

# ALERT

## GOVERNMENT SERVICES

March 2008

### New Indiana Law May Require Collective Bargaining With Public Safety Employees

Several of Barnes & Thornburg LLP's public sector clients have raised questions about a new Indiana law requiring collective bargaining with police and fire department employees in certain circumstances. This "Frequently Asked Questions" alert is intended to provide a general overview of these new requirements as you assess this significant change to Indiana law.

#### What is the new law?

Pursuant to legislation passed last year by the Indiana General Assembly, which went into effect on January 1, 2008, covered government units must "meet and confer" with the representative of their full-time police officers and firefighters ("employees") when requested in writing to do so. See, Indiana Code § 36-8-22. There are some exceptions described below.

#### Who is the Employees' Representative?

If at least 30 percent of the employees of the employer sign a petition requesting an election, the employer must conduct an election to determine the "exclusive recognized representative" of those employees. The election must be held at least 30 but no more than 60 days after the employer receives the petition. An organization becomes the exclusive recognized representative if it receives more than 50 percent of the votes cast in the election. The statute also applies to representatives that were recognized by the employer prior to January 1, 2008.

#### What Triggers the Obligation to Bargain?

An exclusive recognized representative of the employees, once elected, must notify the employer in writing that it intends to exercise its rights under this new law.

## **What is the Employer's Obligation once it Receives such a Letter?**

An employer who receives such a written request “shall meet and confer in good faith” at reasonable times, including meeting in advance of the budget making process, with the representative to discuss issues and proposals regarding wages, hours of employment and other conditions and terms of employment. The terms of any written agreement entered into by the employer and representative may not exceed 48 months and the employer cannot enter into any agreement that would require deficit financing to comply with its terms.

## **Are there any Exceptions to Coverage under the Statute?**

The new statute does not apply to employers who: (a) have a population less than 7,000; or (b) have adopted by ordinance, resolution, amendment or executive order provisions or procedures that permit its employees to form, join or assist employee organizations for collective bargaining purposes. The new law also does not annul, modify or limit collective bargaining agreements entered into prior to January 1, 2008.

## **Can Public Safety Employees Strike?**

No. The statute specifies that employees may not participate or encourage participation in a strike. An employee engaging in a strike is subject to discharge as provided in IC 36-8-3-4.

## **Can the Employer Terminate its Duty to Meet and Confer?**

An employer may terminate its duty to meet and confer with the representative if after meeting and conferring as required (i.e., in “good faith”), the parties are unable to reach a written agreement and at least 50 percent of the members of the legislative body of the employer vote to terminate the employer's duty to meet and confer. Written notice of that decision must be given to the representative. After receiving such notice, the representative may not exercise its rights under I.C. 36-8-22 for one full year beginning on the date the notice was received.

## **What new Rights were Created for Public Safety Employees?**

Public safety employees covered by the new law have the right to:

- meet and freely assemble on their own time to discuss their interests as employees;
- form, join or assist an employee organization on the employee's own time;
- solicit membership for the employee organization; and
- have the organization's dues deducted from the employee's wages.

An employee is not required to:

- become a member of an employee organization; or
- pay dues to an employee organization.

## What Rights does the Government Employer have?

An employer has the right to:

- direct its employee's work;
- hire, promote, demote, transfer, assign, and retain employees in positions;
- suspend, discharge, or otherwise discipline employees for just cause;
- maintain the efficiency of governmental operations;
- relieve employees from duties because of lack of work or for other legitimate reasons; and
- take actions that may be necessary to carry out the mission of the employer in emergencies.

For questions concerning this statute's new requirements, please contact John T.L. Koenig (317-231-7718) or Terry W. Dawson (317-231-7269) in Barnes & Thornburg's Labor and Employment Law Department, or any member of the Governmental Services and Finance Department.

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