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# HOUSE BILL No. 1220

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-1.5-2; IC 36-8-2-14; IC 36-11.

**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 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. Provides that a term of an arbitration panel's decision becomes part of the unit's collective bargaining agreement unless it is rejected by 60% of the members of the unit's legislative body within 20 days after the decision is issued. 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, 2002.

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### Adams, Herrell, Kersey

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January 10, 2002, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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# HOUSE BILL No. 1220



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, 2002]: 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



- 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.
- 21 An agent or agents appointed by a school corporation **or a unit** to  
 22 conduct collective bargaining on behalf of that school corporation **or**  
 23 **unit** does not constitute a 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

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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 36-8-2-14 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
21 1, 2002]: **Sec. 14. Collective bargaining for public safety employees  
22 is governed by IC 36-11.**

23 SECTION 3. IC 36-11 IS ADDED TO THE INDIANA CODE AS  
24 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
25 2002]:

26 **ARTICLE 11. COLLECTIVE BARGAINING FOR PUBLIC  
27 SAFETY EMPLOYEES**

28 **Chapter 1. Collective Bargaining for Public Safety Employees:  
29 Definitions**

30 **Sec. 1. The definitions in this chapter apply throughout this  
31 article.**

32 **Sec. 2. "Bargain collectively" means to perform the obligation  
33 of an employer (through the employer's executive or the  
34 executive's designee) and of the designee of the exclusive  
35 representative to do the following:**

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

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

39 **(A) Wages.**

40 **(B) Salaries.**

41 **(C) Hours.**

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

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

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

Sec. 3. "Bargaining unit" means the full-time employees of a police or fire department. The term does not include a person in an upper level policy making position (as defined in IC 36-8-1-12), except a person in an upper level policy making position included in an agreement in effect on July 1, 2002.

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

Sec. 5. "Complainant" means an employer, employee, employee organization, or exclusive representative that files a complaint with the board under IC 36-11-3.

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

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

- (1) Grievances.
- (2) Labor disputes.
- (3) Wages.
- (4) Rates of pay.
- (5) Hours of employment.
- (6) Employment conditions.

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

- (1) A unit to which this article applies.
- (2) A person designated by the unit to act in the unit's interests in dealing with employees.

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

- (1) certified under IC 36-11-2 by the board; or
- (2) recognized by the employer as the exclusive representative of the employees in a bargaining unit.

Sec. 10. "Respondent" means a person against whom a complainant files a complaint under IC 36-11-3.

Sec. 11. "Strike" includes concerted:

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

Chapter 2. Collective Bargaining for Public Safety Employees:

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1 **Employee Organizations**

2 **Sec. 1. This chapter applies to all units.**

3 **Sec. 2. The board shall implement and administer this chapter**  
 4 **and IC 36-11-3 through IC 36-11-5. To do so, the board may**  
 5 **exercise the 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**

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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

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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 as are set forth in**  
 41 **IC 36-11-3-13 though IC 36-11-3-23 for review of an order of the**  
 42 **board. The record of the board's determination of the appropriate**

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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  
11 under this chapter may include a provision requiring an employee  
12 who is covered by the collective bargaining agreement but is not a  
13 member of the employee organization to pay a proportionate share  
14 of the costs of the collective bargaining process, contract  
15 administration, and matters affecting wages, hours, and conditions  
16 of employment. This proportionate share may not exceed the  
17 amount of dues uniformly required of members of the employee  
18 organization.

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

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

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

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

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

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

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

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

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

15 (1) Interfere with, restrain, or coerce an employee in the  
 16 exercise of the rights guaranteed in this chapter or IC 36-11-3  
 17 through IC 36-11-5.

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

21 (3) Discriminate in regard to:

22 (A) hiring practices;

23 (B) tenure of employment; or

24 (C) a term or condition of employment;

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

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

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

30 (B) given information or testimony under this chapter or  
 31 IC 36-11-3.

