

HOUSE No. 2596

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act regulating collective bargaining impasses involving public employees..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 150E of the General Laws is hereby amended by striking out
2 Section 9, as appearing in Section 1 of Chapter 347 of the Acts of 1977, and inserting in place
3 thereof the following section—Section 9. After a reasonable period of negotiation over the terms
4 of a collective bargaining agreement, either party or the parties acting jointly may petition the
5 board for a determination of the existence of an impasse. Upon receipt of such petition, the board
6 shall commence an investigation forthwith to determine if the parties have negotiated for a
7 reasonable period of time and if an impasse exists, within ten days of the receipt of such petition,
8 the board shall notify the parties of the results of its investigation. Failure to notify the parties
9 within ten days shall be taken to mean that an impasse exists. Within five days after such
10 determination, the board shall appoint a mediator to assist the parties in the resolution of the
11 impasse. In the alternative, the parties may agree upon a person to serve as a mediator and shall
12 notify the board of such agreement and choice of mediator. Any such mediator shall be
13 empowered to order the parties to provide specific representatives authorized to enter into a
14 collective bargaining agreement to be present at meetings held for said purpose of resolving the

15 impasse and negotiating such an agreement. After a reasonable period of mediation, not to exceed
16 twenty days from the date of appointment, said mediator shall issue to the board a report
17 indicating the results of his services in resolving the impasse. If the impasse continues after the
18 conclusion of mediation, either party or the parties acting jointly may petition the board to
19 initiate fact finding proceedings. Upon receipt of such petition, the board shall appoint a fact
20 finder, representative of the public, from a list of qualified persons maintained by the board. In
21 the alternative, the parties may agree upon a person to serve as fact finder and shall notify the
22 board of such agreement and choice of fact finder. No person shall be named as a fact finder who
23 has represented an employer or employee organization within the proceeding twelve months.
24 The fact finder shall be subject to the rules of the board and shall, in addition to powers
25 delegated to him by the board, have the power to mediate and to recommendations for the
26 resolution of the impasse. The fact finder shall transmit his findings and any recommendations
27 for the resolution of the impasse to the board and to both within thirty days after the date of his
28 appointment. If the impasse remains unresolved ten days after the transmittal of such findings
29 and recommendations, the board shall make them public. The parties by their own agreement
30 may mutually waive the fact finding provisions contained herein and may petition the board for
31 arbitration pursuant to Sections 4 or 4B of Chapter one thousand and seventy-eight of the Acts of
32 nineteen hundred and seventy-three. Said waiver shall not constitute a bar to any arbitration
33 award. Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an
34 impasse shall be binding on the parties and on the appropriate legislative body and effective and
35 enforceable pursuant to the provisions of Chapter one hundred and fifty C, provided that said
36 arbitration proceeding has been authorized by the appropriate legislative body or in the case of
37 school employees, by the appropriate school committee. If the impasse continues after the

38 publication of the fact finder's report, the issues in dispute shall be returned to the parties for
39 further bargaining. Any time limitations prescribed in this section may be extended by mutual
40 agreement of the parties and the board.

41 SECTION 2. Chapter 1078 of the Acts of 1973 is hereby amended by inserting after
42 Section 4A, as added by Section 1 of Chapter 730 of the Acts of 1977, the following section:—
43 Section 4B. If an employee organization is engaged in an impasse with a public employer which
44 has continued for thirty days after the publication of the fact finder's report pursuant to Section
45 nine of Chapter one hundred and fifty E of the General Laws or, if the parties have mutually
46 waived the fact finding provisions contained in said Section nine of said Chapter one hundred
47 and fifty E said employee organization shall petition the board to make an investigation. If, after
48 an investigation, the board determines that: 1. The requirements of Section nine of said Chapter
49 one hundred and fifty E have been complied with in good faith by the employee organization; 2.
50 Thirty days have passed since the date of publication of the fact finding report pursuant to said
51 section nine; 3. The proceedings for the prevention of any prohibited practices have been
52 exhausted provided that any such complaints have been filed with the commission prior to the
53 date of the fact finder's report; and 4. An impasse exists, the board shall notify the employer and
54 the employee organization that the issues in dispute shall be resolved by a three-member
55 arbitration panel or when the parties mutually agree, the board shall select a single arbitrator in
56 lieu of the arbitration panel. Said panel shall be comprised of three arbitrators, one selected by the
57 employer, one selected by the employee organization and a third impartial arbitrator, who shall
58 act as chairman of the panel who shall be selected by the two previously selected arbitrators. In
59 the event that their party fails to select an arbitrator, or for any reason there is a delay in the
60 naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time

61 prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to
62 complete the panel which shall act with the same force and effect as if the panel had been
63 selected without intervention of the board, In the event that the parties mutually elect to use a
64 single arbitrator, selected by the board to appoint said arbitrator, who shall act with the same
65 force and effect as if a three-member panel had been selected by the parties. The single arbitrator
66 or the arbitration panel acting through its chairman, shall conduct a hearing within ten days after
67 the date of appointment of its chairman, at a place within the locality of the municipality
68 involved where feasible. The chairman shall give at least seven days notice in writing to each of
69 the other arbitrators. The chairman or single arbitrator shall give like notice to the representatives
70 of the municipal employer and employee organizations of the time and place of such hearing. The
71 single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon
72 application and for good cause shown, a person, labor organization, or government unit having
73 substantial interest therein may be granted leave to intervene by the arbitration panel. The
74 proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant
75 by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall
76 have the power to administer oaths and to require by subpoena the attendance and testimony of
77 witnesses, the production of books, records and other evidence relative to or pertinent to the
78 issues presented to them for determination. If any person refuses to obey a subpoena or refuses to
79 be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in
80 attendance at any hearing, the arbitration panel or single arbitrator may, or the district attorney if
81 requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is
82 being held for the court to issue an appropriate order. A record of the proceedings shall be kept,
83 and the chairman or single arbitrator shall arrange for the necessary recording service.

