

# HOUSE . . . . . No. 2639

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to the resolution of school labor disputes ..

*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. Section 9 of chapter one hundred fifty E, as appearing in the 2006 Official  
2   Edition, is hereby amended by rescinding the fifth paragraph and inserting in place thereof the  
3   following paragraph:

4           The parties by their own agreement may mutually waive the fact finding   provisions  
5   contained herein and may petition the board for arbitration pursuant to       sections four, or four  
6   B, or four D of chapter one thousand and seventy-eight of   the acts of nineteen hundred and  
7   seventy-three when applicable. Said waiver   shall not constitute a bar to any arbitration award.

8           Section 2. Chapter 1078 of the acts of 1973, as most recently amended by section  
9   14 of chapter 300 of the Acts of 2002, is hereby amended by inserting after Section 4C the  
10   following section:

11          Section 4D. (1) There shall be within the board of conciliation and arbitration,   herein  
12   referred to as the board, but not subject to the   jurisdiction thereof, a       committee to be  
13   known as the joint school labor-management committee,   referred to in this section as the joint

committee. The joint committee shall be composed of five members. Two committee members shall be appointed by the governor from nominations submitted by the Massachusetts Association of School Committees, one member shall be selected by the Massachusetts Teachers Association, and one member shall be selected by the American Federation of Teachers Massachusetts. The four joint committee members so designated shall mutually agree upon the fifth member of the joint committee, which member shall serve as chairperson and chief administrative officer of the joint committee. Said chairperson shall have substantial, current experience as an impartial arbitrator of labor-management disputes in the schools. If the selected members of the joint committee cannot agree upon a chairperson, the current chair of the board shall serve as the joint committee chairperson. The chairperson shall serve for a term of three years, subject to re-appointment thereafter by the joint committee.

Members of the joint committee shall serve without compensation, but shall be entitled to reimbursement for reasonable travel or other expenses actually incurred in the performance of any joint committee duties. Any such reimbursement shall be shared equally by the parties. Members of the joint committee who are employed by a school committee shall be granted leave, if on duty, by the municipal employer for those regularly scheduled work hours spent in the performance of committee business. Supplies, equipment, and clerical or other personnel support shall be provided by the board on an as-needed basis.

(2) If an employee organization duly certified or recognized as representing school employees of a city, town, or regional school district is engaged in an impasse with said city, town, or district which has continued for thirty days after the publication of the fact finders report pursuant to section nine of chapter one hundred fifty E of the General Laws,

or, if the parties have mutually waived the fact finding provisions contained in said section nine of said chapter one hundred fifty E, either party to the impasse may elect to petition the board of conciliation and arbitration to assemble a three-member arbitration panel composed of the chairperson and two members of the joint committee. The chair of the arbitration panel shall be mutually selected by the parties to the impasse, provided that, in the event said parties are unable to agree upon a panel chairperson, the current chairperson of the board shall request from the American Arbitration Association a list of three arbitrators with experience in the area of labor dispute resolution. The parties to the impasse shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from among the three. The selection of the arbitration panel chairperson shall be conducted in accordance with the rules of the American Arbitration Association to be consistent with the provisions of this section. The remaining two members of the arbitration panel shall be selected in the following manner. The Massachusetts Association of School Committees shall select one arbitration panelist from among the joint committee members as an advocate for management. In matters pertaining to a bargaining unit represented by one of the employee organizations, or its affiliates, referred to in the preceding sub-section of this act, the arbitration panel shall include as an advocate for labor one joint committee member elected by that employee organization. If no selection is made within ten days of the filing of a petition to the board, the current chair of the board shall determine which joint committee members shall sit on the arbitration panel. Nothing herein shall preclude the parties from reaching a mutual agreement to select a single arbitrator in lieu of said arbitration panel.

(3) The petition to the committee shall identify the issues in dispute, the parties, and the efforts of the parties to resolve the dispute. The negotiating parties shall further file with the joint committee, in such time as the committee orders: (1) copies of all requests to bargain and of all bargaining agenda;

(2) notification of the apparent exhaustion of the processes of collective bargaining;

(3) notification of all unfair labor practice proceedings between the parties;

(4) copies of any fact-finding reports;

(5) copies of any collective bargaining agreements, and any relevant rules and regulations; and

(6) such other information as the joint committee or the arbitration panel may reasonably require.

(4) Within thirty days of receipt of the information set forth herein, the arbitration panel shall review the petition and the submitted materials and shall make a determination whether to exercise jurisdiction over the dispute. The panel shall, at its discretion, have jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving school employees; provided, however, that the panel may determine whether the proceedings for the prevention of any prohibited practices filed with the labor relations commission shall or shall not prevent arbitration pursuant to this section. If the arbitration panel declines to exercise jurisdiction over the dispute or fails to act within thirty

days of receipt of the petition on jurisdiction, the petition shall be automatically referred to the board for disposition in accordance with the provisions of section nine of chapter one hundred and fifty E of the General Laws. Disputes over which the panel does not exercise jurisdiction shall be governed by all other applicable provisions of law.

