



February 14, 2001

HOUSE BILL No. 1407

DIGEST OF HB 1407 (Updated February 13, 2001 12:03 PM - DI 96)

Citations Affected: IC 5-14; IC 36-8; noncode.

Synopsis: Collective bargaining for public safety employees. Allows the police officers and firefighters of a unit (a county, city, town, or township) to bargain collectively with an employer through an exclusive representative. Requires the Indiana education employment relations board to implement the collective bargaining law. Specifies the rights and duties of employees and employers in collective bargaining. Provides for the recognition of exclusive representatives, payroll deductions, complaint proceedings before the board, judicial review of complaints, mediation, and arbitration. Prohibits lockouts and strikes. Provides that an agent appointed by a unit to conduct collective bargaining for the unit is not a "governing body" for open door law purposes.

Effective: July 1, 2001.

Adams T

January 11, 2001, read first time and referred to Committee on Labor and Employment.
February 13, 2001, reported — Do Pass.

C
O
P
Y

HB 1407—LS 7345/DI 102+



February 14, 2001

First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

C
o
p
y

HOUSE BILL No. 1407

A BILL FOR AN ACT to amend the Indiana Code concerning labor.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. For the purposes of
3 this chapter:

4 (a) "Public agency" means the following:

5 (1) Any board, commission, department, agency, authority, or
6 other entity, by whatever name designated, exercising a portion of
7 the executive, administrative, or legislative power of the state.

8 (2) Any county, township, school corporation, city, town, political
9 subdivision, or other entity, by whatever name designated,
10 exercising in a limited geographical area the executive,
11 administrative, or legislative power of the state or a delegated
12 local governmental power.

13 (3) Any entity which is subject to either:

14 (A) budget review by either the state board of tax
15 commissioners or the governing body of a county, city, town,
16 township, or school corporation; or

17 (B) audit by the state board of accounts.

18 (4) Any building corporation of a political subdivision of the state

HB 1407—LS 7345/DI 102+



- 1 of Indiana that issues bonds for the purpose of constructing public
 2 facilities.
- 3 (5) Any advisory commission, committee, or body created by
 4 statute, ordinance, or executive order to advise the governing
 5 body of a public agency, except medical staffs or the committees
 6 of any such staff.
- 7 (6) The Indiana gaming commission established by IC 4-33,
 8 including any department, division, or office of the commission.
- 9 (7) The Indiana horse racing commission established by IC 4-31,
 10 including any department, division, or office of the commission.
- 11 (b) "Governing body" means two (2) or more individuals who are:
 12 (1) a public agency that:
 13 (A) is a board, a commission, an authority, a council, a
 14 committee, a body, or other entity; and
 15 (B) takes official action on public business;
 16 (2) the board, commission, council, or other body of a public
 17 agency which takes official action upon public business; or
 18 (3) any committee appointed directly by the governing body or its
 19 presiding officer to which authority to take official action upon
 20 public business has been delegated. An agent or agents appointed
 21 by a school corporation **or a unit** to conduct collective bargaining
 22 on behalf of that school corporation **or unit** does not constitute a
 23 governing body for purposes of this chapter.
- 24 (c) "Meeting" means a gathering of a majority of the governing body
 25 of a public agency for the purpose of taking official action upon public
 26 business. It does not include:
 27 (1) any social or chance gathering not intended to avoid this
 28 chapter;
 29 (2) any on-site inspection of any project or program;
 30 (3) traveling to and attending meetings of organizations devoted
 31 to betterment of government; or
 32 (4) a caucus.
- 33 (d) "Official action" means to:
 34 (1) receive information;
 35 (2) deliberate;
 36 (3) make recommendations;
 37 (4) establish policy;
 38 (5) make decisions; or
 39 (6) take final action.
- 40 (e) "Public business" means any function upon which the public
 41 agency is empowered or authorized to take official action.
- 42 (f) "Executive session" means a meeting from which the public is

C
 O
 P
 Y



1 excluded, except the governing body may admit those persons
2 necessary to carry out its purpose.

3 (g) "Final action" means a vote by the governing body on any
4 motion, proposal, resolution, rule, regulation, ordinance, or order.

5 (h) "Caucus" means a gathering of members of a political party or
6 coalition which is held for purposes of planning political strategy and
7 holding discussions designed to prepare the members for taking official
8 action.

9 (i) "Deliberate" means a discussion which may reasonably be
10 expected to result in official action (defined under subsection (d)(3),
11 (d)(4), (d)(5), or (d)(6)).

12 (j) "News media" means all newspapers qualified to receive legal
13 advertisements under IC 5-3-1, all news services (as defined in
14 IC 34-6-2-87), and all licensed commercial or public radio or television
15 stations.

16 (k) "Person" means an individual, a corporation, a limited liability
17 company, a partnership, an unincorporated association, or a
18 governmental entity.

