



## **INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD**

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### **Practitioner's Guide to the Amending the Bargaining Unit**

The Indiana Education Employment Relations Board is a neutral agency that oversees relations between public school teachers and the schools they serve.

IEERB staff has compiled the following information on representation matters for **guidance only**. **IEERB cannot provide legal advice; nor does this guidance bind IEERB in any way**. This guidance is not intended to take the place of careful review of IC 20-29-5 and 560 IAC 2-2.1, or as a substitute for legal advice. The relevant statute and rules are provided on IEERB's website at <https://www.in.gov/ieerb/2410.htm>.

Questions about representation matters may be sent to [Questions@ieerb.in.gov](mailto:Questions@ieerb.in.gov). All documents to be filed in a proceeding before IEERB must be sent to [efile@ieerb.in.gov](mailto:efile@ieerb.in.gov).

All correspondence on pending proceedings filed with IEERB must be served on all other parties to the proceedings by simultaneously emailing a copy to other parties, unless the correspondence is confidential in nature (i.e. showing of interests).

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## **I. Bargaining Unit Definition**

A bargaining unit is a group of two or more school employees who: (1) share a community of interest; and (2) are grouped together for purposes of collective bargaining. Bargaining units must be certified by IEERB. Certification of the bargaining unit may be agreed or disputed through a petition for unit amendment or complaint.

Not all employees of the school are considered school employees for purposes of bargaining. Only full-time, certificated employees may be in the bargaining unit. A certificated employee is an individual whose contract with the school corporation requires that the person hold a license or permit from the Indiana Department of Education. [Ind. Code § 20-29-2-4](#). An unlicensed instructor hired to teach a career and technical education course under Ind. Code § 20-28-5-22.1 can also include into the bargaining unit. See Ind. Code § 20-28-5-22.1(b). Supervisors,<sup>1</sup> confidential employees,<sup>2</sup> and employees performing security work<sup>3</sup> may not be in the bargaining unit. See [Ind. Code § 20-29-2-13](#).

## **II. Current Bargaining Unit**

In June 2016, IEERB sent an order to every school employer that included a description of the bargaining unit. The June 2016 IEERB order reflects the current bargaining unit description, unless the parties have gone through the process to successfully amend the bargaining unit, and IEERB has approved the amended unit description. All bargaining unit orders are available on IEERB Search, which may be accessed at: <https://ieerbsearch.ieerb.in.gov/login.aspx>.

## **III. Changing the Bargaining Unit**

All changes to the bargaining unit must go through IEERB. A bargaining unit can be changed at any time. However, the changes may not be effective immediately, depending on the time of the change.

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<sup>1</sup> A supervisor is an individual who has: (1) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline school employees; (2) responsibility to direct school employees and adjust their grievances; or (3) responsibility to effectively recommend the actions described in subdivisions (1) through (2), that is not of a merely routine or clerical nature but requires the use of independent judgment. The term includes superintendents, assistant superintendents, business managers and supervisors, directors with school corporation-wide responsibilities, principals and vice principals, and department heads who have responsibility for evaluating teachers. I.C. § 20-29-2-19.

<sup>2</sup> A confidential employee is a school employee whose: (1) unrestricted access to confidential personnel files; or (2) functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees, makes the school employee's membership in a school employee organization incompatible with the school employee's official duties. I.C. § 20-29-2-5.

<sup>3</sup> An employee performing security work is a school employee: (1) whose primary responsibility is the protection of personal and real property owned or leased by the school corporation; or (2) who performs police or quasi-police powers. I.C. § 20-29-2-8.

#### **IV. Agreed Amendment to the Bargaining Unit**

In order for there to be an agreed composition or amendment to the bargaining unit, there must be an agreement, the parties must provide notice to the current bargaining unit, provide 30 days for objections and submit the agreement to IEERB for certification.

##### **A. Agreement**

The parties must first agree to the change. If there is no agreement between the parties, procedures can be initiated for a disputed change to the unit through an IEERB determination. See [IEERB Determination of the Bargaining Unit](#) for information on a disputed unit determination.

An example of a position that the parties have agreed is included in the bargaining unit: Assistant Athletic Supervisor.<sup>4</sup> An example of a position that the parties have agreed is excluded from the bargaining unit: Department Supervisor.<sup>5</sup> Note: examples provided are examples only; the parties should undertake a fact-sensitive analysis of the position in question before making any determinations on whether the position should be in the bargaining unit.