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

34 (A) Wages.

35 (B) Rates of pay.

36 (C) Hours.

37 (D) Working conditions.

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

39 (6) Fail or refuse to comply with this chapter or IC 36-11-3  
 40 through IC 36-11-5.

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

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- (1) Interfere with, restrain, or coerce:**
  - (A) an employee in the exercise of the rights guaranteed in this chapter or IC 36-11-3 through IC 36-11-5; 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 contrary to 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 or IC 36-11-3 through IC 36-11-5.**

**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.**

**Chapter 3. Collective Bargaining for Public Safety Employees: Complaints**

**Sec. 1. This chapter applies to all units.**

**Sec. 2. (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. 3. (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. 4. (a) A complaint may be amended by the complainant at any time before the issuance of an order by the board if the respondent would not be unfairly prejudiced by the amendment.**

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

7           Sec. 5. The board is not bound by the rules of evidence in  
8 conducting a hearing under this chapter. Testimony received at a  
9 hearing shall be reduced to writing and filed with the board. After  
10 receiving the testimony, the board may take further testimony or  
11 hear arguments upon notice to the parties.

12           Sec. 6. (a) In a proceeding on a complaint under this chapter,  
13 the board shall make a determination based on the preponderance  
14 of evidence received.

15           (b) If the board determines that the respondent was or is  
16 engaged in an unfair labor practice, the board shall state the  
17 findings of fact and serve on the respondent an order requiring  
18 that the respondent cease the unfair labor practice and take  
19 affirmative actions, including reinstatement of an employee with  
20 or without back pay, to carry out this chapter, IC 36-11-2,  
21 IC 36-11-4, or IC 36-11-5. The order may further require that the  
22 respondent make reports showing the extent of the respondent's  
23 compliance with the order.

24           Sec. 7. If the board determines that a respondent:

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

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

29           Sec. 8. A hearing may be conducted by:

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

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

36           Sec. 9. If an exception is not filed by a party:

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

39 the recommended order filed under section 8 of this chapter  
40 becomes the order of the board.

41           Sec. 10. If an exception to a recommended order filed under  
42 section 8 of this chapter is filed, the board shall grant review if the

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1 board determines that the exception raises a substantial issue of  
2 fact or law.

3 Sec. 11. If the board determines that an exception to a  
4 recommended order filed under section 8 of this chapter does not  
5 raise a substantial issue of fact or law, the recommended order  
6 becomes the order of the board.

7 Sec. 12. An order of the board under sections 8 through 11 of  
8 this chapter is a final order and binding on the parties to the  
9 complaint, subject to judicial review under sections 13 through 23  
10 of this chapter.

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

13 (1) IC 36-11-2-6 through IC 36-11-2-15; or

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

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

18 Sec. 14. A party aggrieved by the board's order may petition the  
19 court for a review of the order and for appropriate relief. If a  
20 petition is not filed within the thirty (30) day period allowed by  
21 section 13 of this chapter, the order may not be reviewed. The  
22 board shall then file a petition with the court to enforce the order.

23 Sec. 15. The commencement of proceedings after the filing of a  
24 petition under section 14 of this chapter does not, unless  
25 specifically ordered by the court, operate as a stay of the board's  
26 order.

27 Sec. 16. After a petition is filed under section 14 of this chapter,  
28 the court shall have notice of the petition served upon the parties  
29 and send a copy to the board.

30 Sec. 17. In a proceeding on a petition filed under section 14 of  
31 this chapter, an objection that was not made at the hearing  
32 conducted under section 8 of this chapter may not be considered by  
33 the court, unless the failure to make the objection is excused  
34 because of extraordinary circumstances.

35 Sec. 18. If either party to a petition filed under section 14 of this  
36 chapter applies to the court for leave to introduce additional  
37 evidence and shows to the satisfaction of the court that:

38 (1) the additional evidence is material; and

39 (2) there were reasonable grounds for the failure to introduce  
40 the evidence in the hearing conducted under section 8 of this  
41 chapter;

42 the court may order the additional evidence to be taken by the

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board and made a part of the record.