19 SECTION 2. IC 36-8-21 IS ADDED TO THE INDIANA CODE AS
20 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2001]:

22 **Chapter 21. Collective Bargaining Between Local Government**
23 **Employers and Police Officers and Firefighters: Definitions**

24 **Sec. 1. The definitions in this chapter apply throughout this**
25 **chapter, IC 36-8-22, IC 36-8-23, IC 36-8-24, and IC 36-8-25.**

26 **Sec. 2. "Bargain collectively" means to perform the obligation**
27 **of an employer (through the employer's executive or the**
28 **executive's designee) and of the designee of the exclusive**
29 **representative to do the following:**

30 **(1) Meet at reasonable times, including meetings in advance**
31 **of the budget making process.**

32 **(2) Negotiate in good faith concerning the following:**

33 **(A) Wages.**

34 **(B) Salaries.**

35 **(C) Hours.**

36 **(D) Salary and wage related benefits.**

37 **(E) All other terms and conditions of employment,**
38 **including health and safety conditions.**

39 **(3) Execute a written contract incorporating an agreement if**
40 **a written contract is requested by either party.**

41 **Sec. 3. "Bargaining unit" means the full-time employees of a**
42 **police or fire department. The term does not include a person in an**

C
o
p
y



1 upper level policy making position (as defined in IC 36-8-1-12),
2 except a person in an upper level policy making position included
3 in an agreement in effect on July 1, 2001.

4 Sec. 4. "Board" refers to the Indiana education employment
5 relations board created by IC 20-7.5-1-9.

6 Sec. 5. "Complainant" means an employer, employee, employee
7 organization, or exclusive representative that files a complaint with
8 the board under IC 36-8-23.

9 Sec. 6. "Employee" means a person who is a member of a
10 bargaining unit.

11 Sec. 7. "Employee organization" means an organization in
12 which employees participate and that exists to deal with an
13 employer concerning any of the following:

- 14 (1) Grievances.
- 15 (2) Labor disputes.
- 16 (3) Wages.
- 17 (4) Rates of pay.
- 18 (5) Hours of employment.
- 19 (6) Employment conditions.

20 Sec. 8. "Employer" means either of the following:

- 21 (1) A unit to which IC 36-8-22 applies.
- 22 (2) A person designated by the unit to act in the unit's
23 interests in dealing with employees.

24 Sec. 9. "Exclusive representative" means an employee
25 organization that is:

- 26 (1) certified under IC 36-8-22 by the board; or
- 27 (2) recognized by the employer as the exclusive representative
28 of the employees in a bargaining unit.

29 Sec. 10. "Respondent" means a person against whom a
30 complainant files a complaint under IC 36-8-23.

31 Sec. 11. "Strike" includes concerted:

- 32 (1) willful absence from the employee's position;
- 33 (2) stoppage of work; or
- 34 (3) abstinence in whole or in part from the full and proper
35 performance of the duties of employment.

36 SECTION 3. IC 36-8-22 IS ADDED TO THE INDIANA CODE AS
37 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2001]:

39 **Chapter 22. Collective Bargaining Between Local Government**
40 **Employers and Police Officers and Firefighters: Employee**
41 **Organizations**

42 Sec. 1. This chapter, IC 36-8-23, IC 36-8-24, and IC 36-8-25

C
o
p
y



1 apply to all units.

2 **Sec. 2.** The board shall implement this chapter, IC 36-8-23,
3 IC 36-8-24, and IC 36-8-25. In the administration of this chapter,
4 IC 36-8-23, IC 36-8-24, and IC 36-8-25, the board may exercise the
5 powers granted to the board under IC 20-7.5-1-9.

6 **Sec. 3.** Employees may do the following:

- 7 (1) Form, join, or participate in employee organizations.
8 (2) Participate in collective bargaining with the employer
9 through representatives of the employees' choosing.
10 (3) Engage in other activities, individually or in concert, to
11 establish, maintain, or improve the following:
12 (A) Salaries.
13 (B) Wages.
14 (C) Hours.
15 (D) Salary and wage related fringe benefits.
16 (E) All other terms and conditions of employment,
17 including health and safety conditions.

18 **Sec. 4.** An employer shall manage and direct the employer's
19 operations and activities to the full extent authorized by law.

20 **Sec. 5.** An employer may do the following:

- 21 (1) Direct the work of an employee, except where otherwise
22 provided by law.
23 (2) Establish policy.
24 (3) Hire, promote, demote, transfer, assign, and retain an
25 employee in accordance with law and collective bargaining
26 agreements.
27 (4) Suspend or discharge an employee in accordance with law.
28 (5) Maintain the efficiency of governmental operations.
29 (6) Take action necessary to carry out the missions of the
30 police department and the fire department.
31 (7) Protect the fiscal soundness and assure the continuation of
32 vital public safety services.
33 (8) Take actions necessary to carry out the employer's
34 responsibilities in emergencies, including any of the following:
35 (A) Riot.
36 (B) Military action.
37 (C) Natural disaster.
38 (D) Civil disorder.