##### **B. Notice**

If the school employer and exclusive representative agree to amend the unit, the school employer is required to provide notice to all certificated school employees. According to [560 IAC 2-2.1-1](#), the notice must include the following information:

- A description of the existing bargaining unit.
- A description of the proposed changes to the bargaining unit.
- The current address, telephone number, and email address for IEERB.
- That objections to the composition or amendment may be made to IEERB within 30 days of the first date of notice.

The notice may be provided by email, posting, or any other method reasonably calculated to apprise all certificated employees of the proposed amendment to the bargaining unit. The school employer may submit the proposed notice to the executive director and obtain approval of the contents, timing, and the intended method of notice from the executive director. If a school employer does not submit the proposed notice for preapproval, the executive director will review the notice after posting to ensure substantial compliance with [560 IAC 2-2.1-1](#). A sample agreed notice is on IEERB's website at <https://www.in.gov/ieerb/2410.htm>.

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<sup>4</sup> *Northeastern Wayne*, R-00-05-8375, 2000 WL 35738218 (H.E. Rep. Oct. 23, 2000).

<sup>5</sup> *Mount Vernon*, R-74-100-6590, 1974 WL 336145 (H.E. Rep. Aug. 19, 1974).

### C. Objections/Complaints

A school employee affected by the proposed change may object to the change by filing a complaint within thirty (30) days from the date of the first notice. The complaint must include a statement describing the reason for the objection. [560 IAC 2-2.1-2](#). A sample complaint may be found on the IEERB website at <https://www.in.gov/ieerb/2410.htm>.

Complaints must be filed directly to IEERB. If a complaint is filed, IEERB will provide a copy of the complaint to the parties. [560 IAC 2-2.1-4](#). The agreed composition or amendment of the bargaining unit will then be converted to a disputed case whereby IEERB makes a determination on the appropriate bargaining unit. See [IEERB Determination of the Bargaining Unit](#) for information about a disputed change to the bargaining unit.

### D. Send Notice and Verification to IEERB

If no complaint has been filed after 30 days from the initial notice, the parties must submit to IEERB a formal request for certification of the bargaining unit change, including a dated copy of the notice to the board with a signed verification of the notice date. [560 IAC 2-2.1-1\(g\)](#). A sample request may be found on the IEERB website at <https://www.in.gov/ieerb/2410.htm>.

### E. IEERB Certification

If appropriate, the executive director will issue an order acknowledging the bargaining unit amendment and certifying the new bargaining unit. Even if the parties agree on inclusion of a position in the unit, the Executive Director will deny an agreed unit amendment if it includes a position in the bargaining unit that is contrary to law. After the amendments have been certified, the bargaining unit can change for the next round of collective bargaining. [560 IAC 2-2.1-1](#).

### V. Disputed Change of the Bargaining Unit

IEERB will determine the appropriate bargaining unit if an affected school employee files a complaint objecting to the proposed agreed unit amendment, or if a school employee organization or school employer files a petition. [560 IAC 2-2.1-3](#). A petition may be filed only for actual positions (current or newly created). A petition may not be filed for a position that does not currently exist.<sup>6</sup>

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<sup>6</sup> The question is not whether the position has been filled, but whether "someone is likely to be employed in a reasonable short period of time." *Tipton*, R-93-05-7945, 1993 WL 13653501 (H.E. Rep. June 28, 1993). When a position has not yet been filled, a determination will be made "based on the best evidence available concerning future job responsibilities. On the other hand, a procedure must be available to provide for the possibility that actual practice does not accord with prospective assessment." *Id.* (quoting *Tippecanoe*, R-90-07-7865, 1990 WL

An Example of a position that IEERB has found to be properly included in the bargaining unit: Coordinator of Instructional Support.<sup>7</sup> Example of a position that IEERB has found to be properly excluded from the bargaining unit: Director of Technology.<sup>8</sup> Note: examples provided are examples only; the parties should undertake a fact sensitive analysis of the position in question before making any determinations on whether the position should be in the bargaining unit.

### A. Petition

A petition for disputed unit composition or amendment must be filed with IEERB. When a petition is filed with IEERB, the executive director will provide a copy of the petition to the parties. The petition must include:

- a. A description of the present bargaining unit and date of certification or recognition, if applicable.
- b. A description of the proposed composition or amendment.
- c. The reason why the proposed composition or amendment is sought.