**Sec. 19.** After a court, under section 18 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 any modified findings and any recommendations for a modification or setting aside of the original order with the court.

**Sec. 20.** A party who petitions a court for review of an order of the board under section 14 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. 21.** After the record of a hearing conducted under section 8 of this chapter is filed with the court under section 20 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. 22.** Petitions filed under section 13 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. 23.** 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.

**Chapter 4. Collective Bargaining for Public Safety Employees: Mediation and Arbitration**

**Sec. 1.** This chapter applies to all units.

**Sec. 2.** 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. 3.** A contract may not include provisions in conflict with any of the following:

- (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. 4.** A collective bargaining contract may be in effect for more than one (1) year.

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1           **Sec. 5.** A contract entered into under section 2 of this chapter  
2 must contain a grievance resolution procedure that applies to all  
3 employees in the bargaining unit. This procedure must provide for  
4 the final and binding arbitration of disputes concerning the  
5 administration or interpretation of the contract. The arbitration  
6 provisions of the contract are subject to IC 34-57-1.

7           **Sec. 6.** Collective bargaining must begin by May 1 of a year in  
8 which a collective bargaining agreement is to expire. The parties  
9 shall inform the board of the results of collective bargaining.

10           **Sec. 7.** If the exclusive representative and the employer have not  
11 agreed on a contract forty-five (45) days after collective bargaining  
12 begins under section 6 of this chapter, either party may:

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

16           **Sec. 8.** The board shall make a mediator available to the parties  
17 at the board's expense within seven (7) days after the board is  
18 notified under section 7 of this chapter.

19           **Sec. 9.** The mediator provided under section 8 of this chapter  
20 shall communicate with both the employer and the exclusive  
21 representative and aid the employer and exclusive representative  
22 in making a settlement so that the parties may enter into a  
23 contract.

24           **Sec. 10.** If a dispute has not been resolved, twenty-one (21) days  
25 after either party makes a request for mediation under section 7 of  
26 this chapter the employer or exclusive representative shall submit  
27 a written request for arbitration to the board.

28           **Sec. 11.** Not later than ten (10) days after a request for  
29 arbitration must be filed under section 10 of this chapter, the  
30 employer and the exclusive representative shall each select a  
31 member to a panel of arbitration. The employer and exclusive  
32 representative shall advise each other and the board of the  
33 selections.

34           **Sec. 12.** Not later than seven (7) days after the request of either  
35 party for arbitration is submitted to the board under section 10 of  
36 this chapter, the board shall select from the permanent staff of fact  
37 finders or panel of part time fact finders established under  
38 IC 20-7.5-1-13 five (5) persons as nominees to serve as impartial  
39 arbitrators on the arbitration panel. Not later than five (5) days  
40 after the selection, the parties shall each alternately strike the  
41 names of two (2) of the nominees, with the first person to request  
42 arbitration under section 10 of this chapter striking first.

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1           **Sec. 13.** The member remaining after the striking process under  
 2 section 12 of this chapter and the members selected by the  
 3 employer and the exclusive representative constitute the panel. The  
 4 panel member not struck under section 12 of this chapter is the  
 5 chairperson of the arbitration panel.

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

12           **Sec. 15.** Oral or documentary evidence and other data  
 13 considered relevant by the arbitration panel may be received in  
 14 evidence at an arbitration hearing held under this chapter. The  
 15 hearing shall be informal and the rules of evidence do not apply. A  
 16 verbatim record of the hearing must be made. The arbitrator shall  
 17 arrange for the necessary recording service. Transcripts may be  
 18 ordered at the expense of the party ordering the transcripts, but  
 19 the transcripts are not necessary for a decision by the arbitration  
 20 panel.