39 **Sec. 6.** In accordance with rules adopted by the board under
40 IC 4-22-2, the board shall investigate a petition filed with the board
41 by:

- 42 (1) an employee organization alleging that thirty percent

C
O
P
Y



1 (30%) of the employees in the appropriate bargaining unit
 2 wish to be represented for collective bargaining purposes by
 3 an exclusive representative;

4 (2) an employer alleging that at least one (1) employee
 5 organization has presented a claim to be recognized as the
 6 exclusive representative in an appropriate bargaining unit; or

7 (3) an employee or a group of employees alleging that thirty
 8 percent (30%) of the employees assert that the designated
 9 exclusive representative is no longer the representative of the
 10 majority of employees in the bargaining unit.

11 Sec. 7. If the board has reasonable cause to believe that a
 12 question of representation exists, the board shall conduct a hearing
 13 within thirty (30) days after a petition is filed with the board. If the
 14 board finds upon the record of the hearing that a question of
 15 representation exists, the board shall do the following:

16 (1) Direct an election by secret ballot within thirty (30) days
 17 after the hearing.

18 (2) Certify the results within ten (10) days after the election.

19 Sec. 8. If the parties referred to in section 6 of this chapter waive
 20 the hearing, the board is not required to conduct a hearing under
 21 section 7 of this chapter before a consent election.

22 Sec. 9. The board shall determine who is eligible to vote in an
 23 election directed under section 7 of this chapter and shall establish
 24 rules governing the election, subject to the following conditions:

25 (1) To be placed on the ballot, an employee organization must
 26 be designated by more than ten percent (10%) of the
 27 employees in the unit.

28 (2) If none of the choices on the ballot receives a majority in
 29 an election but a majority of all votes cast are for
 30 representation by some employee organization, the board
 31 shall conduct a runoff election.

32 (3) An employee organization that receives the majority of the
 33 votes cast in an election shall be certified by the board as the
 34 exclusive representative.

35 Sec. 10. An election may not be directed in a bargaining unit or
 36 in a subdivision of a bargaining unit within which a valid election
 37 has been held in the preceding twelve (12) months.

38 Sec. 11. Notwithstanding sections 6 through 10 of this chapter,
 39 an employer shall recognize a particular employee organization as
 40 the exclusive representative of the employees within an appropriate
 41 bargaining unit if the employee organization presents to the
 42 employer evidence that the employee organization represents a

C
O
P
Y



1 majority of the employees within the bargaining unit, unless an
 2 employee organization or a group of employees representing
 3 employees within the bargaining unit files a written objection to
 4 recognition with the employer or the board.

5 **Sec. 12. If:**

6 (1) an employee organization under section 11 of this chapter
 7 provides an employer with evidence that the employee
 8 organization represents a majority of the employees within an
 9 appropriate bargaining unit; and

10 (2) no written objection to the recognition of the employee
 11 organization as the exclusive representative of the employees
 12 within the bargaining unit is filed under section 11 of this
 13 chapter by another employee organization or a group of
 14 employees representing the employees within the bargaining
 15 unit;

16 the board is not required to hold a hearing or to direct an election
 17 on the question of whether the employee organization referred to
 18 in subdivision (1) shall be recognized as the exclusive
 19 representative of the employees within the bargaining unit.

20 **Sec. 13.** Before recognizing an employee organization as an
 21 exclusive representative under section 11 of this chapter, the
 22 employer must post a written public notice of the employer's
 23 intention to recognize the employee organization as the exclusive
 24 representative of the employees within the bargaining unit. The
 25 notice must be posted in a place where it will be seen by the
 26 employees within the bargaining unit for at least thirty (30) days
 27 immediately preceding the recognition.

28 **Sec. 14.** In a case in which:

29 (1) there is a historical pattern of recognition; and

30 (2) the employer has recognized an employee organization as
 31 the sole and exclusive bargaining agent for an existing
 32 bargaining unit;

33 the board shall find that the employees in the bargaining unit are
 34 represented by that employee organization and recognize the
 35 employee organization as the exclusive representative.

36 **Sec. 15.** A determination made under this chapter that an
 37 employee organization has been chosen as the exclusive
 38 representative by a majority of the employees in an appropriate
 39 bargaining unit is subject to judicial review under the same
 40 procedure, time limits, and other requirements set forth in
 41 IC 36-8-23-12 through IC 36-8-23-22 for review of an order of the
 42 board. The record of the board's determination of the appropriate

C
O
P
Y



1 bargaining unit and the exclusive representative may be a part of
2 the transcript of a proceeding under this section.

3 Sec. 16. An employer, upon receipt of a written authorization
4 from an employee subject to this chapter, shall:

5 (1) deduct from the pay of the employee the dues, fees, or
6 assessments designated or certified by the appropriate officer
7 of an employee organization; and

8 (2) remit those amounts to the employee organization.

