

F. Bates, E. Russell Withrow, Harold P. Black, Thomas P. Delaney, Robert E. Faulkner, Ralph J. Fitzmaurice, Thomas L. Fitzmaurice, Stephen A. Jones, John N. Mulheren, Manuel F. Raposa, Hjalmar S. Sellstone, Harold R. Sinclair, F. Leonard Tracy, and Walter C. Watts, Jr., all former management employees of the Eastern Massachusetts Street Railway Company, who became employees of the Massachusetts Bay Transportation Authority on or after March thirtieth, nineteen hundred and sixty-two by reason of the takeover of said company by the Authority, shall be entitled to use their prior years of service with the Eastern Massachusetts Street Railway Company for qualifying for deferred compensation payments from the Authority as well as using these years of service as creditable service in computing the amount of such deferred compensation payment. Said persons shall be entitled to the same rights to use prior service with the Eastern Massachusetts Street Railway Company as the Authority affords to former members of the Boston Elevated Railway Company in computing deferred compensation rights of said members.

SECTION 2. In no instance shall the combined total of prior service pension allowance received for Eastern Massachusetts Street Railway Company service plus membership service pension allowance from the Massachusetts Bay Transportation Authority plus benefits received under the provisions of section one of this act entitle any person retiring from the Authority to receive more than sixty-five per cent of the average annual salary received from the Authority by such person for the five years next prior to the date of retirement, provided, however, in the event of a change in the method of salary averaging for other members of the Authority from a five year term then the salary averaging method for persons named in said section one shall also be changed to be the same as such new salary averaging term. *Approved November 21, 1973.*

Chap. 1078. AN ACT RELATIVE TO COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES.

Be it enacted, etc., as follows:

SECTION 1. Section one hundred and seventy-eight D and sections one hundred and seventy-eight F to one hundred and seventy-eight N, inclusive, of chapter one hundred and forty-nine of the General Laws are hereby repealed.

SECTION 2. The General Laws are hereby amended by inserting after chapter 150D the following chapter: —

CHAPTER 150E.

LABOR RELATIONS: PUBLIC EMPLOYEES.

Section 1. The following words and phrases as used in this chapter shall have the following meaning unless the context clearly requires otherwise: —

“Board”, the board of conciliation and arbitration established under section seven of chapter twenty-three.

“Commission”, the labor relations commission established under section nine 0 of chapter twenty-three.

“Cost items”, the provisions of a collective bargaining agreement which require an appropriation by a legislative body.

“Employee” or “public employee”, any person employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the commission. Employees shall be designated as managerial employees only if they (a) participate in formulating or determining policy, or (b) are reasonably required, on behalf of a public employer, to assist directly in the preparation for or conduct of collective bargaining, or (c) have a substantial responsibility, involving the exercise of independent judgment of an appellate responsibility not initially in effect, in the administration of a collective bargaining agreement or in personnel administration. Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter.

“Employee organization”, any lawful association, organization, federation, council, or labor union, the membership of which includes public employees, and assists its members to improve their wages, hours, and conditions of employment.

“Employer” or “public employer”, the commonwealth acting through the commissioner of administration, or any county, city, town or district acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees. In the case of school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives. In the case of employees of the community and state colleges and universities, the employer shall mean the respective board of trustees or any individual who is designated to represent it and act in its interest in dealing with its employees.

“Legislative body”, the general court in the case of the commonwealth or a county, the city council or town meeting in the case of a city, town or district, or any body which has the power of appropriation with respect to an employer as defined in this chapter.

“Professional employee”, any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an insti-

tution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

"Strike", a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring immediately preceding the alleged strike, or in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike; provided that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to conditions of employment.

Section 2. Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve.

Section 3. The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees votes for inclusion in such unit; provided, however, that in any fire department, or any department in whole or in part engaging in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, public safety director, board of engineers or chief of department, shall be deemed to be a professional employee and all other members of said department shall be classified for the purposes of this chapter as nonprofessional employees.

No elected or appointed official, member of any board of commission, representative of a public employer, including the administrative officer, director or chief of a department or agency of the commonwealth or any political subdivision thereof, or any other managerial or confidential employee shall be included in an appropriate bargaining unit or entitled to coverage under this chapter.

Section 4. Public employers may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the

employees in such unit for the purpose of collective bargaining.

The commission, upon receipt of an employer's petition alleging that one or more employee organizations claims to represent a substantial number of the employees in a bargaining unit, or upon receipt of an employee organization's petition that a substantial number of the employees in a bargaining unit wish to be represented by the petitioner, or upon receipt of a petition filed by or on behalf of a substantial number of the employees in a unit alleging that the exclusive representative therefor no longer represents a majority of the employees therein, shall investigate, and if it has reasonable cause to believe that a substantial question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which employee organization the employees in an appropriate unit desire to be represented, and shall certify any employee organization which received a majority of the votes in such election as the exclusive representative of such employees.

