

Transcript of the

ORIGINAL

IEERB Board Hearing

Date: August 20, 2012



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IEERB BOARD MEETING

TAKEN ON
AUGUST 20, 2012

AT
INDIANA GOVERNMENT CENTER NORTH
IEERB BOARDROOM N1045
100 NORTH SENATE AVENUE
INDIANAPOLIS, INDIANA

COMMENCING AT
9:00 A.M.

STENOGRAPHIC RECORD
BY
JODIE FRANZEN, RPR, CSR
NOTARY PUBLIC

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1 MR. MAPES: Good morning. We
2 can bring this meeting to order of the
3 Indiana Education Employment Relations
4 Board. The first thing we would like to
5 do is welcome everyone today. My
6 name is Pat Mapes. I'm the new chairman
7 of the IEERB board. I would like
8 to introduce John Krauss. John has been
9 an IEERB board member for a while. We
10 do have a vacancy currently. Steve
11 Hayford has resigned his position, and
12 the Governor's office will be searching
13 for a new member and appointing one
14 hopefully soon. Our new general
15 counsel, Sarah Cudahy is here today as
16 well. And with that, we'll get started
17 with our meeting today.

18 MR. KRAUSS: Mr. Chair, in that I
19 was the remaining board member who
20 attended the February 16th board meeting,
21 I move the approval of the minutes of
22 that meeting.

23 MR. MAPES: And I would second
24 those.

25 All of those who approve, indicate

1 by saying aye.

2 MR. KRAUSS: Aye.

3 MR. MAPES: I will abstain from
4 that since I was not in attendance. So
5 it passes one-zero.

6 The real reason we're here today
7 is to discuss the rulemaking process that
8 the IEERB board had started and we're
9 going to have some discussion over the
10 comments that have been received in the
11 public hearing that we had and we're
12 going to let Sarah go through all of the
13 information that we have for the
14 rulemaking process.

15 MS. CUDAHY: Okay. So we're going
16 to go through this. It represents all of
17 the written comments that were submitted
18 during the public comment period time,
19 which ended August 16th as well as the
20 two public hearings June 22nd of 2012 and
21 August 16th of 2012. I'm going to go
22 through each of the comments one by one
23 as well as the Board's response to those
24 comments.

25 The first comment was IEERB's

1 compliance review of the LBOs should
2 either be confined to whether the parties
3 have submitted all required
4 documentation, or eliminated entirely.
5 Although factfinding timelines are short,
6 24 hours is a short amount of time to
7 make substantive changes, and the LBO
8 will be reviewed for substance by the
9 factfinder. If IEERB does review LBOs
10 for compliance, IEERB should include a
11 procedure whereby it retains the ability
12 to reject LBOs not substantially in
13 compliance with IEERB's requirements. If
14 the LBO is substantially compliant, IEERB
15 should notify the submitting party, who
16 will have 24 hours to resubmit or provide
17 the requested documents.

18 The Board agrees with the comment
19 raised. As such, the Board will delete
20 proposed section 560 IAC 2-4-3.1(e) as
21 written and revise it and also amend
22 proposed section 560 IAC 2-4-3.1(d) to
23 provide for non-substantive compliance
24 review of LBOs by IEERB prior to the
25 appointment of a factfinder.

1 And I should say these comments
2 are summaries of the public comments.
3 These summaries are available online as
4 well as the full transcript of the public
5 hearings.

6 Comment 2: IEERB does not need to
7 notify the parties when the LBOs have
8 been reviewed and accepted, especially if
9 IEERB will be notifying the parties if
10 their LBO is not compliant.

11 The Board agrees with the comment
12 raised. As such, the Board will delete
13 proposed section 560 IAC 2-4-3.1(d)(2)
14 providing that IEERB will notify the
15 parties when the LBOs have been reviewed
16 and accepted.

17 Comment 3: Will IEERB be
18 developing an LBO form pursuant to 560
19 IAC 2-4-3.1?

20 MR. KRAUSS: Can I make an
21 interjection?

22 MS. CUDAHY: Yes.

23 MR. KRAUSS: The language in
24 Comment 2 I think is an error. The Board
25 doesn't agree. The Board hasn't

1 considered this comment.