9 Sec. 17. A collective bargaining agreement with an employee
10 organization that is recognized as an exclusive representative may
11 include a provision requiring an employee who is covered by the
12 collective bargaining agreement but is not a member of the
13 employee organization to pay a proportionate share of the costs of
14 the collective bargaining process, contract administration, and
15 matters affecting wages, hours, and conditions of employment. This
16 proportionate share may not exceed the amount of dues uniformly
17 required of members of the employee organization.

18 Sec. 18. An employee organization referred to in section 17 of
19 this chapter shall certify to an employer the amount constituting
20 each nonmember employee's proportionate share. The employer
21 shall deduct the proportionate share payment from the earnings of
22 a nonmember employee and pay the amount to the employee
23 organization.

24 Sec. 19. Only the exclusive representative of the employees
25 within a bargaining unit may negotiate provisions in a collective
26 bargaining agreement providing for the payroll deduction of any
27 of the following:

- 28 (1) Labor organization dues.
29 (2) Fair share payment.
30 (3) Initiation fees.
31 (4) Assessments.

32 Sec. 20. Except as provided in sections 17 and 18 of this chapter,
33 deductions may be made only upon an employee's written
34 authorization and shall be continued until:

- 35 (1) revoked in writing; or
36 (2) the termination date of the applicable collective bargaining
37 agreement.

38 Sec. 21. A collective bargaining agreement providing for an
39 employee who is not a member of the employee organization
40 recognized as the exclusive representative to pay a proportionate
41 share agreement must safeguard the right of nonassociation based
42 upon bona fide religious tenets of an employee. An affected

C
O
P
Y



1 employee may be required to pay an amount equal to the
 2 employee's proportionate share, determined under a lawful
 3 proportionate share agreement, to a nonreligious charitable
 4 organization agreed upon by the employee and the exclusive
 5 representative to which the employee would otherwise pay the
 6 service fee.

7 **Sec. 22.** If an affected employee referred to in section 21 of this
 8 chapter and the exclusive representative are unable to agree on a
 9 payment under section 21 of this chapter, the board may establish
 10 an approved list of charitable organizations to which the payments
 11 may be made.

12 **Sec. 23.** It is an unfair labor practice for an employer to do any
 13 of the following:

14 (1) Interfere with, restrain, or coerce an employee in the
 15 exercise of the rights guaranteed in this chapter, IC 36-8-23,
 16 IC 36-8-24, or IC 36-8-25.

17 (2) Dominate, interfere, or assist in the formation or
 18 administration of an employee organization, or contribute
 19 financial or other support to the employee organization.

20 (3) Discriminate in regard to:

21 (A) hiring practices;

22 (B) tenure of employment; or

23 (C) a term or condition of employment;

24 to encourage or discourage membership in an employee
 25 organization.

26 (4) Discharge or otherwise discriminate against an employee
 27 because that employee has:

28 (A) filed a complaint, an affidavit, or a petition; or

29 (B) given information or testimony under this chapter or
 30 IC 36-8-23.

31 (5) Refuse to bargain collectively in good faith with an
 32 exclusive representative concerning the following:

33 (A) Wages.

34 (B) Rates of pay.

35 (C) Hours.

36 (D) Working conditions.

37 (E) Any other terms or conditions of employment.

38 (6) Fail or refuse to comply with this chapter, IC 36-8-23,
 39 IC 36-8-24, or IC 36-8-25.

40 **Sec. 24.** It is an unfair labor practice for an employee
 41 organization to do any of the following:

42 (1) Interfere with, restrain, or coerce:

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (A) an employee in the exercise of the rights guaranteed in this chapter, IC 36-8-23, IC 36-8-24, or IC 36-8-25; or
- (B) an employer in the selection of an exclusive representative for collective bargaining or the adjustment of grievances.
- (2) Cause or attempt to cause an employer to discriminate against an employee in violation of section 23 of this chapter.
- (3) Refuse to bargain collectively in good faith with an employer if the employee organization is the exclusive representative.
- (4) Engage in a strike.
- (5) Fail to comply with this chapter, IC 36-8-23, IC 36-8-24, or IC 36-8-25.

Sec. 25. It is not an unfair labor practice for an employer to confer with an employee without loss of time or pay by the employee during working hours.

Sec. 26. It is not an unfair labor practice for an employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.

SECTION 4. IC 36-8-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 23. Collective Bargaining Between Local Government Employers and Police Officers and Firefighters: Complaints

Sec. 1. (a) An employer, employee, employee organization, or exclusive representative who is aggrieved by an alleged unfair labor practice may file a complaint with the board.

(b) The board shall serve a copy of the complaint on the respondent complained of and notify the respondent of the date and place of a hearing on the complaint.

Sec. 2. (a) The board shall hold a hearing on a complaint not less than five (5) days or more than thirty (30) days after the complaint is served on the respondent.

(b) A notice of a hearing may not be issued based upon an alleged unfair labor practice occurring more than ninety (90) days before the filing of the complaint, unless the complainant was prevented from filing the complaint because of service in the armed forces. In that event, the complaint must be filed not more than ninety (90) days after the complainant's discharge from the armed forces.