Except for good cause no election shall be directed by the commission in an appropriate bargaining unit within which a valid election has been held in the preceding twelve months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by an employer and an employee organization for waiving of hearing and the conducting of a consent election by the commission for the purpose of determining a controversy concerning the representation of employees.

Any hearing under this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case. In addition any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary statements filed by the parties, if any, together with such other evidence as the commission may require.

Section 5. The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee

organization membership.

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive representative of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

Section 6. The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but such obligation shall not compel either party to agree to a proposal or make a concession.

Section 7. Any collective bargaining agreement reached between the employer and the exclusive representative shall not exceed a term of three years. The agreement shall be reduced to writing, executed by the parties, and a copy of such agreement shall be filed with the commission.

The employer shall submit to the appropriate legislative body within thirty days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein; provided, that if the general court is not in session at that time, such request shall be submitted at the next session thereof. If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining. The provisions of the preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative.

If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and any municipal personnel ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to section ninety-seven A of chapter forty-one; the regulations of a fire chief or other head of a fire department pursuant to chapter forty-eight; any of the following statutory provisions or rules or regulations made thereunder:

(a) the second paragraph of section twenty-eight of chapter seven;

(a¹/₂) section six E of chapter twenty one;

(b) sections fifty to fifty-six, inclusive, of chapter thirty-five;

(c) section twenty-four A, paragraphs (4) and (5) of section forty-five, paragraphs (1), (4) and (10) of section forty-six, section forty-nine, as it applies to allocation appeals, and section fifty-three of chapter thirty;

- (d) sections twenty-one A and twenty-one B of chapter forty;
- (e) sections one hundred and eight D to one hundred and eight I, inclusive, and sections one hundred and eleven to one hundred and eleven L, inclusive, of chapter forty-one;
- (f) section thirty-three A of chapter forty-four;
- (g) sections fifty-seven to fifty-nine, inclusive, of chapter forty-eight;
- (g^{1/2}) section sixty-two of chapter ninety-two;
- (h) sections fourteen to seventeen E, inclusive, of chapter one hundred and forty-seven;
- (i) sections thirty to forty-two, inclusive, of chapter one hundred and forty-nine;
- (j) section fifty-three C of chapter two hundred and sixty-two, the terms of the collective bargaining agreement shall prevail.

Section 8. The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon the request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforceable under the provisions of chapter one hundred and fifty C and shall, where such arbitration is elected by the employee as the method of grievance resolution, be the exclusive procedure for resolving any such grievance involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of sections forty-three and forty-six G of chapter thirty-one, section sixteen of chapter thirty-two, or sections forty-two through forty-three A, inclusive, of chapter seventy-one.

Section 9. After a reasonable period of negotiation over the terms of a collective bargaining agreement, either party or the parties acting jointly may petition the board for a determination of the existence of an impasse. Upon receipt of such petition, the board shall commence an investigation forthwith to determine if the parties have negotiated for a reasonable period of time and if an impasse exists, within ten days of the receipt of such petition, the board shall notify the parties of the results of its investigation. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

Within five days after such determination, the board shall appoint a mediator to assist the parties in the resolution of the impasse. In the alternative, the parties may agree upon a person to serve as a mediator and shall notify the board of such agreement and choice of mediator.

After a reasonable period of mediation, not to exceed twenty days from the date of appointment, said mediator shall issue to the board a report indicating the results of his services in resolving the impasse.

If the impasse continues after the conclusion of mediation, either party or the parties acting jointly may petition the board to initiate fact-finding proceedings. Upon receipt of such petition, the board shall appoint a fact-finder, representative of the public, from a list of qualified persons maintained by the board. In the alternative, the parties may agree upon a person to serve as fact-finder and shall notify the board of such agreement and choice of fact-finder. No person shall be named as a fact-finder who has represented an employer or employee organization within the preceding twelve months. The fact-finder shall be subject to the rules of the board and shall, in addition to powers delegated to him by the board, have the power to mediate and to make recommendations for the resolution of the impasse. The fact-finder shall transmit his findings and any recommendations for the resolution of the impasse to the board and to both parties within thirty days after the date of his appointment. If the impasse remains unresolved ten days after the transmittal of such findings and recommendations, the board shall make them public.

Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an impasse shall be binding on the parties and on the appropriate legislative body and made effective and enforceable pursuant to the provisions of chapter one hundred and fifty C, provided that said arbitration proceeding has been authorized by the appropriate legislative body or in the case of school employees, by the appropriate school committee.