21           **Sec. 16.** If a member of an arbitration panel assembled under  
 22 this chapter is a public officer or employee, the public officer or  
 23 employee continues on the payroll of the employer without loss of  
 24 pay.

25           **Sec. 17.** A hearing conducted by an arbitration panel under this  
 26 chapter may be adjourned periodically but, unless otherwise  
 27 agreed to by the parties, must be concluded not later than thirty  
 28 (30) days after the date of commencement. Arbitration proceedings  
 29 under this chapter may not be interrupted or terminated by an  
 30 unfair labor practice charge filed by either party at any time.

31           **Sec. 18.** An arbitration panel may do the following:

- 32           (1) Administer oaths.
- 33           (2) Require the attendance of witnesses and the production of  
 34 evidence considered material to a just determination of an  
 35 issue in dispute.

36           **Sec. 19.** An arbitration panel may issue a subpoena under  
 37 section 18 of this chapter.

38           **Sec. 20.** If:

- 39           (1) a person refuses to obey a subpoena or to be sworn or to  
 40 testify; or
- 41           (2) a witness, a party, or an attorney is guilty of contempt at  
 42 a hearing;

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1 the arbitration panel may request the circuit or superior court  
2 where the hearing is held to issue an order.

3 **Sec. 21.** The failure to obey an order issued at the request of an  
4 arbitration panel under section 20 of this chapter may be punished  
5 by the court as contempt.

6 **Sec. 22.** Before an award is made, the chairperson of an  
7 arbitration panel may remand the dispute to the parties for further  
8 collective bargaining for a period not to exceed two (2) weeks. If  
9 the dispute is remanded, the time provisions of this chapter are  
10 extended for a period equal to that of the remand. The chairperson  
11 of the arbitration panel shall notify the board of a remand under  
12 this section.

13 **Sec. 23.** Not later than the conclusion of a hearing held under  
14 section 14 of this chapter, the arbitration panel shall identify the  
15 economic issues in dispute and direct each party to submit to the  
16 arbitration panel and to each other, within the time limit the panel  
17 prescribes, each party's last offer of settlement on each economic  
18 issue. The determination of an arbitration panel is conclusive  
19 concerning the identification of issues in dispute and issues that are  
20 economic.

21 **Sec. 24. (a)** The arbitration panel shall make written findings of  
22 fact and adopt a written opinion not later than the end of:

- 23 (1) thirty (30) days after the conclusion of a hearing; or
- 24 (2) any further additional periods to which the parties agree.

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

27 **Sec. 25. (a)** As to economic issues, the arbitration panel shall, on  
28 an issue by issue basis, adopt the last offer of settlement that, in the  
29 opinion of the arbitration panel, more nearly complies with the  
30 applicable factors prescribed in section 26 of this chapter.

31 **(b)** The findings, opinions, and order as to all other issues must  
32 also be based upon the applicable factors prescribed in section 26  
33 of this chapter.

34 **Sec. 26.** If there is no agreement between the parties, or if there  
35 is an agreement but the parties have begun negotiations or  
36 discussions for a new agreement or an amendment of the existing  
37 agreement, and wage rates or other conditions of employment  
38 under the proposed new or amended agreement are in dispute, the  
39 arbitration panel shall base its findings, opinions, and order upon  
40 the following factors:

- 41 (1) The lawful authority of the employer.
- 42 (2) Stipulations of the parties.

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**(3) The interests and welfare of the public and the financial ability of the employer to meet the costs.**

**(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in comparable communities.**

**(5) The average consumer prices for goods and services.**

**(6) The overall compensation currently received by the employees, including the following:**

**(A) Direct wage compensation, vacations, holidays, and other excused time.**

**(B) Insurance, pension, medical, and hospitalization benefits.**

**(C) The continuity and stability of employment.**

**(7) Changes in any of the circumstances during the arbitration proceedings.**

**(8) Other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, or arbitration between parties in public or private employment.**