2 MS. CUDAHY: Agreed. Sorry.

3 MR. KRAUSS: So we need to strike
4 that word.

5 MS. CUDAHY: So Comment 3 -- and
6 that should be for Comment 1 and 2 strike
7 that.

8 MR. KRAUSS: I might suggest "the
9 Board might consider" to replace that
10 rather than "agree".

11 MS. CUDAHY: Right.

12 Comment 3 -- sorry. What you're
13 not seeing is I'm doing "suggested" on
14 here, and I didn't say that.

15 So Comment 3: Will IEERB be
16 developing an LBO form pursuant to 560
17 IAC 2-4-3.1?

18 And the suggestion -- what the
19 Board can consider -- is the need for
20 parties to know the requirements of an
21 LBO and to consider amending 560
22 IAC 2-4-3.1 to include information on LBO
23 requirements.

24 Comment 4: Do the parties need to
25 include all bargained items in an LBO or

1 only what is in dispute?

2 Again, the Board can agree to
3 recognize the need for parties to know
4 the requirements of an LBO and to amend
5 560 IAC 2-4-3.1 to include information on
6 LBO requirements.

7 Comment 5: Under 560 IAC 2-4-3.1,
8 what happens if a party resubmits a
9 non-compliant LBO?

10 And the answer is the rules
11 provide that if a party resubmits a
12 non-compliant LBO, the LBO may be
13 rejected. The revised rule also allows
14 IEERB to reject a substantially
15 non-compliant LBO outright if they adopt
16 the public comments No. 1 and 2.

17 Comment 6: Proposed rule 560
18 IAC 2-4-4(b) provides that parties that
19 settle during factfinding should submit
20 identical LBOs. Will those LBOs be
21 reviewed by the factfinder? And if so,
22 could they be rejected by the factfinder?

23
24 IC 20-29-6-15.1 provides that
25 factfinding must culminate in the

1 factfinder imposing contract terms on the
2 parties. The factfinder must select one
3 party's last best offer as the contract
4 terms. The factfinder's order must be
5 restricted to only those items permitted
6 under IC 20-29-6-4 and cannot put the
7 employer in a position of deficit
8 financing. As such, the Board can decide
9 whether or not to revise the rule or to
10 leave the rule as it is in place under
11 the statute.

12 Comment 7 --

13 MR. KRAUSS: Wait, wait, wait.

14 (Pause.) Okay. Go ahead.

15 MS. CUDAHY: Comment 7: Employee
16 organizations and school employers should
17 have equal access via email to teachers
18 regarding representation elections.

19 So the Board can decide whether or
20 not they want to provide for equal access
21 via email, recognizing IEERB's
22 requirements under the Access to Public
23 Records Act.

24 Comment 8: The rules should not
25 delete the parties' ability to request a

1 copy of vote tallies after mail-in
2 representation election under 560
3 IAC 2-2-9(g).

4 Under the Access to Public Records
5 Act a copy of vote tallies is something
6 that would be available to either the
7 parties or the public. The Board could
8 still decide to undelete this particular
9 position in the final adoption of the
10 rules.

11 Comment 9: Does the 60 days for
12 declaring impasse under 560 IAC 2-4-1 run
13 from the date the parties begin
14 bargaining or from August 1st?

15 The Board can decide to clarify
16 when impasse will be declared under this
17 proposed rule.

18 And finally, Comment 10: The
19 rules should include timelines for
20 schools to provide requested information
21 to the exclusive representatives.

22 Exclusive representatives may
23 obtain information relevant to impasse
24 procedures through a request to the
25 school corporation pursuant to the

1 Indiana Access to Public Records Act. So
2 the Board can decide and take into
3 consideration whether or not they want to
4 put into place a timeline under the rules
5 at this time.