If the impasse continues after the publication of the fact-finder's report, the issues in dispute shall be returned to the parties for further bargaining.

Any time limitations prescribed in this section may be extended by mutual agreement of the parties and the board.

Section 9A. (a) No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.

(b) Whenever a strike occurs or is about to occur, the employer shall petition the commission to make an investigation. If, after investigation, the commission determines that any provision of paragraph (a) of this section has been or is about to be violated, it shall immediately set requirements that must be complied with, including, but not limited to, instituting appropriate proceedings in the superior court for the county wherein such violation has occurred or is about to occur for enforcement of such requirements.

Section 10. (a) It shall be a prohibited practice for a public employer or its designated representative to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership

in any employee organization;

(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined, or chosen to be represented by an employee organization;

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section six;

(6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in sections eight and nine;

(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent to:

(1) Interfere, restrain, or coerce any employer in the exercise of any right guaranteed under this chapter;

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section seven;

(3) Refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in sections eight and nine.

Section 11. When a complaint is made to the commission that a practice prohibited by section ten has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. If a hearing is ordered, the commission shall set the time and place for the hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The employer, the employee organization or the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the commission may limit. Such employer, such employee organization or such person shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission any person may be allowed to intervene in such proceeding. In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts.

Whenever it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative as required in section ten and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the commission shall, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. Where such interim order is issued the commission shall hold a hearing on the charge in a summary manner and shall speedily determine the issues raised and shall make an appropriate decision.

Upon any complaint made under this section the commission in its discretion may order that the hearing be conducted by a mem-

ber or agent of the commission. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission, any person may be allowed to intervene in such proceeding. In any hearing the member or agent shall not be bound by the technical rules of evidence prevailing in the courts. At the conclusion of the hearing, the member or agent shall determine whether a practice prohibited under section ten has been committed and if so, he shall issue an order requiring it or him to cease and desist from such prohibited practice. If the member or agent determines that a practice prohibited under section ten has not been committed, he shall issue an order dismissing the complaint. Any order issued pursuant to this paragraph shall become final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the commission requests, upon a transcript of the testimony taken at the preliminary hearing, together with such other testimony as the commission may require.

If, upon all the testimony, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. It shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this section. If, upon all of the testimony, the commission determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint.

Section 12. The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting. Such service fee shall be proportionately commensurate

with the cost of collective bargaining and contract administration.

Section 13. The commission shall maintain a list of employee organizations. To be recognized as such and to be included in the list an organization shall file with the commission a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. Every employee organization shall notify the commission promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The commission shall indicate on the list which employee organizations are exclusive representatives of appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of such list shall be made available to interested parties upon request.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the same manner as other orders of the commission under this chapter.

Section 14. No person or association of persons shall operate or maintain an employee organization under this chapter unless and until there has been filed with the commission a written statement signed by the president and secretary of such employee organization setting forth the names and addresses of all of the officers of such organization, the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid to the officers.

Every employee organization shall keep an adequate record of its financial transactions and shall make annually available to its members and to non-member employees who are required to pay a service fee under section twelve of this act, within sixty days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet and operating statement. Such report shall indicate the total of its receipts of any kind and the sources of such receipts, and disbursements made by it during its last fiscal year. A copy of such report shall be filed with the commission.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the same manner as other orders of the commission under this chapter.

Section 15. Whoever wilfully assaults, physically resists, prevents, impedes, or interferes with a mediator, fact-finder, or arbitrator, or any member of the commission or any of the agents or employees of the commission in the performance of duties pursuant to this chapter shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Whoever knowingly files a statement or report under section

fourteen of this chapter, which report is false in any material representation, shall be punished by a fine of not more than five thousand dollars.

No compensation shall be paid by an employer to an employee with respect to any day or part thereof when such employee is engaged in a strike against said employer, nor shall such employee be eligible to recover such compensation at a later date in the event that such employee is required to work additional days to fulfill the provisions of collective bargaining agreement.

Any employee who engages in a strike shall be subject to discipline and discharge proceedings by the employer.

SECTION 2A. Section 9R of chapter 23 of the General Laws, as most recently amended by chapter 763 of the acts of 1965, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence: — The commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of sections nine O to nine Q, inclusive, of this chapter, chapter one hundred and fifty A, and chapter one hundred and fifty E.

SECTION 2B. Section 28 of chapter 7 of the General Laws, as most recently amended by chapter 352 of the acts of 1963, is hereby further amended by inserting at the end of the second paragraph the following sentence: — In the event of a conflict between the terms of a collective bargaining agreement and any rule or regulation made pursuant to this paragraph, the terms of the collective bargaining agreement shall prevail.