Sec. 3. (a) A complaint may be amended by the complainant at any time before the issuance of an order by the board if the

C
o
p
y



1 respondent would not be unfairly prejudiced by the amendment.

2 (b) The respondent shall file an answer to the original or
3 amended complaint. The complainant and the respondent are
4 parties and are entitled to appear in person or otherwise give
5 testimony at the hearing. At the discretion of the board, an
6 interested person may be allowed to intervene in the hearing and
7 present testimony.

8 Sec. 4. The board is not bound by the rules of evidence in
9 conducting a hearing under this chapter. Testimony received at a
10 hearing shall be reduced to writing and filed with the board. After
11 receiving the testimony, the board may take further testimony or
12 hear arguments upon notice to the parties.

13 Sec. 5. (a) In a proceeding on a complaint under this chapter,
14 the board shall make a determination based on the preponderance
15 of evidence received.

16 (b) If the board determines that the respondent was or is
17 engaged in an unfair labor practice, the board shall state the
18 findings of fact and serve on the respondent an order requiring
19 that the respondent cease the unfair labor practice and take
20 affirmative actions, including reinstatement of an employee with
21 or without back pay, to carry out IC 36-8-22, IC 36-8-24,
22 IC 36-8-25, and this chapter. The order may further require that
23 the respondent make reports showing the extent of the
24 respondent's compliance with the order.

25 Sec. 6. If the board determines that a respondent:

- 26 (1) did not engage in; or
27 (2) is not engaging in;

28 an unfair labor practice, the board shall state the findings of fact
29 and dismiss the complaint.

30 Sec. 7. A hearing may be conducted by:

- 31 (1) a member of the board; or
32 (2) a hearing examiner or an agency designated by the board;

33 instead of by the full board. However, after the hearing, the
34 member, hearing examiner, or agency shall serve on the parties
35 and file with the board proposed findings and a recommended
36 order.

37 Sec. 8. If an exception is not filed by a party:

- 38 (1) within twenty (20) days after service on the parties; or
39 (2) within a period authorized by the board;

40 the recommended order filed under section 7 of this chapter
41 becomes the order of the board.

42 Sec. 9. If an exception to a recommended order filed under

C
O
P
Y



1 section 7 of this chapter is filed, the board shall grant review if the
2 board determines that the exception raises a substantial issue of
3 fact or law.

4 Sec. 10. If the board determines that an exception to a
5 recommended order filed under section 7 of this chapter does not
6 raise a substantial issue of fact or law, the recommended order
7 becomes the order of the board.

8 Sec. 11. An order of the board under sections 7 through 10 of
9 this chapter is a final order and binding on the parties to the
10 complaint, subject to judicial review under sections 12 through 22
11 of this chapter.

12 Sec. 12. Not later than thirty (30) days after service of the
13 board's order under:

14 (1) IC 36-8-22-6 through IC 36-8-22-15; or

15 (2) sections 1 through 11 of this chapter;

16 on the complainant and respondent, the board or the complainant
17 may petition the circuit or superior court of a county in which the
18 unit is located for the enforcement of the board's order and for
19 appropriate relief.

20 Sec. 13. A party aggrieved by the board's order may petition the
21 court for a review of the order and for appropriate relief. If a
22 petition is not filed within the thirty (30) day period allowed by
23 section 12 of this chapter, the order may not be reviewed. The
24 board shall then file a petition with the court to enforce the order.

25 Sec. 14. The commencement of proceedings after the filing of a
26 petition under section 13 of this chapter does not, unless
27 specifically ordered by the court, operate as a stay of the board's
28 order.

29 Sec. 15. After a petition is filed under section 13 of this chapter,
30 the court shall have notice served upon the parties of the petition
31 and send a copy to the board.

32 Sec. 16. In a proceeding on a petition filed under section 13 of
33 this chapter, an objection that was not made at the hearing
34 conducted under section 7 of this chapter may not be considered by
35 the court, unless the failure to make the objection is excused
36 because of extraordinary circumstances.

37 Sec. 17. If either party to a petition filed under section 13 of this
38 chapter applies to the court for leave to introduce additional
39 evidence and shows to the satisfaction of the court that:

40 (1) the additional evidence is material; and

41 (2) there were reasonable grounds for the failure to introduce
42 the evidence in the hearing conducted under section 7 of this

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

chapter;
the court may order the additional evidence to be taken by the board and made a part of the record.

Sec. 18. After a court, under section 17 of this chapter, orders the board to make additional evidence a part of the record, the board:

(1) may modify the findings of fact by reason of the additional evidence; and

(2) shall file the modified findings and the recommendations for a modification or setting aside of the original order with the court.

Sec. 19. A petitioner who petitions a court for review of an order of the board under section 13 of this chapter must file a record of the hearing, certified by the board, with the court. Until a record of the hearing is filed, the board may, at any time upon reasonable notice, modify or set aside all or part of a finding or an order made or issued by the board.