**Sec. 27. If a fiscal year begins:**

**(1) after the initiation of arbitration procedures under this chapter; and**

**(2) before the arbitration decision or enforcement of the decision;**

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

**Sec. 28. Except as provided in section 29 of this chapter, an increase in rates of compensation awarded by an arbitration panel under this chapter is effective at the beginning of the employer's fiscal year beginning on or after the date of the arbitration award.**

**Sec. 29. If a fiscal year begins after the initiation of arbitration procedures, section 28 of this chapter does not apply. However, an increase awarded by an arbitration panel under this chapter may be retroactive to the beginning of the fiscal year.**

**Sec. 30. The parties may, by stipulation, amend or modify an award of arbitration under this chapter.**

**Sec. 31. 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 or superior court in the county in**

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1 which the dispute arose or in which a majority of the affected  
 2 employees reside. However, the only grounds upon which the  
 3 panel's order may be reviewed are that:

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

9 **Sec. 32.** A petition for review of an order of an arbitration panel  
 10 under section 31 of this chapter must be filed with the circuit court  
 11 not later than ninety (90) days after the issuance of the arbitration  
 12 order. The pendency of the proceeding for review does not  
 13 automatically stay the order of the arbitration panel.

14 **Sec. 33.** If the court, in proceedings on a petition for review of  
 15 an order of an arbitration panel, finds the appeal or petition  
 16 frivolous, the party against whom the final decision of the court is  
 17 adverse shall pay reasonable attorney's fees and costs to the  
 18 successful party.

19 **Sec. 34.** If the court's decision in a proceeding on a petition for  
 20 review of an order of an arbitration panel affirms an award of  
 21 money, the award, if retroactive, bears interest at the rate of twelve  
 22 percent (12%) annually from the effective retroactive date.

23 **Sec. 35.** During the pendency of proceedings before an  
 24 arbitration panel, currently applicable wages, hours, and other  
 25 conditions of employment may not be changed by either party  
 26 without the consent of the other. However, a party may consent to  
 27 a change without prejudice to the party's rights or position under  
 28 IC 36-11-2 or this chapter.

29 **Sec. 36.** An employee covered under IC 36-11-2 and this chapter  
 30 may not withhold services.

31 **Sec. 37.** An employer may not lock out or prevent an employee  
 32 from performing services.

33 **Sec. 38. (a)** All terms decided upon by an arbitration panel  
 34 under this chapter must be included in an agreement to be  
 35 submitted to the employer's legislative body for ratification and:

- 36 (1) adoption by ordinance if the unit is a county or  
 37 municipality; or  
 38 (2) passage of a resolution if the unit is a township.

39 **(b)** The legislative body of the unit shall review each of the terms  
 40 decided by an arbitration panel under this chapter.

41 **Sec. 39.** If the legislative body of a unit does not reject a term of  
 42 an arbitration panel's decision by a vote of at least sixty percent

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1 (60%) of all the members of the body within twenty (20) days after  
 2 the issuance of the decision, the term becomes a part of the  
 3 collective bargaining agreement.

4 **Sec. 40.** If the legislative body of a unit rejects a term of the  
 5 arbitration panel's decision, the legislative body must issue written  
 6 reasons for the rejection of the term to the parties within twenty  
 7 (20) days after the rejection. Written reasons must be issued under  
 8 this section for each term that is rejected. The parties shall then  
 9 return to the arbitration panel within thirty (30) days after the  
 10 issuance of the reason for rejection for further proceedings and the  
 11 issuance of a supplemental decision with respect to the rejected  
 12 terms.

13 **Sec. 41.** A supplemental decision made under section 40 of this  
 14 chapter by an arbitration panel or other decisionmaker selected by  
 15 the parties must be submitted to the legislative body of a unit for  
 16 ratification in accordance with sections 38 through 40 of this  
 17 chapter.

18 **Sec. 42.** The voting requirements of section 39 of this chapter  
 19 apply to all disputes submitted to arbitration, notwithstanding  
 20 inconsistent voting requirements that may be contained in a  
 21 collective bargaining agreement between the parties.

