 2-8-7](#); filed Jan 7, 2016, 8:13 a.m.:  
[20160203-IR-560150200FRA](#))

**[560 IAC 2-8-8](#) Prior approval for ratifying subsequent agreement**

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#); [IC 20-29-6-13](#)

Sec. 8. (a) If the final order of the board requires the parties to obtain written approval from the board or board's agent prior to ratifying any subsequent CBA or MOU, the following shall occur:

- (1) The board chair shall appoint a staff member or ad hoc panel member to serve as the compliance officer to review the tentatively agreed upon CBA or MOU.
- (2) The written appointment shall:
  - (A) be made no later than August 1; and

(B) be provided to both the school employer and the exclusive representative.

(3) The school employer shall submit a copy of the tentatively agreed upon CBA or MOU to the compliance officer in the manner prescribed by the compliance officer.

(4) The compliance officer shall review the CBA or MOU and provide the parties with a written notice of approval or denial.

(b) If the compliance officer issues a denial of approval to ratify, the notice shall identify the terms of the CBA or MOU that preclude the compliance officer's approval.

(c) Absent a timely appeal and as soon as practicable, the parties shall correct the noncompliant terms and submit a new tentatively agreed upon CBA or MOU to the compliance officer for review in accordance with this section.

(d) Parties have four (4) business days from the date the notice of denial is e-mailed to appeal the compliance officer's decision.

(e) The appeal must be in writing and describe, with reasonable particularity, the reason the identified terms of the CBA or MOU should be approved.

(f) Upon the timely filing of an appeal, the board shall make a determination and issue a final notice of approval or denial no later than thirty (30) days after receipt of the appeal.

(g) The board or its agent may stay impasse proceedings pending the board's final order in an appeal under this section.

(h) Failure to obtain approval to ratify a CBA subjects the parties to impasse procedures pursuant to [IC 20-29-6-13](#) unless impasse is otherwise stayed by the board or the board's agent.

(i) Any ratification of a subsequent CBA or MOU without the written approval of the board or the board's agent as required in this section, shall be considered null and void, and the parties will proceed through impasse proceedings pursuant to [IC 20-29-6-13](#) as applicable.

*(Indiana Education Employment Relations Board; [560 IAC 2-8-8](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#))*

#### **[560 IAC 2-8-9](#) Applicability of [IC 4-21.5](#)**

**Authority:** [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

**Affected:** [IC 4-21.5](#); [IC 20-29-6-6.1](#)

**Sec. 9. [IC 4-21.5](#) does not apply to the reviews under this rule.**

*(Indiana Education Employment Relations Board; [560 IAC 2-8-9](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#))*

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