Policy Advisor

By Julie M. Slavens, Senior Counsel/Director of Policy Services

TOPICS:

I. COLLECTIVE BARGAINING PUBLIC HEARING AND MEETINGS – PUBLIC COMMENTS POLICY

II. SEARCH FEES FOR PUBLIC RECORDS REQUESTS

I. COLLECTIVE BARGAINING PUBLIC HEARING AND MEETINGS – PUBLIC COMMENTS POLICY

The 2019 Indiana General Assembly passed legislation (SEA 390) that amended the collective bargaining law. The Act requires two additional meetings to be conducted by the school employer as part of the collective bargaining process – a public hearing before the formal collective bargaining period begins and a meeting at the end of formal collective bargaining. School employer for purposes of the collective bargaining law means the governing body of the school corporation and persons who are authorized to act on behalf of the governing body for collective bargaining purposes. (SEA 390 amended IC 20-29-6-1 and IC 20-29-6-19.)

The first meeting required is a public hearing that must take place before formal collective bargaining begins, which by law is September 15. At this hearing, public testimony must be taken on the items to be bargained and to discuss such items. The items required to be bargained are wages, salaries, and wage-related benefits. The second meeting required is a public meeting of the school employer to discuss the tentatively agreed-upon collective bargaining agreement (tentative agreement). There is no requirement to take public comments or testimony at this meeting. In addition to these two meetings, the Act requires the school board to take public testimony or comments on the tentative agreement prior to the school board's vote to ratify the collective bargaining agreement. (The Indiana Education Employment Relations Board (IEERB) provided guidance on the requirements of these additional meetings, which may be found at https://www.in.gov/ieerb/files/SB%20390%20Guidance%20Updated%207_29.pdf.)

Public Hearing

The first meeting, which is referred to in the law as a public hearing so will be referred to as such in this article, must include a representative of the exclusive representative of the teachers (i.e., the teachers' union), as the law requires both parties to hold the public hearing jointly. The law is silent as to whether the school board or individual members of the school board are required to be present. Since school employer by definition includes a representative of the school board and the topic of discussion for the public hearing is the required bargaining subjects, IEERB has interpreted the law not to require the school board to "host" the public hearing but rather a representative of the school board should attend and conduct the meeting, preferably a member of the school board's bargaining team. ISBA agrees with this interpretation. This interpretation does not preclude the school board from conducting the public hearing if it chooses to do so; nor does it preclude individual school board members from

attending the public hearing.

The law does not require a specific public notice for the public hearing. The school corporation should at a minimum follow the Open Door Law notice of meeting provisions for the public hearing as this will allow school board members to attend the public hearing in the situations where the school board is not conducting the public hearing.

The law requires public testimony to be taken by the parties at this meeting. School boards should consider addressing the procedures or process for taking the public testimony at the public hearing. This public hearing is not a school board meeting wherein a public participation at board meetings policy applies; and if a school board does not allow public comments at its meetings, the policy could not be applied at the public hearing as public testimony is required by the law. School boards need to determine the specific procedure for taking public testimony at the public hearing. This procedure or process can be addressed in the school board policy on public participation by including a separate provision on the collective bargaining public hearing. If the school board does not allow public comments at its board meetings as a matter of policy or practice, a school board should adopt a policy or procedure to address the public testimony process at the public hearing. The school board should also keep in mind how the public testimony will be recorded and shared with the school board members after the hearing takes place, especially if the school board or any individual member does not attend the public hearing. All school board members should receive or be given access to the public testimony given at the public hearing.

Tentative Collective Bargaining Agreement Meeting (TA Meeting)

The second meeting requires the school employer to discuss the tentative agreement in a public meeting. Since the school board is the party required to ratify the tentative agreement, the school board must conduct this meeting. This meeting is required to be held at least 72 calendar hours before the meeting at which the school board will vote to ratify the tentative agreement. The time (including the date) and place of the TA meeting must be posted on the school corporation's website at least 72 calendar hours prior to the TA meeting. The tentative agreement must also be posted on the school corporation website at least 72 calendar hours before the TA meeting. Both the notice and the tentative agreement should be posted together. Keep in mind this is a board meeting under the Open Door Law, so its notice of meeting requirements must be followed. If the 72 calendar hours for the notice does not include a Saturday, Sunday, or a legal holiday, it will meet the requirements of the Open Door Law; otherwise, the board will have to give an additional notice of the TA meeting that complies with the Open Door Law. (The state legal holidays during the Fall semester include Columbus Day, Election Day, and Veteran's Day; the legal holidays for the state may be found at IC 1-1-9-1.) The law does not require public comment at this meeting. The board may choose to do so; if the board chooses to do so, the procedures should be addressed in its public participation at school board meetings policy.

Ratification of Tentative Agreement – Board Meeting

The law requires a school board to take public comments on the tentative agreement at the board meeting where the school board ratifies the tentative agreement. The school board must take public comments on the tentative agreement even though it does not allow public comments at its board meetings. The public comments should be taken at the point in the agenda the school board will ratify the agreement and must be taken before the school board votes on the tentative agreement. If a school board has a policy or practice of taking general public comments as a separate agenda item, the public comments on the tentative agreement cannot be taken during the general public comments section of the agenda but should be taken at the point in the agenda the school board is voting to ratify the tentative agreement.

Given the public testimony and public comments requirements for these meetings, a school board should review its policy, procedures, and/or practices for public comments at board meetings and amend them accordingly to meet the requirements of SEA 390. If a school board currently has a policy, procedure, or practice of taking public comments at its board meetings, the current criteria for signing up, time limits, questions to the board, and other related items may continue to be used by the school board in the newly required meetings.

II. SEARCH FEES FOR PUBLIC RECORDS REQUESTS

The 2019 Indiana General Assembly also passed HEA 1629, which amended the Access to Public Records Act (APRA), specifically IC 5-14-3-8. This statute addresses when a fee may be charged for a public records request under the APRA. The amendment allows a school corporation to charge a search fee. The

search fee must be charged only for searches of records stored in an electronic format. The fee may be charged for the time of the search to complete in excess of five (5) hours; partial hours must be a pro-rated fee. The amount of the fee cannot be more than twenty dollars ($20) or the hourly rate of the person conducting the search, whichever is less. In addition, the law prohibits a minimum fee for the search to be established by the school corporation.

Computer processing time cannot be counted in the hours calculated for the search fee; such processing time is defined by the law as the "amount of time a computer takes to process a command or script to extract or copy electronically stored data that is the subject of a public records request." The law also states a school corporation can change only for the actual time spent searching for the electronically stored records by the person conducting the search and a good faith effort should be made by the school corporation to complete the search for such records in a reasonable period of time. Therefore, as an example, if a search for an electronically stored record per a public records request takes six and a half (6.5) hours and is completed by a person whose hourly rate is ten dollars ($10), and the computer processing time takes 15 minutes, the school corporation may charge a search fee of fifteen dollars ($15) under this new law. (6.5 hours minus 5 hours equals 1.5 hours times $10 equals $15.)

The law was not changed with respect to the ability to collect the fee before the records are disclosed; thus, a school corporation can and should collect the search fee before disclosing the records. The fees for copying documents remain the same as HEA 1629 or any other act did not change these fees.

Some school boards have a policy on requests for public records that include provisions on copying fees for public records requests. These policies should be reviewed and updated to include the search fees as authorized by HEA 1629.

If you have any questions or would like a copy of any document referred to in this article, please contact Julie M. Slavens, Staff Attorney, by phone: 317/639-0330 ext. 111 or by e-mail: jslavens@isba-ind.org.