22 **Sec. 43.** The employer shall pay all reasonable costs of a  
 23 supplemental proceeding under section 40 of this chapter,  
 24 including the exclusive representative's reasonable attorney's fees,  
 25 as established by the board.

26 **Sec. 44.** The employer and exclusive representative may agree  
 27 to submit unresolved disputes concerning wages, hours, terms, and  
 28 conditions of employment to an alternative form of impasse  
 29 resolution without regard to this chapter.

30 **Sec. 45.** Except as provided in sections 8 and 43 of this chapter,  
 31 the cost of procedures under this chapter as determined by the  
 32 board shall be paid equally by the parties. The board shall  
 33 establish a complete procedure for the collection and payment of  
 34 the cost.

35 **Sec. 46.** After the exhaustion of an arbitration mandated by this  
 36 chapter or procedures mandated by a collective bargaining  
 37 agreement, a civil action for the violation of an agreement between  
 38 an employer and a labor organization representing employees may  
 39 be brought by either party to the agreement in the circuit or  
 40 superior court of a county in which:

- 41 (1) the employer transacts business; or
- 42 (2) the employer's principal office is located.



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1           **Chapter 5. Collective Bargaining for Public Safety Employees:**  
 2           **Miscellaneous Provisions**

3           **Sec. 1. This chapter applies to all units.**

4           **Sec. 2. If this chapter or IC 36-11-2 through IC 36-11-4 conflicts**  
 5           **with an Indiana statute, rule, or executive order relating to wages,**  
 6           **hours, and conditions of employment and employment relations,**  
 7           **this chapter or IC 36-11-2 through IC 36-11-4 prevails.**

8           **Sec. 3. For purposes of IC 36-1-3-6, this chapter and IC 36-11-2**  
 9           **through IC 36-11-4 provide the exclusive manner for a unit to**  
 10           **exercise the power to bargain collectively with the unit's**  
 11           **employees.**

12           **Sec. 4. An employee or exclusive representative may not**  
 13           **participate in a strike against an employer.**

14           **Sec. 5. An employee engaging in a strike is subject to discharge**  
 15           **by the employer, as provided for members of police and fire**  
 16           **departments of towns and townships in IC 36-8-3-4.**

17           **Sec. 6. An exclusive representative that engages in or sanctions**  
 18           **a strike loses the right to represent the employees for one (1) year**  
 19           **after the date of the action.**

20           **Sec. 7. An employer may not pay an employee for days during**  
 21           **which the employee was engaged in a strike.**

22           **Chapter 6. Other Collective Bargaining Provisions in Title 36.**

23           **Sec. 1. This chapter contains a list of references to other**  
 24           **provisions within IC 36 that concern collective bargaining.**

25           **Sec. 2. IC 36-8-10-23 prohibits bargaining cost of living**  
 26           **adjustments for disabled or retired employee beneficiaries of a**  
 27           **sheriff's department when a county's fiscal body has adopted the**  
 28           **section.**

29           **Sec. 3. Collective bargaining for employees of regional**  
 30           **transportation authorities and public transportation agency**  
 31           **employees affected by the actions of a regional transportation**  
 32           **authority is governed by IC 36-9-3-21 through IC 36-9-3-25 and**  
 33           **IC 36-9-3-27.**

34           **Sec. 4. Collective bargaining for employees of urban mass**  
 35           **transportation systems and public transportation corporations is**  
 36           **governed by IC 36-9-4-37 and IC 36-9-4-41.**

37           **SECTION 4. [EFFECTIVE JULY 1, 2002] (a) This act does not:**

38           **(1) apply to or abrogate a contract or an agreement in effect**  
 39           **on June 30, 2002; or**

40           **(2) preclude arbitration on a provision in a contract or**  
 41           **agreement referred to in subdivision (1).**

42           **(b) This SECTION expires July 1, 2005.**

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