



ISBA Collective Bargaining Seminar

IEERB Updates 2020

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What is IEERB?

- ◆ Indiana Education Employment Relations Board <https://www.in.gov/ieerb/>
- ◆ Established to promote fundamental interest in harmonious and cooperative relationships between teachers and the corporations they serve
- ◆ Neutral agency administering teacher collective bargaining
- ◆ 5 staff members
- ◆ Major Functions
 - ◆ Research and training
 - ◆ Representation decisions
 - ◆ Unfair practice decisions
 - ◆ Resolves impasses
 - ◆ Determines CBA compliance

RESEARCH & DATA

- ◆ Collections
 - ◆ Exclusive Representative Membership Verification Affidavit
 - ◆ Exclusive Rep President submits to Superintendent by September 15th
 - ◆ Superintendent uploads Affidavit into Gateway by October 1st
 - ◆ Bargaining Status Form - both parties must complete by November 15th
 - ◆ Contract Upload - Superintendent must upload contract by November 16th
 - ◆ Collective Bargaining Report - opens June 1 and closes July 30, 2021
- ◆ 2019-2020 collective bargaining report data now available on [Gateway Report Builder](#)
 - ◆ Individual corporation and statewide
- ◆ IEERBSearch database
 - ◆ Cases, contracts, bargaining unit orders

Collective Bargaining & Timeline

- ◆ Who is bargaining?
 - ◆ The school employer and the exclusive representative organization
 - ◆ (Use this [Form](#) to update Superintendent or Assn. President contact with IEERB)
- ◆ Who does the exclusive representative represent?
 - ◆ IC 20-29-2-3 "School employee" means a full-time certificated person in the employment of the employer. This term does not include supervisors, confidential employees, employees performing security work, and noncertified employees.
 - ◆ Parties can exclude additional employees through the bargaining unit amendment process.

What does it mean to collectively bargain and what are we bargaining?

- ◇ Bargaining collectively means the performance of the mutual obligation of the school employer and the exclusive representative to
 - ◇ (1) Meet at reasonable times to negotiate in good faith concerning the items enumerated in IC 20-29-6-4; and
 - ◇ (2) Execute a written contract incorporating any agreement relating to the matters described in subdivision (1)

- ◇ Salary
 - ◇ Compensation plan under IC 20-28-9-1.5
- ◇ Wages
- ◇ Salary and wage related fringe benefits

Bargaining Timeline

- ◇ Informal Bargaining prior to September 15
 - ◇ Public Hearing - parties may not bargain until a public meeting is held and testimony is taken
 - Hosted by both parties
 - Can take place starting July 1
 - Must allow public testimony on teacher compensation
 - Public testimony must be provided to the school board
- ◇ Formal bargaining begins September 15 - [Guide to Bargaining and Impasse](#)
 - ◇ Public Meeting – Tentative Agreement (TA) Meeting
 - 72 hours notice – post TA on website
 - Open Door Law requirements apply
 - School board to discuss the TA
 - Public Meeting – Ratification Meeting
 - At least 72 hours after first, TA, public meeting
 - Must allow public comments
 - Open Door Law requirements apply
- ◇ Bargaining ends November 16
- ◇ Impasse begins November 17
 - ◇ Mediation
 - ◇ Fact-finding
- ◇ Fact-finding ends February 15

CBA Compliance

- ◆ IEERB is required by law to review bargained agreements for compliance.
- ◆ I.C. § 20-29-6-6.1
 - ◆ (a) After ratification of a contract under section 6 of this chapter, a school employer shall submit the ratified collective bargaining agreement, including the compensation model developed under IC 20-28-9-1.5, to the board.
 - ◆ (b) The board shall appoint a staff member or an ad hoc panel member to review each submitted collective bargaining agreement and to make a written recommendation concerning the collective bargaining agreement's compliance with this chapter, including a penalty for any noncompliance. The review must be completed before May 31 of the year in which the current collective bargaining agreement expires (emphasis added).
- ◆ Penalties for noncompliance: C&D, Prior Approval, and other actions deemed appropriate

CBA Compliance

- ◇ 187 Compliance Reports issued on May 29, 2020, for all 2019-20 CBAs
- ◇ Top issues of noncompliance in 2019-20 CBAs:
 - ◇ Bargaining Unit Description
 - ◇ Non-Bargainable Subjects
 - ◇ Increases not in Compensation Plan
 - ◇ Increases not Attributed to a Factor
 - ◇ 50% Cap on Education & Experience Increases
 - ◇ Redistribution Plan
- ◇ 13 appeals
 - ◇ Bargaining for non-unit members
 - ◇ Redistribution
 - ◇ 50% education + experience cap violations

Bargaining Unit Description

- ◆ Must match most recent IEERB Order in effect on date of CBA ratification
- ◆ Unit changes, once certified by IEERB in an Order, become effective upon next ratification
- ◆ Ratifying a CBA with an amended unit description after the notice period but before the order is issued results in an FNC
- ◆ IEERB bargaining unit orders available on IEERB Search
 - ◆ <https://ieerbsearch.ieerb.in.gov>
 - ◆ Guest login credentials on the IEERB Search homepage.