Sec. 20. After the record of a hearing conducted under section 7 of this chapter is filed with the court under section 19 of this chapter, the jurisdiction of the court to modify, set aside, or enforce a board's order and to grant other appropriate relief is exclusive, and the court's judgment and decree are final, subject to review in accordance with the rules of court.

Sec. 21. Petitions filed under section 12 of this chapter shall be heard not later than sixty (60) days after the petitions are docketed. The petition takes precedence over all other civil matters except matters of the same character docketed earlier.

Sec. 22. In a court's review of an order of the board under this chapter, the original or modified findings of fact by the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are conclusive.

SECTION 5. IC 36-8-24 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 24. Collective Bargaining Between Local Government Employers and Police Officers and Firefighters: Mediation and Arbitration

Sec. 1. Employers and employees shall bargain collectively. The parties shall enter into a contract embodying the matters on which the parties have agreed during the collective bargaining process.

Sec. 2. A contract may not include provisions in conflict with any of the following:

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (1) A right or benefit established by federal or state law.
- (2) Employee rights described in this article.
- (3) Employer rights described in this article.

Sec. 3. A collective bargaining contract may be in effect for more than one (1) year.

Sec. 4. A contract entered into under section 1 of this chapter must contain a grievance resolution procedure that applies to all employees in the bargaining unit. This procedure must provide for the final and binding arbitration of disputes concerning the administration or interpretation of the contract. The arbitration provisions of the contract are subject to IC 34-57-1.

Sec. 5. Collective bargaining must begin by May 1 of a year in which a collective bargaining agreement is to expire. The parties shall inform the board of the results of collective bargaining.

Sec. 6. If the exclusive representative and the employer have not agreed on a contract not later than forty-five (45) days after collective bargaining begins under section 5 of this chapter, either party may:

- (1) notify the board of the inability to reach an agreement; and
- (2) ask the board for mediation to begin.

Sec. 7. The board shall make a mediator available to the parties at the board's expense within seven (7) days after the board is notified under section 6 of this chapter.

Sec. 8. The mediator provided under section 7 of this chapter shall communicate with both the employer and the exclusive representative and aid the employer and exclusive representative in making a settlement so that the parties may enter into a contract.

Sec. 9. If a dispute has not been resolved not later than twenty-one (21) days after either party makes a request for mediation under section 6 of this chapter, the employer or exclusive representative shall submit a written request for arbitration to the board.

Sec. 10. Not later than ten (10) days after a request for arbitration must be filed under section 9 of this chapter, the employer and the exclusive representative shall each select a member to a panel of arbitration. The employer and exclusive representative shall advise each other and the board of the selections.

Sec. 11. Not later than seven (7) days after the request of either party for arbitration is submitted to the board under section 9 of

C
O
P
Y



1 this chapter, the board shall select from the employees' labor
 2 mediation roster established by IC 20-7.5-1-13 five (5) persons as
 3 nominees to serve as impartial arbitrators on the arbitration panel.
 4 Not later than five (5) days after the selection, the parties shall each
 5 alternately strike the names of two (2) of the nominees, with the
 6 first person to request arbitration under section 9 of this chapter
 7 striking first.

8 **Sec. 12.** The member remaining after the striking under section
 9 11 of this chapter and the members selected by the employer and
 10 the exclusive representative constitute the panel. The panel
 11 member not struck under section 11 of this chapter is the
 12 chairperson of the arbitration panel.

13 **Sec. 13.** The chairperson of the arbitration panel shall schedule
 14 a hearing to begin not later than fifteen (15) days after the panel's
 15 membership is selected and shall give reasonable notice of the time
 16 and place of the hearing to the parties. The hearing shall be held at
 17 the location the board considers appropriate. The chairperson shall
 18 preside over the hearing and take testimony.

19 **Sec. 14.** Oral or documentary evidence and other data
 20 considered relevant by the arbitration panel may be received in
 21 evidence at an arbitration hearing held under this chapter. The
 22 hearing shall be informal and the rules of evidence do not apply. A
 23 verbatim record of a hearing must be made. The arbitrator shall
 24 arrange for the necessary recording service. Transcripts may be
 25 ordered at the expense of the party ordering the transcripts, but
 26 the transcripts are not necessary for a decision by the arbitration
 27 panel.

28 **Sec. 15.** If a member of an arbitration panel assembled under
 29 this chapter is a public officer or employee, the public officer or
 30 employee continues on the payroll of the employer without loss of
 31 pay.

32 **Sec. 16.** A hearing conducted by an arbitration panel under this
 33 chapter may be adjourned periodically, but, unless otherwise
 34 agreed to by the parties, must be concluded not later than thirty
 35 (30) days after the date of commencement. Arbitration proceedings
 36 under this chapter may not be interrupted or terminated by an
 37 unfair labor practice charge filed by either party at any time.

38 **Sec. 17.** An arbitration panel may do the following:

39 (1) Administer oaths.

