

FAQ's: Changing the Bargaining Unit

- **What is a bargaining unit?**
 - A bargaining unit is a group of school employees that the employer has recognized or IEERB has certified as appropriate to be represented by a school employee organization for the purpose of collective bargaining. Not all employees of the school are school employees as defined in the collective bargaining statute.
 - School employees are full-time certificated employees, meaning that they are school employees whose contract with the school requires that the person hold a license or permit from the Indiana Department of Education, Division of Professional Standards under Ind. Code Art. 20-28.
 - School employees are not supervisors, confidential employees, employees performing security work, or non-certificated employees.

- **How do I know what my school's bargaining unit is?**
 - The composition of a bargaining unit is a required part of the collective bargaining agreement, which must be posted on a school's website, and also can be found on IEERB's website (through Gateway and IEERB Search).
 - Additionally, at its June 13, 2016, meeting, the IEERB Board voted to send an order to every bargaining unit regarding its bargaining unit composition. Those orders can be found on IEERB Search.

- **When do I have to go through the bargaining unit change process?**
 - You must go through the process anytime either or both parties want to add a position to, or remove a position from, the bargaining unit. Therefore, it is imperative that all interested parties are aware of the bargaining unit.
 - Example: The bargaining unit is all certificated employees except the superintendent, principals, and athletic director. The change process must be completed for any certificated position that is not one of those positions that one or both parties wish to exclude from the bargaining unit (such as the director of curriculum). By contrast, if there is a new certificated position that is not one of the excluded positions (such as the assistant athletic director), that the parties agree will be in the bargaining unit, the parties do not have to (although they can) go through the bargaining unit change process as the position is already in the unit. Note that parties cannot agree to include impermissible positions in the unit (see below for more information).

- **We have changed our bargaining unit in the past without going through IEERB – what do we do now?**
 - Nothing needs to be done until you want to change the unit again. On June 13, 2016, the IEERB Board issued an order finding that the bargaining units provided for in the current collective bargaining agreement will be considered the bargaining unit for the respective parties unless otherwise challenged. All future changes to the bargaining unit must be made through IEERB to be effective.

- **Is the required posting the same as what is posted for all open positions?**
 - No. The IEERB posting is solely based on the position's status with regard to the bargaining unit. A sample posting may be found at www.in.gov/ieerb.

- **What are the types of changes to the bargaining unit?**
 - There are two types of changes to the bargaining unit: (1) unit amendment and (2) unit clarification.
 - **Unit amendment** is a change in the bargaining unit that involves adding or excluding a **newly created** position.
 - **Unit clarification** is a change in the bargaining unit that involves adding or excluding an **existing** position.
 - Although there are different terms for changing the unit, a party's failure to use the appropriate term will not affect the outcome of a petition.

- **Can we bargain the change at the bargaining table?**
 - No. Changing the bargaining unit is separate from the bargaining process. The parties may agree to a change in the bargaining unit. However, that agreement does not change the unit until appropriate notice has been posted and sent to IEERB.

- **What is the process to change the unit?**
 - There are two (and only two) ways to change the bargaining unit: (1) voluntary and (2) IEERB determination.

 - Voluntary:
 - (1) the parties agree on an allowable change to unit
 - (2) the parties post notice of the change (or mail to unit members if school not in session)
 - (3) the parties wait 30 days
 - (4) the parties send notice and date of notice posting to IEERB
 - (5) if all steps met and no complaints filed, IEERB certifies change

 - IEERB Determination:
 - (1) One of the parties files a petition
 - (2) IEERB sends notice to be posted (or mailed to unit members if school not in session)
 - (3) Parties file briefs
 - (4) IEERB decides case on briefs (unless hearing requested)

- **Can the parties agree to any change?**
 - No. The parties have flexibility to agree on who is in the unit; however, only school employees may be in the unit. Therefore, all members of the bargaining unit must be certificated employees. A bargaining unit cannot include a certificated employee that is a supervisor, confidential employee, or employee performing security work.

- **What must be in the notice for a voluntary change:**
 - (1) Description of the existing bargaining unit;
 - (2) Proposed amendment or clarification;
 - (3) Statement that objections to the amendment or clarification by any affected school employee may be made to IEERB within 30 days of the first date of posting or of the mailing of the notice; and
 - (4) Current address and telephone number of the IEERB.

A sample posting may be found at www.in.gov/ieerb.

- **What are the factors used by IEERB to determine if a position should be included in the unit?**
 - The decision must be based on, but is not limited to, the following considerations:
 - efficient administration of school operations;
 - the existence of a community of interest among school employees;
 - the effects on the school corporation and school employees of fragmentation of units; and
 - recommendations of the parties involved.

- **Will IEERB tell me if a position would be determined to be included in the unit?**
 - No. IEERB cannot provide an advisory opinion. However, there are examples below of positions included in and excluded from the unit in past cases.

- **Can I file a petition to figure out if the position would be in the unit prior to filling it?**
 - IEERB will not make a determination for a hypothetical position. The question is not whether the position has been filled, but whether someone is likely to be hired or employed in that position in a reasonably short period of time.

- **What must be in a petition for unit determination?**
 - (1) Contact information for the superintendent and school employer representative;
 - (2) Contact information for the petitioner, school employee organization, and petitioner's representative;
 - (3) A description of the present bargaining unit and date of certification or recognition;
 - (4) Proposed clarification or amendment of the unit and the reasons why the proposed clarification or amendment is requested;
 - (5) Any other relevant facts; and
 - (6) Signature of petitioner or petitioner's duly authorized agent.

A petition form is available at www.in.gov/ieerb.

- **When must the parties start this process?**
 - The bargaining unit may be changed at any time. However, the change may not be effective immediately depending on when the change is made.

- **Can you provide some examples of positions included in or excluded from the unit:**

Note: examples provided are examples only; the parties should undertake an individualized analysis of the position in question before making any determinations on whether the position should be in the bargaining unit.

- Position that IEERB has found to be properly included in the bargaining unit:
Coordinator of Instructional Support
- Position that IEERB has found to be properly excluded from the bargaining unit:
Director of Technology
- Position that the parties have agreed is included in the bargaining unit: Assistant Athletic Supervisor.
- Position that the parties have agreed is excluded from the bargaining unit: Department Supervisor.