



STATE OF INDIANA

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September 14, 2020

Danny Kelley, Policy Director
Indiana House of Representatives
Republican Caucus
200 W. Washington St., Room 401-1
Indianapolis, IN 46204

Re: Informal Opinion; 20-INF-11; Collective Bargaining

Dear Mr. Kelley,

This informal opinion is in response to your inquiry regarding collective bargaining in light of Senate Enrolled Act 390 (2019). In accordance with Indiana Code section 5-14-4-10(6), I issue the following informal opinion.

BACKGROUND

In 2019, the Indiana General Assembly enacted legislation amending the collective bargaining procedure for schools.¹ School employers and employees must now hold at least one public hearing and take public testimony before the parties may privately negotiate collective bargaining matters.² Additionally, the school employer must hold a public meeting to discuss a tentative collective bargaining agreement at least 72 hours before the ratification of a tentative collective bargaining agreement.³

There exists some concern among certain legislators that this provision may not be followed by the letter of the law. In turn, you reached out to this office to provide clarification and guidance in conjunction with the Indiana Education Employment Relations Board (IEERB).⁴ You also requested guidance as to any other enforcement considerations if these statutes are not properly followed.

¹ P.L. 274-2019 (S.E.A. 390).

² Ind. Code § 20-29-6-1.

³ Ind. Code § 20-29-6-19.

⁴ <https://www.in.gov/ieerb/files/2020%20Bargaining%20Season%20Reminders%20Final.pdf>

ANALYSIS

1. Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. Toward that end, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. See Ind. Code § 5-14-1.5-3(a).

1.1 Public hearings

Other provisions of the Indiana Code may require additional kinds of gatherings which are not uniquely specific to the Open Door Law. And so it is for the purposes of this opinion. The legislature amended the collective bargaining process between schools and labor relations representatives. Namely, the law now mandates a public hearing—with public testimony—be held before collective bargaining commences. *See* Ind. Code § 20-29-6-1(b).

Even though most public hearings involve a majority of a governing body and are also meetings by definition,⁵ public hearings are distinguishable from public meetings. Because the two gatherings are often inextricably linked, regulatory agencies such as IEERB will often defer to the guidance of this office on both matters.

For a public hearing on these matters, however, the statute is ambiguous as to who hosts the meetings. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of the Open Door Law.⁶ Therefore if an individual representative from the school employer hosts the hearing, the public hearing required under Indiana Code section 20-29-6-1(b) is not necessarily a public meeting for purposes of the ODL. This office would not have express jurisdiction to field complaints regarding any defects in that process.⁷ To that end, the PAC defers to IEERB for any grievance procedure.

⁵ Under the ODL, a meeting is “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c).

⁶ Ind. Code § 5-14-1.5-2(b)(3).

⁷ PAC has jurisdiction over ODL, Access to Public Records Act; and any other state statute or rule governing access to public meetings or public records. *See* Ind. Code § 5-14-5-6.

If a governing body may attends the public hearing as a collective or hosts it outright, the gathering would constitute a meeting as well. That would fall under concurrent ODL purview but the substantive hearing portions would be up to IEERB to regulate.

Still, this office does not take lightly the legislature's intent to make the collective bargaining process transparent and will not shy from making recommendations and suggestions to agencies. At the same time, the initial public hearing should not be dismissed as a trifle, but conducted as a sober and serious opportunity for the community to provide valuable input as to the process. Substantive dialogue with the public yields better decisions and results – full stop.

1.2 Meetings

Similarly, Indiana Code section 20-29-6-19(a) requires a public meeting to substantively discuss any tentative collective bargaining agreement before ratification. The meeting must take place 72 hours before the agreement is ratified. Of these meetings, this office has jurisdiction to directly address and field grievances. As a proper meeting involves a majority of a governing body, the ODL is implicated.

Even so, the meetings provision in section 19(a) differs from the ODL. First, the usual 48 hour notice is expanded to 72 hours advance notice. Schools can post the notice on the school's web site as opposed to a physical location. Second, the governing body must allow public comment at the meeting at which a tentative collective bargaining agreement is ratified. And finally, the agreement must be posted within 14 days of ratification on the school's web site. *See* Ind. Code § 20-29-6-19(b)-(d).

Since all of these statutes involve public meetings or records, this office will field questions and complaints as to any defect in procedure.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