84 Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not
85 be necessary for an award by the panel or single arbitrator. The hearing may be continued at the
86 discretion of the panel or single arbitrator and shall be concluded within forty days from the time
87 of commencement. At the conclusion of the hearing, each party shall submit a written statement
88 containing its last and best offer for each of the issues in dispute to the panel or single arbitrator,
89 who shall take said statements under advisement. Within ten days after the conclusion of the
90 hearing, a majority of the panel, or the single arbitrator, shall select as the last and best
91 arbitration award either the employer's written statement of its last and best offer, the employee
92 organization's written statement of its last and best offer, or the recommendations of the fact
93 finder, if a fact finding report and recommendations have been issued, and immediately shall
94 give written notice of the selection to the parties. The selection shall be final and binding upon
95 the parties and upon the appropriate legislative body. Within thirty calendar days of the last and
96 best offer selection and award, the impartial chairperson of the arbitration panel, or the single
97 arbitrator, shall issue a written opinion inclusive of an analysis of all statutory facts applicable to
98 the proceedings. At any time before the rendering of an award, the chairman of the arbitration
99 panel or single arbitrator, if he is of the opinion that it would be useful or beneficial to do so,
100 may remand the dispute to the parties for further collective bargaining. If the dispute is remanded
101 for further collective bargaining, the time provisions of this act shall be extended for a period
102 equal to that of the remand. In the event that the representatives of the parties mutually resolve
103 each of the issues in dispute and agree to be bound accordingly, said representatives may, at any
104 time prior to the final decisions by the panel, or single arbitrator, request that the arbitration
105 proceedings be terminated, the panel, acting through its chairman or single arbitrator, shall
106 terminate the proceedings. The factors among others, to be given right by the arbitration panel or

107 single arbitrator in arriving at the decision shall include:1. The financial ability of the
108 municipality to meet costs. Such factors which shall be taken into consideration shall include but
109 not be limited to (a) the city, town or district's state reimbursements and assessments; (b) the
110 city, town or district's long and short term bonded indebtedness; (c) the city, town or district's
111 estimated share in the metropolitan district commission deficit; (d) the city, town or district's
112 estimated share in the Massachusetts Bay Transportation Authority's deficit; and (e)
113 consideration of the average per capita property tax burden, average annual income of members
114 of the community, the effect any accord by the panel or single arbitrator might have on the
115 respective property tax rates on the city or town.2. The interests and welfare of the public.3. The
116 hazards of employment, physical, educational. and mental qualifications, job training and skills
117 involved.4. A comparison of wages, hours and conditions of employment of the employees
118 involved in the arbitration proceedings with the wages, hours and conditions of employment of
119 other employees performing similar services and with other employees generally in public and
120 private employment in comparable communities.5. The decisions and recommendations of the
121 fact finder, if any.6. The average consumer prices for goods and services commonly known as
122 the cost of living.7. The overall compensation presently received by the employees including
123 direct wages and fringe benefits.8. Changes in any of the foregoing circumstances while the
124 arbitration proceedings were pending.9. Such other factors, not confined to the foregoing, which
125 are normally or traditionally taken into consideration in the determination of wages, hours and
126 conditions of employment through voluntary collective bargaining, mediation, fact finding,
127 arbitration or otherwise between parties, in the public service or in private employment.10. The
128 stipulation of the parties.Any determination or decision of the arbitration panel or single
129 arbitrator if supported by material and substantive evidence on the whole record shall be binding

130 upon the parties and may be enforced at the instance of either party, the single arbitrator or the
131 arbitration panel in the superior court in equity, provided however, that the scope of arbitration in
132 police matters shall be limited to wages, hours, and conditions of employment and shall not
133 include the following matters of inherent managerial policy: the right to appoint, promote, assign
134 and transfer employees; and provided, further, that the scope of arbitration in firefighter matters
135 shall not include the right to appoint and promote employees. Assignments shall not be within
136 the scope; provided, however, that the subject matters of initial station assignment upon
137 appointment or promotion shall be within the scope of arbitration. The subject matter of transfer
138 shall not be within the scope of arbitration, provided, however, that the subject matters of
139 relationship of seniority to transfers and disciplinary and punitive transfers shall be within the
140 scope of arbitration. Notwithstanding any other provisions of this chapter to the contrary, no
141 municipal employer shall be required to negotiate over subjects of minimum manning of shift
142 coverage, with an employee organization representing municipal police officers and
143 firefighters. The commencement of a new municipal finance year prior to the final awards by the
144 arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the
145 jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel
146 may be retroactive to the expiration date of the last contract. If a municipal employer, or an
147 employee organization willfully disobeys a lawful order of enforcement pursuant to this section,
148 or willfully encourages or offers resistance to such order whether by strike or otherwise, the
149 punishment for each day that such contempt continues may be a fine for each day to be
150 determined at the discretion of said court. Each of the parties shall provide compensation for the
151 arbitrator which he has selected pursuant to this section. The remaining costs of arbitration
152 proceedings under this section shall be divided equally between the parties. Compensation for

153 the arbitrators shall be in accordance with a schedule of payment established by the American
154 Arbitration Association.