Bargaining Unit Description

◆ Tips:

- ◆ CBA recognition clause should match IEERB Order exactly
- ◆ Don't wait until you're about to ratify your CBA to make unit changes
 - ◆ Contact IEERB for timing suggestions if you're cutting it close
- ◆ Retrieve your Order from IEERB Search and review it thoroughly
 - ◆ You're responsible for notifying IEERB of any mistakes in the Order
- ◆ Agreed changes to unit description not affecting unit composition are quick and easy, so get them done (See 560 IAC 2-2.1-1(c))
 - ◆ Example: The formal title of an excluded position changes (e.g. "Director of Information Technology" title changed to "Director of Informatics")

NBS: Terms for non-unit-members

- ◇ Union represents employees in the bargaining unit only
- ◇ Terminology in BU description given plain meaning unless parties include alternate definition in unit description
 - ◇ Parties have flexibility to define term locally, but **MUST** amend unit to include definitions that deviate from plain meaning
- ◇ Example: BU = all “full-time” certificated employees
 - ◇ Plain meaning of “full-time” is teacher employed 1.0 FTE
 - ◇ Parties wish 0.5 FTE or greater teachers to be considered full-time
 - ◇ Solution: Amend BU to add “full-time defined as 0.5 FTE or greater”

NBS: Terms for non-unit-members

◆ Tips:

◆ Clarify ambiguities in unit description

◆ Example: use “boys varsity high school basketball coach” instead of “basketball coach” to exclude the position from the BU

◆ Note: Agreed change that does not affect unit composition is quick and easy (See 560 IAC 2-2.1-1(c))

◆ Avoid adding wages for excluded ECA positions or lay staff to your ECA schedule

◆ If you DO add them there, be sure to clearly indicate that the wage for that position was not bargained and was included for informational purposes only

◆ If BU limited to “full-time” don’t bargain for teachers employed part-time, less than a full day, less than a full load, or less than full-time

Undescribed Transition to New Salary Schedule

- ◇ Example: Salary schedule includes \$1000 across-the-board increase from last year, but Comp Plan only describes increase amounts from advancing rows and columns
- ◇ Result:
 - ◇ FNC for increase not in compensation plan
 - ◇ FNC for increase not attributed to statutory factor
 - ◇ Amount of transition increase included in the 50% calculation due to lack of factor attribution
- ◇ Solution: “Teachers that satisfy the evaluation rating factor transition to the 2020-21 SS in the same row and receive a \$500 increase”
- ◇ More Info: [How to Ensure Compliance When Moving to a New Salary Schedule](#)

50% Cap on Education & Experience

- ◇ Calculation based on percentage of total possible increase
- ◇ Increases Subject to the Cap:
 - ◇ Years of experience factor
 - ◇ Content area degrees and hours factor
 - ◇ When Academic Needs or Instructional Leadership is defined or distributed using education and or experience, it will count toward the 50% cap.
 - ◇ When Education or Experience is the limiting factor to earn an Academic Need or Instructional Leadership increase, the entire amount (education/experience + academic need/instructional leadership) will count toward the 50% cap.
- ◇ Increases not Subject to the Cap:
 - ◇ Increases to reduce-the-gap
 - ◇ Teacher retention catch-up increases
 - ◇ Evaluation factor
 - ◇ Academic Needs and Instructional Leadership factors w/o ed/exp component

Redistribution Plan (RDP)

- ◇ All compensation plans (CPs) must include RDP, unless it's clear that one is not needed
- ◇ Simply saying that a specified amount of money will be fully distributed, when that is not demonstrated by the CP, is insufficient and will result in an FNC
- ◇ Examples of CPs that need a redistribution plan:
 - ◇ Increases based on advancement on a salary schedule
 - ◇ An increase is described as a set amount per teacher, point, or factor (even if CP uses pool/points, for example, to distribute other factor increases)
- ◇ Required components of RDP:
 - ◇ To all teachers rated effective or highly effective
 - ◇ In current contract year
 - ◇ METHOD: as a stipend or base increase

Final Thoughts on CBA Compliance

- ◆ 2020 Compliance Rubric is approved and posted at <https://www.in.gov/ieerb/2411.htm>
 - ◆ No major changes to compliance requirements
 - ◆ Includes additional tips and clarifications
- ◆ Review your last compliance report carefully and don't skip the footnotes or general comments
- ◆ When bargaining: Is it salary, wages, or fringe benefits? If no, don't bargain it
- ◆ Including policy for reference purposes? Be sure to say that it wasn't bargained and was included for informational purposes only
- ◆ Beware of old language and remove if possible
- ◆ Check dates and internal citations for accuracy
- ◆ Keep it simple

MOUs

◆ What is an MOU?

- ◆ Defined in 560 IAC 2-1-2(14) - any agreement ratified by the school employer and the exclusive representative, subsequent to a ratified CBA, that changes or modifies the CBA

◆ When can an MOU be bargained?