(5) The arbitration panel may meet with the parties to a dispute, conduct formal or informal conferences, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the dispute. The panel shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement through negotiation or mediation. The panel may remove at any time from the jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the board shall then take no further action in such dispute. The panel may, at any time, remand to the board any dispute over which the panel has exercised jurisdiction. The board shall assist and cooperate with the panel in the performance of its arbitration duties.

(6) The arbitration panel shall have exclusive jurisdiction in matters over which it assumes jurisdiction and shall determine whether issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. If the panel makes such a determination, it is authorized to hold a hearing to identify:

(1) the issues that remain in dispute;

(2) the current positions of the parties;

101 (3) the views of the parties as to how the continuing dispute should be  
102 resolved; and

103 (4) the preferences of the parties as to the mechanism to be followed in  
104 order to reach a final agreement between the parties.

105 If the panel, after a full hearing, finds there is an apparent exhaustion of the  
106 processes of collective bargaining which constitutes a potential threat to public  
107 education, it shall so notify the parties of its findings. Within ten days of such  
108 notification, the panel shall also notify the parties of its intent to invoke such  
109 procedures and mechanisms as it deems appropriate for the resolution of the  
110 collective bargaining negotiations. Such procedures and mechanisms may include,  
111 but need not be limited to:

112 (1) any form of arbitration, including, but not limited to, conventional  
113 arbitration, issue by issue or last best offer;

114 (2) arbitration for all or any issue in dispute; provided, however, that the  
115 panel may direct the parties to conduct further negotiations concerning  
116 issues not specified for arbitration;

117 (3) separate stages or procedures for the executive and legislative bodies  
118 of a municipality.

119 (7) The factors to be given weight in any decision or determination  
120 resulting from the mechanism or procedures determined by the panel to

be followed by the parties in order to reach final agreement pursuant to  
this section shall include, but not be limited to:

(1) such an award which shall be consistent with section twenty  
one C of chapter fifty-nine of the General Laws;

(2) the financial ability of the municipality to meet costs. The  
commissioner of revenue shall assist the panel in determining such  
financial ability. Such factors which shall be taken into consideration shall  
include but not be limited to:

(i) the city, town, or district's state reimbursements and  
assessments, including any state appropriation to the city, town, or  
district made, or scheduled to be made, pursuant to chapter 70 of  
the General Laws;

(ii) the city, town or district's long and short term bonded  
indebtedness;

(iii) the city, town, or district's estimated share in the metropolitan  
district commission's deficit;

(iv) the city, town, or district's estimated share in the  
Massachusetts Bay Transportation Authority's deficit; and

(v) consideration of the average per capita property tax burden,  
average annual income of members of the community, the effect

any accord might have on the respective property tax rates on the city or town;

(3) the interests and welfare of the public;

(4) the hazards of employment, physical, educational and mental qualifications, job training and skills involved;

(5) a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;

(6) the decisions and recommendations of the fact finder, if any;

(7) the average consumer prices for goods and services, commonly known as the cost of living;

(8) the overall compensation presently received by the employees, including direct wages and fringe benefits;

(9) changes in any of the foregoing circumstances during the pendency of the dispute;

(10) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective



bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment;

(11) the stipulation of the parties.

(8) Any decision or determination resulting from the mechanism or procedures determined by the arbitration panel, if supported by material and substantive evidence on the whole record, shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party in the superior court; provided, however, that the scope of arbitration shall be limited to wages, hours, and conditions of employment and shall not include any matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with a recommendation for approval of said request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of

(i) the next occurring annual town meeting, or

(ii) the next occurring special town meeting.

In a regional school district, the regional school committee shall be deemed to be the legislative body for purposes of this act. The employer and the exclusive employee representative shall support any such decision

or determination in the same way and to the same extent that the employer or the exclusive representative, respectively, is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining. The joint committee may take such further action as it deems appropriate, including without limitation, inquiring as to the municipal legislative body's vote.

The commencement of a new municipal finance year prior to the final award by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

(9) If a municipal or regional district employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court. Such fine shall be in addition to such other remedies as the court may determine.

(10) In any dispute resolution conducted by other than the board or the joint committee or its members or its staff, the parties shall share and pay equally the costs involved in such resolution; provided, further, that the parties shall share and pay equally the daily arbitration fee that the chair of the arbitration panel, if said chair is not otherwise employed by the Commonwealth or any of its governmental subdivisions, may reasonably charge.