6 MR. KRAUSS: I have just a
7 clarification. Under Comment 3, I
8 realize that the requirements can be
9 substantive and can be almost
10 bureaucratic in terms of how things are
11 labeled or described. Would it be
12 worthwhile to -- and I ask this
13 open-ended question -- that we enable the
14 staff to periodically post on the website
15 the requirements and the format of how
16 these things should be submitted,
17 therefore it will be a little easier to
18 change if the name of a form that DOE --
19 or something else happens -- we don't
20 have to go back and change the rule. And
21 I don't mean to put something on the web
22 as a requirement that is substantive but
23 it is procedural in form-wise.

24 MR. MAPES: I would think so, only
25 from the standpoint of if legislation

1 also changes and something else gets put
2 in that a last best offer or some other
3 form has to be changed, it would be great
4 for the staff --

5 MR. KRAUSS: A form for the
6 procedure.

7 MR. MAPES: Yeah. It would be
8 great for the staff to have the
9 flexibility instead of going through the
10 rulemaking process.

11 MR. KRAUSS: So I would suggest
12 that while this form under 560
13 IAC 2-4-3.1 we would be -- develop -- in
14 the minutes we may just say "it is our
15 desire", "our goal", or "our request" to
16 develop -- to staff to develop that form
17 and ask for comments about the form and
18 then publish it on the web.

19 MS. CUDAHY: Okay.

20 MR. KRAUSS: But we've got a fine
21 line between substance and procedure.
22 But why should we have to wait?

23 I have another question in also
24 dealing with the web. I realized under
25 Comment 7, when I was reading the

1 transcript over and I read the comments
2 and everything else, Comment 7 tends to
3 come from a confusion. Somebody
4 obviously doesn't know that they can have
5 access to tallies and other things, so I
6 think we need to have something of a
7 "what your rights are" or some link on
8 the web to the Access to Public Records
9 Act.

10 MS. CUDAHY: And I think you're
11 referring to Comment 8.

12 MR. KRAUSS: Sorry. Comment 8.
13 But Comment 7 also references the public
14 records act. I know 8 does, too. It
15 seems to be obviously somebody doesn't
16 know, therefore we have a duty to educate
17 them and put it up on the web.

18 On Comment 9, what's our procedure
19 for telling parties when impasse has been
20 declared? When do we do that? I mean a
21 person is asking to clarify this. So
22 when do we do it?

23 MR. MAPES: So after August 1
24 starts the count of 60 days.

25 MR. KRAUSS: So how do we give

1 notice?

2 MR. MAPES: We'll do it two ways.
3 We'll do it electronically via email to
4 both parties and also write and send
5 letters to both parties. Because if we
6 don't receive a contract by that 60-day
7 count, the statute pretty much
8 automatically puts them into impasse, so
9 that's where they're at.

10 MR. KRAUSS: Okay. That's the
11 notice. Do we -- and I don't say this
12 with a conclusion in mind. Are we
13 keeping a tally on the web, or anywhere
14 else public, of the number of
15 corporations that are at impasse or have
16 completed the contract?

17 MR. MAPES: Yes, we will.
18 Obviously we haven't got that started
19 yet.

20 MR. KRAUSS: You haven't started
21 yet. We're not just saying you look down
22 there and you say -- I mean there is a
23 psychological thing, too, here, as to
24 95 percent of the schools have signed,
25 and these are them. Or 95 percent of the

1 schools haven't signed.

2 MS. CUDAHY: And what is available
3 online under the "research" section of
4 IEERB's website are all of the contracts
5 that we have in, so as they roll in, we
6 will have them as well as a tally.

7 MR. MAPES: And as an agency,
8 that's one of our metrics that we'll be
9 recording as far as success and the
10 procedure, whether it be impasse or --

11 MR. KRAUSS: In 10 we have another
12 comment -- another reference to public
13 access records again, so --

14 MR. MAPES: Yep.

15 MR. KRAUSS: In my reading of the
16 transcripts and the comments, I think it
17 was a healthy exercise. I appreciate the
18 comments that were made. And as I said
19 in the previous Board meeting, this is a
20 new law and new rules and everything is
21 brand new and if anyone can help us
22 navigate the implementation of this and
23 do it well and do it clear, I'm all for
24 it. I thank you.