[560 IAC 2-2.1-3.](#)

A sample petition may be found on the IEERB website at [www.in.gov/ieerb/2410.htm](http://www.in.gov/ieerb/2410.htm).

### B. Notice

After a complaint or petition is filed, the school employer must draft a notice of the petition. The notice must include:

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10556511 (H.E. Rep. Sep. 27, 1990)). Therefore, any interested party may reopen the question of the bargaining unit based on actual job performance; some hearing officers will set a certain window within the next year. *See id.*

<sup>7</sup> The position was found to be part of the bargaining unit based on the following findings on the position: (1) primary responsibility would not be the protection of property; (2) no unrestricted access to confidential personnel files; (3) no functional responsibilities or knowledge concerning dealing between the school employer and its employees; and (4) position would not require evaluation of school employees or recommendation concerning the employment of school employees. *Tipton*, R-93-05-7945, 1993 WL 13653501 (H.E. Rep. June 28, 1993).

<sup>8</sup> The Director of Technology was excluded from the bargaining unit because the job was found to fall under the definition of supervisor and confidential employee based on the following findings regarding the position: (1) direct and monitor school employees in the development and implementation of technology throughout the school corporation; (2) primary responsibility to evaluate school employees who are media specialists and librarians. The Director also would contribute to the evaluations of other school employees with respect to their use or lack of use of technology; (3) influential recommendation to the Superintendent concerning the hiring, assignment, transfer, discipline, and discharge of school employees, to the extent that such recommendations relate to the use or lack of use of technology; (4) unrestricted access to the confidential personnel files of bargaining unit members; and (5) participate with supervisory personnel in staff meetings in which bargaining issues will be discussed. *Tipton*, R-93-05- 7945, 1993 WL 13653501 (H.E. Rep. June 28, 1993); *see also Marion*, R-92-07-2865 (H.E. Rep. Mar. 5, 1993) (excluding computer technology coordinator as supervisor); *Tippecanoe* (excluding Coordinator of Gifted and Enrichment Education; Coordinator of Instructional Services).

- a. A description of the existing bargaining unit.
- b. A description of the proposed changes to the bargaining unit.
- c. The current address, telephone number, and email address for IEERB.
- d. That objections to the composition or amendment may be made to IEERB within 30 days of the first date of notice .

The school employer must then submit a copy of the notice to the executive director for approval before it is sent to the school employees. After the executive director has approved the notice, the school employer must provide the notice to school employees. The notice may be provided by email, posting, or any other method reasonably calculated to apprise all certificated employees of the disputed unit composition or amendment. [560 IAC 2-2.1-3.](#)

### **C. Response**

Any party opposing a petition or complaint may file a response with IEERB within 20 days of receipt of initial notice. [560 IAC 2-3.1-4.](#)

### **D. Hearing Officer**

The executive director will appoint a hearing officer to make a determination on the disputed unit composition or amendment. The hearing officer will hold a hearing, unless the parties all waive the hearing and request a determination based solely on written submissions. The hearing officer will consider evidence submitted at the hearing or through written submissions and make a determination on the disputed unit composition or amendment. [560 IAC 2-3.1-4.](#)

The decision on whether a position is included in, or excluded from, the unit must be based on, but is not limited to, the following considerations:

- a. efficient administration of school operations;
- b. the existence of a community of interest among school employees;
- c. the effects on the school corporation and school employees of fragmentation of units; and
- d. recommendations of the parties involved.

## **VI. Frequently Asked Questions for Changing the Bargaining Unit**

### **A. What is a bargaining unit?**

A bargaining unit is a group of two or more school employees who: (1) share a community of interest; and (2) are grouped together for purposes of collective bargaining.

### **B. What is a school employee?**

Not all employees of the school are school employees as defined in the collective bargaining statute. School employees are full-time certificated employees, meaning that they are school employees whose contract with the school requires that the person hold a license or permit from the Indiana Department of Education or be an unlicensed instruction hired in accordance with IC 20-28-5-22.1. School employees can also include career and technical education (CTE) instructors who are not certificated but meet the education or experience requirements of IC 20-28-5-22.1. School employees cannot be supervisors, confidential employees, employees performing security work, or other non-certificated employees.