- ◆ During the formal bargaining period (September 15 – November 15)
- ◆ Outside the formal bargaining period when either of the following exceptions apply:
 - ◆ A. The MOU is necessary due to newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA; or
 - ◆ B. The MOU is bargained and ratified in accordance with a nonrule policy document issued by IEERB regarding unanticipated circumstances impacting multiple bargaining parties

◆ What can be bargained in an MOU?

- ◆ Just like the CBA it modifies, an MOU must be limited to salary, wage, and fringe benefit terms bargained on behalf of school employees in the bargaining unit.

MOUs

- ◇ MOUs require the agreement of BOTH parties
 - ◇ Cannot be used to impose unilateral changes to a CBA
- ◇ Once bargained, MOU must be signed by at least one agent of each party
 - ◇ Usually, the school board president or secretary are entitled to sign on behalf of a school employer (See I.C. § 20-26-4-8)
- ◇ Subject to IEERB compliance review, just like CBAs
 - ◇ Must be submitted to IEERB (ratifiedcontracts@ieerb.in.gov) within 10 days of ratification
 - ◇ Must include a written explanation of the need for the MOU and applicable exception
 - ◇ Must combine ratified MOU and corresponding CBA into single PDF and upload to Gateway
 - ◇ Don't forget to post on corporation's website just like the CBA
- ◇ More Info on MOUs: Page 13 of [Guide to CBA Compliance](#)
- ◇ Pre-Approval of MOUs available: Submit request, unsigned draft, and written explanation to compliance@ieerb.in.gov. Remember to copy your bargaining counterpart on email request.

Pre-Impasse Assistance

- ◆ Prior to the declaration of impasse, the parties have the option of contacting IEERB and requesting pre-impasse financial consulting.
- ◆ We have financial consultants with extensive backgrounds in school funding and collective bargaining.
- ◆ The consultant is an objective 3rd party to assess the financial situation and provide ideas for a solution prior to going to impasse.

At Impasse: Mediation & Fact-finding

- ◆ When parties are unable to reach an agreement by November 15th, IEERB declares the parties at impasse and will assign a mediator.
- ◆ 560 IAC 2-4-1 (c) School employer must share the following revenue upon which it will rely in supporting an LBO within 14 days of the declaration of impasse:
 1. all revenue
 2. bargained teacher expenses
 3. non-bargained teacher expenses
 4. non-teacher expenses
- ◆ Mediation lasts up to 30 days and consists of up to 3 mediation sessions.
- ◆ The cost of mediation is split between parties.

- ◆ If parties cannot ratify a CBA during mediation, they must exchange Last, Best, Offers
- ◆ IEERB has developed a required format, required information, and required supporting documents
- ◆ Failure to meet LBO requirements could result in rejection and approval of the other parties' LBO
- ◆ It is strongly recommended that parties submit LBOs electronically and hardcopy versions
- ◆ Parties are strongly encouraged to include any additional documents that support their LBO

What is discussion?

- ◇ The performance of the mutual obligation of
- ◇ the school corporation through its superintendent and the exclusive representative
- ◇ to meet at reasonable times to:
 - (1) discuss;
 - (2) provide meaningful input; or
 - (3) exchange points of view;
- ◇ with respect to items enumerated in [IC 20-29-6-7](#).

What are we discussing?

Mandatory subjects of discussion:

- (1) Curriculum development and revision.
- (2) Selection of curricular materials.
- (3) Teaching methods.
- (4) Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees.
- (5) Student discipline.
- (6) Expulsion or supervision of students.
- (7) Pupil/teacher ratio.
- (8) Class size or budget appropriations.
- (9) Safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law.
- (10) Hours.
- (11) Funding for a plan for a remediation program for any subset of students enrolled in K-12.
- (12) The following nonbargainable items under IC 20-43-10-3:
 - (A) Performance grants.
 - (B) Individual performance stipends to teachers.
 - (C) Additions to base salary based on performance stipends.
- (13) The pre-evaluation planning session required under IC 20-28-11.5-4.
- (14) The superintendent's report to the governing body concerning staff performance evaluations required under IC 20-28-11.5-9.
- (15) Teacher performance model.

Discussion Best Practices

- ◇ From Page 5 of Practitioner's Guide to Bargaining and Impasse
 - ◇ Setting an agenda of items to be discussed
 - ◇ Being prepared for the discussion of agenda items
 - ◇ Taking discussion seriously
 - ◇ Actively participating in discussions
 - ◇ Actively listening
 - ◇ Being open to alternate suggestions
 - ◇ Having a clear understanding of next steps
- ◇ Special and Emergency Meetings
 - ◇ Have a plan
 - ◇ Both parties must be flexible and reasonable in notice time, partial teams, leaders only . . .
- ◇ When in doubt, talk it out!!!

Additional IEERB Guidance

- The following presentations are available online at <https://www.in.gov/ieerb/2331.htm>
 - Guide to Changing the Bargaining Unit
 - Compliance
 - Research
- 2020 CBA Compliance Guidance at <https://www.in.gov/ieerb/2411.htm>
- 2020 Representation Guidance at <https://www.in.gov/ieerb/2410.htm>
- IEERB Statutes, Rules, and NPDs at <https://www.in.gov/ieerb/2334.htm>

Have questions? Email them to questions@ieerb.in.gov