25 Mr. Chairman, I move that we adopt

1 the suggestions. I leave it to the staff
2 to make sure that we get everything
3 precisely written as reflected in the
4 suggestions they make, plus the comments
5 that I made.

6 MR. MAPES: Okay. We have had a
7 motion to approve the revision by
8 Mr. Krauss. I would second that.

9 MR. KRAUSS: Any discussion?

10 MR. MAPES: Any discussion?

11 (No response.)

12 MR. MAPES: Seeing there is none,
13 we'll take a vote.

14 All of those who approve, say aye.

15 MR. KRAUSS: Aye.

16 MR. MAPES: Aye.

17 Opposed?

18 (No response.)

19 MR. MAPES: And that takes care of
20 our changes to the rules.

21 So the last thing that we would
22 like to do, just so we have the rule as a
23 whole approved, I think that's important
24 for us for the process of what LSA
25 expects us to do, we would now need a

1 motion to approve a final rule under
2 IC 20-29.

3 MR. KRAUSS: I move that we
4 approve it subject to the technical
5 changes that we have just made the motion
6 and that be incorporated and so that we
7 approve the body of that action.

8 MR. MAPES: And I would second
9 that.

10 Any discussion?

11 (No response.)

12 MR. MAPES: All of those in favor
13 signify by saying aye.

14 MR. KRAUSS: Aye.

15 MR. MAPES: Aye.

16 Opposed?

17 (No response.)

18 MR. MAPES: And we have a rule to
19 move forward due process now.

20 Any other new business?

21 MS. CUDAHY: Do you want to go
22 through the specific revisions?

23 MR. KRAUSS: Let me go back to
24 the -- we have suggestions based on the
25 public comment and the transcripts.

1 There are technical revisions that
2 have -- that we welcome that should be
3 made. I have a memorandum that IEERB
4 counsel has given me. It is reflecting
5 19 technical revisions. I move that they
6 be incorporated in the motion that I had
7 made. I ask that we revise my motion to
8 incorporate those.

9 MR. MAPES: That's what I took as
10 the "technical" being.

11 MR. KRAUSS: That technical thing.

12 MS. CUDAHY: I will provide you a
13 copy of this.

14 THE REPORTER: Thank you.

15 MR. KRAUSS: Is it clear what I
16 have just said we have already done?

17 MR. MAPES: I took as being such
18 when we said we were doing the technical
19 revisions as well, so that's why I didn't
20 move any other area for that.

21 Any new business? We have none.

22 John, do you have any new
23 business?

24 MR. KRAUSS: No.

25 MR. MAPES: Okay. Any public

1 comments at this time?

2 (No response.)

3 MR. MAPES: Seeing that there is
4 none, we have no future meeting dates at
5 this point in time as things --

6 MS. CUDAHY: Sorry. Just for open
7 discussion, the review of Indiana
8 Economic Development Corporation's
9 comments to IEERB's proposed rules. We
10 have sent the rules to IEDC. They came
11 back and did not have any suggested
12 changes and approved the rule as written.

13 MR. MAPES: Okay. If there is
14 nothing else, I will take a motion to
15 adjourn.

16 MR. KRAUSS: So moved.

17 MR. MAPES: Second.

18 Motion to adjourn, vote by saying
19 aye.

20 MR. KRAUSS: Aye.

21 MR. MAPES: Aye.

22 Thank you very much for attending
23 today.

24

25

1 STATE OF INDIANA)
) SS:
 2 COUNTY OF HAMILTON)

3

4 I, Jodie Franzen, RPR, CSR, and Notary
 5 Public in and for said county and state, do
 6 hereby certify that said public hearing was
 7 taken before me at the time and place herein set
 8 forth and was taken down by me in shorthand and
 9 thereafter transcribed into typewriting under my
 10 direction and supervision.

11

12 I further certify that I am neither
 13 counsel for nor related to any party to said
 14 action, nor in any way interested in the outcome
 15 thereof.