**C. Do non-certificated CTE instructors have to be part of the bargaining unit?**

No. A non-certificated CTE instructor is considered a teacher for the purposes of collective bargaining. The bargaining units, however, are limited to only certain school employees that are described in description of the composition of the bargaining unit. Currently, the bargaining units include only certificated employees. If a party wishes to include a non-certificated CTE instructor, the bargaining unit will need to be amended utilizing one of the two methods described above. If non-certificated CTE instructors become part of the bargaining unit, the school employer will have to provide the CTE instructor with compensation, benefits and grievance procedures consistent with the CBA.

**D. How do I know what my school's bargaining unit is?**

A description of the composition of a bargaining unit is a required part of the collective bargaining agreement. The CBA must be posted on a school's website, and also can be found on IEERB's website (through Gateway and IEERB Search).

**E. When do I have to go through the bargaining unit amendment process?**

The parties may go through the unit amendment process anytime either or both parties want to add a position to, or remove a position from, the bargaining unit. Therefore, all interested parties should know the current bargaining unit and any necessary amendments to it. Amending the bargaining unit requires 30 days' notice, and should be done with sufficient time for notice prior to the desired effective date. A change in the title of an existing position, that does not include or exclude any school employee, is not an amendment to a bargaining unit and does not require notice to teachers. IEERB must still be notified and certify the change.

**F. Can we bargain the amendment at the bargaining table?**

No. Changing the bargaining unit is separate from the bargaining process. The parties may agree to an amendment in the bargaining unit. However, that agreement does not amend the unit until appropriate notice has been posted and sent to IEERB, and a bargaining unit order has been issued. If the parties agree to amend the bargaining unit at the bargaining table, that amendment may not be included in the CBA, unless the unit amendment process is completed and an order



issued on the same date as ratification. The parties should confirm that certification is official before ratifying.

**G. Can the parties agree to any amendment?**

No. The parties have flexibility to agree on who is in the unit; however, only school employees may be in the unit. Therefore, all members of the bargaining unit must be certificated employees, unless the school employee is a non-certificated CTE instructor who has met the education and experience requirements in IC 20-28-5-22.1. A bargaining unit cannot include a certificated employee that is a supervisor, confidential employee, or employee performing security work. IEERB's Executive Director may deny any proposed unit amendment that is clearly contrary to statute and may conduct an investigation to determine whether a proposed amendment is appropriate.

**H. How must a notice be provided?**

Regardless of the type of notice, notice may be provided by email, posting, or any other method reasonably calculated to apprise all certificated employees of the proposed amendment to the bargaining unit.

**I. Does the school employer have to use a different method of notice during summer break?**

The school employer should make a good faith effort to provide actual notice to the members of the bargaining unit when school is not in session. If the school intends to only post notice in the school, as opposed to sending the notice out individually to each school employee, the school should make sure that the posting is up for 30 days that do not include the scheduled summer break. The school should consider using multiple methods of notification during the scheduled summer break. Planning is key when notice is provided during scheduled breaks in order to ensure that the school employees have a reasonable opportunity to object to the amendment of the bargaining unit.

**J. Is the required notice the same as what is posted for all open positions?**

No. The bargaining unit notice is solely based on the position's status with regard to the bargaining unit. A sample agree or disputed notice may be found at [www.in.gov/ieerb/2410.htm](http://www.in.gov/ieerb/2410.htm).

**K. What must be in the notice for an agreed amendment?**

A sample notice may be found at <https://www.in.gov/ieerb/2410.htm>. The following information must be in the notice for an agreed amendment:

- Description of the existing bargaining unit;

- Description of the proposed changes to the bargaining unit;
- The current address, telephone number, and email address for IEERB; and
- That objection to the proposed amendment may be made to IEERB within 30 days of the first date of notice.

**L. Is the bargaining unit changed immediately after notice is posted?**

No. The notice must be submitted to IEERB, who will review the notice to ensure substantial compliance with the law. If the notice is substantially compliant, IEERB will certify the change to the bargaining unit. Unit amendments become effective upon certification by the IEERB and constitute the unit to be used for the next collective bargaining agreement. Certification of a new bargaining unit does not modify the unit in an existing collective bargaining agreement.

**M. Will IEERB tell me if a position would be determined to be included in the unit?**

No. IEERB cannot provide an advisory opinion and will not address hypotheticals.