40 (2) Require the attendance of witnesses and the production of
 41 evidence considered material to a just determination of an
 42 issue in dispute.



C
O
P
Y

1 **Sec. 18.** An arbitration panel may issue a subpoena for purposes
2 of section 17 of this chapter.

3 **Sec. 19.** If:

4 (1) a person refuses to obey a subpoena or to be sworn or to
5 testify; or

6 (2) a witness, a party, or an attorney is guilty of contempt at
7 a hearing;

8 the arbitration panel may request a circuit court with jurisdiction
9 where the hearing is held to issue an appropriate order.

10 **Sec. 20.** The failure to obey an order issued at the request of an
11 arbitration panel under section 19 of this chapter may be punished
12 by the court as contempt.

13 **Sec. 21.** Before an award is made, the chairperson of an
14 arbitration panel may remand the dispute to the parties for further
15 collective bargaining for a period not to exceed two (2) weeks. If
16 the dispute is remanded, the time provisions of this chapter are
17 extended for a period equal to that of the remand. The chairperson
18 of the arbitration panel shall notify the board of a remand under
19 this section.

20 **Sec. 22.** Not later than the conclusion of a hearing held under
21 section 13 of this chapter, the arbitration panel shall identify the
22 economic issues in dispute and direct each of the parties to submit
23 to the arbitration panel and to each other, within the time limit the
24 panel prescribes, each party's last offer of settlement on each
25 economic issue. The determination of an arbitration panel is
26 conclusive concerning the identification of issues in dispute and
27 issues that are economic.

28 **Sec. 23.** (a) The arbitration panel shall make written findings of
29 fact and adopt a written opinion not later than the end of:

30 (1) thirty (30) days after the conclusion of a hearing; or

31 (2) any further additional periods to which the parties agree.

32 (b) The arbitration panel shall mail a copy of the opinion to the
33 parties, the representatives of the parties, and the board.

34 **Sec. 24.** (a) As to economic issues, the arbitration panel shall
35 adopt the last offer of settlement on an issue by issue basis that, in
36 the opinion of the arbitration panel, more nearly complies with the
37 applicable factors prescribed in section 25 of this chapter.

38 (b) The findings, opinions, and order as to all other issues must
39 also be based upon the applicable factors prescribed in section 25
40 of this chapter.

41 **Sec. 25.** If there is no agreement between the parties, or if there
42 is an agreement but the parties have begun negotiations or

C
o
p
y



1 discussions for a new agreement or an amendment of the existing
2 agreement, and wage rates or other conditions of employment
3 under the proposed new or amended agreement are in dispute, the
4 arbitration panel shall base its findings, opinions, and order upon
5 the following factors:

- 6 (1) The lawful authority of the employer.
- 7 (2) Stipulations of the parties.
- 8 (3) The interests and welfare of the public and the financial
9 ability of the employer to meet the costs.
- 10 (4) Comparison of the wages, hours, and conditions of
11 employment of the employees involved in the arbitration
12 proceeding with the wages, hours, and conditions of
13 employment of employees performing similar services and
14 with other employees generally in comparable communities.
- 15 (5) The average consumer prices for goods and services.
- 16 (6) The overall compensation currently received by the
17 employees, including the following:
 - 18 (A) Direct wage compensation, vacations, holidays, and
19 other excused time.
 - 20 (B) Insurance, pension, medical, and hospitalization
21 benefits.
 - 22 (C) The continuity and stability of employment.
- 23 (7) Changes in any of the circumstances during the
24 arbitration proceedings.
- 25 (8) Other factors normally or traditionally taken into
26 consideration in the determination of wages, hours, and
27 conditions of employment through voluntary collective
28 bargaining, mediation, factfinding, or arbitration between
29 parties in public or private employment.

30 Sec. 26. If a fiscal year begins:

- 31 (1) after the initiation of arbitration procedures under this
32 chapter; and
- 33 (2) before the arbitration decision or enforcement of the
34 decision;

35 this occurrence does not render a dispute moot or impair the
36 jurisdiction or authority of the arbitration panel or the decision.

37 Sec. 27. Except as provided in section 28 of this chapter, an
38 increase in rates of compensation awarded by an arbitration panel
39 under this chapter is effective at the beginning of the employer's
40 fiscal year beginning on or after the date of the arbitration award.

41 Sec. 28. If a fiscal year begins after the initiation of arbitration
42 procedures, section 27 of this chapter does not apply. However, an

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

increase awarded by an arbitration panel under this chapter may be retroactive to the beginning of the fiscal year.

Sec. 29. The parties may, by stipulation, amend or modify an award of arbitration under this chapter.

Sec. 30. Upon petition by either the employer or the exclusive representative, an order of an arbitration panel under this chapter may be reviewed by the circuit court with jurisdiction in the county in which the dispute arose or in which a majority of the affected employees reside. However, the only grounds upon which the panel's order may be reviewed are that:

- (1) the arbitration panel was without authority or exceeded the panel's authority;
- (2) the order is arbitrary or capricious; or
- (3) the order was procured by fraud, collusion, or unlawful means.