16

17 IN WITNESS WHEREOF, I have subscribed my
 18 name and affixed my seal this 21st day of
 19 August, 2012.

20

21 My Commission Expires:
 22 June 12, 2016

23



24

JODIE FRANZEN, RPR

25

CSR #01-R-3011

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To: IEERB Board Members
Cc: Andrew Kossack, Deputy Chief of Staff, DOE
From: Sarah Cudahy, General Counsel, IEERB
Date: August 20, 2012

Re: Guide to Final Adoption of LSA #12-112

I. Reminders

-IC 20-29-3-11 provides that IEERB has the power to adopt, amend, or rescind rules the board considers necessary and administratively feasible to carry out IC 20-29.

-Prior to adopting a rule, the Board "shall fully consider comments received at the public hearing ... and may consider any other information" Review of a written record or summary of the public hearing constitutes full consideration.

-An agency may not adopt a rule that *substantially differs* from the version of the proposed rule published in the Indiana register unless it is a logical outgrowth of any proposed rule as supported by any written public comments.

II. Public Comments & Recommended Revisions

a. Public Comments & Suggested Board Comment

Comment 1: IEERB's compliance review of LBOs should either be confined to whether the parties have submitted all required documentation, or eliminated entirely. Although factfinding timelines are short, 24 hours is a short amount of time to make substantive changes, and the LBO will be reviewed for substance by the Factfinder. If IEERB does review LBOs for compliance, IEERB should include a procedure whereby it retains the ability to reject LBOs not substantially in compliance with IEERB's requirements. If the LBO is substantially compliant, IEERB should notify the submitting party, who will have twenty-four (24) hours to resubmit or provide the requested documents.

Suggested Comment: The Board agrees with the comment raised. As such, the Board will delete proposed section 560 IAC 2-4-3.1(e) and amend proposed section 560 IAC 2-4-3.1(d) to provide for non-substantive compliance review of LBOs by IEERB prior to the appointment of a factfinder.

Comment 2: IEERB does not need to notify the parties when the LBOs have been reviewed and accepted, especially if IEERB will be notifying the parties if their LBO is not compliant.

Suggested Comment: The Board agrees with the comment raised. As such, the Board will delete proposed section 560 IAC 2-4-3.1(d)(2) providing that IEERB will notify the parties when the LBOs have been reviewed and accepted.

Comment 3: Will IEERB be developing an LBO form pursuant to 560 IAC 2-4-3.1?

Suggested Comment: The Board recognizes the need for parties to know the requirements of an LBO. As such, the Board will amend 560 IAC 2-4-3.1 to include information on LBO requirements.

Comment 4: Do the parties need to include all bargained items in an LBO, or only what is in dispute?

Suggested Comment: The Board recognizes the need for parties to know the requirements of an LBO. As such, it will make the change afore mentioned.

Comment 5: Under 560 IAC 2-4-3.1, what happens if a party resubmits a non-compliant LBO?

Suggested Comment: The rules already provide that if a party resubmits a non-compliant LBO, the LBO may be rejected. Moreover, the revised rule also allows IEERB to reject a substantially non-compliant LBO outright.

Comment 6: Proposed rule 560 IAC 2-4-4(b) provides that parties that settle during factfinding should submit identical LBOs. Will those LBOs be reviewed by the factfinder, and, if so, could they be rejected by the factfinder?

Suggested Comment: IC 20-29-6-15.1 provides that factfinding must culminate in the factfinder imposing contract terms on the parties. The factfinder must select one party's last best offer as the contract terms. The factfinder's order must be restricted to only those items permitted under IC 20-29-6-4, and cannot put the employer in a position of deficit financing. Therefore, the factfinder will have to review and analyze the identical LBOs, including possibly rejecting them. As such, the Board does not feel that any revision to the rule is necessary at this time.

Comment 7: Employee organizations and school employers should have equal access via email to teachers regarding representation elections.

Suggested Comment: While the Board recognizes the need for equal access to teachers, there are complications with IEERB's requirements under the Access to Public Records Act. As such, the Board will table this suggestion for further review.

Comment 8: The rules should not delete the parties' ability to request a copy of vote tallies after a mail-in representation election under 560 IAC 2-2-9(g).

Suggested Comment: The Board recognizes the need for parties to be able to quickly receive a complete tally of the ballots. Therefore, the Board will undelete the provision.

Comment 9: Does the 60 days for declaring impasse under 560 IAC 2-4-1 run from the date the parties begin bargaining or from August 1st?

Suggested Comment: The Board recognizes the need for the parties to know when impasse may be declared. As such, the Board will amend 560 IAC 2-4-1 to clarify when impasse will be declared.

Comment 10: The rules should include timelines for schools to provide requested information to the exclusive representatives.

Suggested Comment: Exclusive representatives may obtain information relevant to impasse procedures through a request to the school corporation pursuant to the Indiana Access to Public Records Act. As such, the Board will not revise the rules at this time. However, should there be an issue with timely dissemination of information from either party, the Board will reconsider.

b. Revisions

1. Add IC 20-29-3-11 to the Authority tag line for each proposed rule.
2. Change fact-finding to factfinding throughout 560 IAC 2.
3. Add to 560 IAC 2-1-2 (Definitions) the following definition of contract:
“‘Contract’ means a written agreement reached through collective bargaining that is ratified by the governing body of the school corporation and the exclusive representative.”
4. Change reference in 560 IAC 2-2-9(b) of IC 20-7.5-1-10 to IC 20-29-5-3.
5. Change reference in 560 IAC 2-2-9(f) of “interested parties” to “all employee organizations listed on the ballot.”
6. Undelete the following provision of 560 IAC 2-2-9(g): “Upon request, a complete tally of the ballots will be furnished to the parties at the conclusion of the count.”
7. Delete from 560 IAC 2-4-1(a): If the parties do not reach a collective bargaining agreement sixty (60) days following the beginning of formal bargaining collectively between the parties, the IEERB shall declare impasse.
8. Add to 560 IAC 2-4-1(a): “The IEERB shall declare impasse after September 30 if either (1) the parties notify the IEERB of impasse or (2) the parties are, or are supposed to be under the terms of their contract, in collective bargaining for all or part of a contract and have not submitted a contract to the IEERB.”
9. Add “email address” to information required by the parties pursuant to 560 IAC 2-4-1(b).
10. Add to 560 IAC 2-4-1(c): “Unless otherwise indicated in these rules, all correspondence for impasse procedures shall be via email. Parties or the IEERB may, in addition to email, correspond via mail, facsimile, or hand delivery. Receipt of an email will be presumed upon dispatch.”
11. Add “by the board” to 560 IAC 2-4-3 (Appointment of mediator).
12. Add to proposed section 560 IAC 2-4-3.1(b): Prior to October 1st of each year, the IEERB shall post on its website the required format, information, and documents for an LBO for that year’s bargaining season. This information also will be sent to the parties upon declaration of impasse.

13. Amend proposed section 560 IAC 2-4-3.1(d) to read: IEERB shall review the LBOs to ensure that the LBO is in the required format and contains the required information and documents. Failure to substantially comply with the requirements of an LBO could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.
14. Amend proposed section 560 IAC 2-4-3.1(e) If a party has substantially complied with the LBO requirements, IEERB will notify the submitting party, who will have twenty-four (24) hours to provide the requested format, information or documents. Failure to submit an LBO as requested by IEERB could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.
15. Add IC 20-29-8-7 as Authority and IC 20-29-8 as Affected to 560 IAC 2-4-4 (Fact-finding).
16. Change "audio tape of the proceedings" in 560 IAC 2-4-4 to "recording of the proceedings."
17. Change IC 20-20-6-15-1 to IC 20-29-6-15.1 in Authority section of 560 IAC 2-4-5.
18. Amend 560 IAC 2-4-5 (Initiation of mediation or fact-finding) to read: "The chairman or chairperson or his or her designee shall initiate mediation pursuant to 560 IAC 2-4-1 and 560 IAC 2-4-3, regardless of whether the parties have requested it. The chairman or chairperson or his or her designee shall initiate the factfinding process if mediation does not result in a contract."
19. Amend 560 IAC 2-4-6 (Appeal of factfinding reports) to add that additional briefs may not be filed "unless requested by the board."