Sec. 31. A petition for review of an order of an arbitration panel under section 30 of this chapter must be filed with the circuit court not later than ninety (90) days after the issuance of the arbitration order. The pendency of the proceeding for review does not automatically stay the order of the arbitration panel.

Sec. 32. If the court, in proceedings on a petition for review of an order of an arbitration panel, finds the appeal or petition frivolous, the party against whom the final decision of the court is adverse shall pay reasonable attorney's fees and costs to the successful party.

Sec. 33. If the court's decision in a proceeding on a petition for review of an order of an arbitration panel affirms an award of money, the award, if retroactive, bears interest at the rate of twelve percent (12%) annually from the effective retroactive date.

Sec. 34. During the pendency of proceedings before an arbitration panel, currently applicable wages, hours, and other conditions of employment may not be changed by either party without the consent of the other. However, a party may consent to a change without prejudice to the party's rights or position under IC 36-8-22 or this chapter.

Sec. 35. An employee covered under IC 36-8-22 and this chapter may not withhold services.

Sec. 36. An employer may not lock out or prevent an employee from performing services.

Sec. 37. (a) All terms decided upon by an arbitration panel under this chapter must be included in an agreement to be submitted to the employer's legislative body for ratification and:

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(1) adoption by ordinance if the unit is a county or municipality; or

(2) passage of a resolution if the unit is a township.
(b) The legislative body of the unit shall review each term decided by an arbitration panel under this chapter.

Sec. 38. If the legislative body of a unit does not reject a term of an arbitration panel's decision by a vote of at least sixty percent (60%) of all the members of the body within twenty (20) days after the issuance of the decision, the term becomes a part of the collective bargaining agreement.

Sec. 39. If the legislative body of a unit rejects a term of the arbitration panel's decision, the legislative body must issue written reasons for the rejection of the term to the parties within twenty (20) days after the rejection. Written reasons must be issued under this section for each term that is rejected. The parties shall then return to the arbitration panel within thirty (30) days after the issuance of the reason for rejection for further proceedings and the issuance of a supplemental decision with respect to the rejected terms.

Sec. 40. A supplemental decision made under section 39 of this chapter by an arbitration panel or other decisionmaker selected by the parties must be submitted to the legislative body of a unit for ratification in accordance with sections 37 through 39 of this chapter.

Sec. 41. The voting requirements of section 38 of this chapter apply to all disputes submitted to arbitration, notwithstanding inconsistent voting requirements that may be contained in a collective bargaining agreement between the parties.

Sec. 42. The employer shall pay all reasonable costs of a supplemental proceeding under section 39 of this chapter, including the exclusive representative's reasonable attorney's fees, as established by the board.

Sec. 43. The employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms, and conditions of employment to an alternative form of impasse resolution without regard to this chapter.

Sec. 44. Except as provided in sections 7 and 42 of this chapter, the cost of procedures under this chapter as determined by the board shall be paid equally by the parties. The board shall establish a complete procedure for the collection and payment of the cost.

Sec. 45. After the exhaustion of an arbitration mandated by this

C
O
P
Y



chapter or procedures mandated by a collective bargaining agreement, a civil action for the violation of an agreement between an employer and a labor organization representing employees may be brought by either party to the agreement in the circuit or superior court of a county in which the employer:

- (1) transacts business; or
- (2) has the employer's principal office.

SECTION 6. IC 36-8-25 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 25. Collective Bargaining Between Local Government Employers and Police Officers and Firefighters: Miscellaneous Provisions

Sec. 1. If IC 36-8-22, IC 36-8-23, IC 36-8-24, or this chapter conflicts with an Indiana statute, rule, or executive order relating to wages, hours, and conditions of employment and employment relations, IC 36-8-22, IC 36-8-23, IC 36-8-24, or this chapter prevails.

Sec. 2. For purposes of IC 36-1-3-6:

- (1) IC 36-8-22;
- (2) IC 36-8-23;
- (3) IC 36-8-24; and
- (4) this chapter;

provide the exclusive manner for a unit to exercise the power to bargain collectively with the unit's employees.

Sec. 3. An employee or exclusive representative may not participate in a strike against an employer.

Sec. 4. An employee engaging in a strike is subject to discharge by the employer, as provided in IC 36-8-3-4.

Sec. 5. An exclusive representative that engages in or sanctions a strike loses the right to represent the employees for one (1) year after the date of the action.

Sec. 6. An employer may not pay an employee for days during which the employee was engaged in a strike.

SECTION 7. [EFFECTIVE JULY 1, 2001] (a) This act does not:

- (1) apply to or abrogate a contract or an agreement in effect on June 30, 2001; or
- (2) preclude arbitration on a provision in a contract or agreement referred to in subdivision (1).

(b) This SECTION expires July 1, 2004.

COPY



COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1407, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LIGGETT, Chair

Committee Vote: yeas 9, nays 5.

C
o
p
y