SECTION 2C. Section 17A of chapter 180 of the General Laws, as most recently amended by chapter 472 of the acts of 1969, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph: —

The state treasurer, the common paymaster as defined in section one hundred and thirty-three of chapter one hundred and seventy-five, or the treasurer of the county or municipality by which such employee is employed, shall deduct from the salary of such employee such amount of union dues, dues to the Massachusetts State Employees Association, dues to the Massachusetts Nurses Association, or dues payable to any relief association of any municipal department as may be certified to him on the payroll, and transmit the sum so deducted to the treasurer of said association; provided, that the state treasurer or the county or municipal treasurer, as the case may be, is satisfied by such evidence as he may require that the treasurer of such association has given to said association a bond, in a form approved by the commissioner of corporations and taxation, for the faithful performance of his duties, in a sum and with such surety or sureties as are satisfactory to the state treasurer or county or municipal treasurer; and provided, further, that whenever an association or union of state, county, or municipal employees is certified or obtains consent recognition under the provisions of chapter one

hundred and fifty E, such deductions shall be made for dues only to the certified or recognized association or union.

SECTION 3. Chapter 180 of the General Laws is hereby amended by striking out section 17G and inserting in place thereof the following section: —

Section 17G. Deductions on payroll schedules shall be made from the salary of any state, county or municipal employee of any amount which such employee may specify in writing to any state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is employed for the payment of agency service fees to the employee organization, which, in accordance with the provisions of chapter one hundred and fifty E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed. Such agency service fees shall be proportionately commensurate with the cost of collective bargaining and contract administration. Any such authorization may be withdrawn by the employee by giving at least sixty days' notice in writing of such withdrawal to the state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is then employed, and by filing a copy thereof with the treasurer of the employee organization.

The state treasurer, the common paymaster as defined in section one hundred and thirty-three of chapter one hundred and seventy-five, or the treasurer of the county or municipality by which such employee is employed shall deduct from the salary of such employee such amount of agency service fees as may be certified to him on the payroll and transmit the sum so deducted to the treasurer of such employee organization; provided that the state treasurer or county or municipal treasurer, as the case may be, is satisfied by such evidence as he may require that the treasurer of such employee organization has given to said organization a bond, in a form approved by the commissioner of corporations and taxation for the faithful performance of his duties, in such sum and with such surety or sureties as are satisfactory to the state treasurer, or the county or municipal treasurer.

The provisions of this section shall not be applicable to the city of Boston.

SECTION 4. If an employee organization duly recognized as representing the firefighters or police officers of a city, town or district is engaged in an impasse which has continued for thirty days after the publication of the fact-finders report pursuant to section nine of chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation. If, after investigation, the board determined that:

(1) the requirements of section nine of chapter one hundred and fifty E have been complied with in good faith by the employee organization;

(2) thirty days have passed since the date of publication of

the fact-finders report pursuant to said section nine;

(3) the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such complaints have been filed with the commission, prior to the date of the fact-finders report; and

(4) an impasse exists, the board shall immediately notify the employer and the employee organization that the issues in dispute shall be resolved by a three-member arbitration panel.

Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by the employee organization, and a third an impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously selected arbitrators. In the event that either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected without intervention by the board.

The arbitration panel shall, acting through its chairman, hold a hearing within ten days after the date of appointment of the chairman at a place within the locality of the municipality involved, where feasible. The chairman shall give at least seven days' notice in writing to each of the other arbitrators, and to the representatives of the municipal employer and employee organization of the time and place of such hearing. The chairman shall preside over the hearing and shall take testimony. Upon application and for good cause shown, a person, labor organization, or governmental unit having substantial interest therein may be granted leave to intervene by the arbitration panel. The proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received into evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues presented to them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel may, or the district attorney if requested, shall, invoke the aid of the superior court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order.

A record of the proceedings shall be kept, and the chairman shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an award by the panel. The hearing may be continued at the discretion of the panel and shall be concluded within forty days from the time of commencement. At the conclusion of the hearing, each party shall submit a written

statement containing its last and best offer for each of the issues in dispute to the panel, which shall take said statements under advisement. Within ten days after the conclusion of the hearing, a majority of the panel shall select one of the two written statements and shall immediately give written notice of selection to the parties. The selection shall be final and binding upon the parties and upon the appropriate legislative body.

At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks and notify the board of the remand. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand.

In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said representatives may, at any time prior to the final decision by the panel, request that the arbitration proceedings be terminated, the panel, acting through its chairman, shall terminate the proceedings.

The factors, among others, to be given weight by the arbitration panel in arriving at a decision shall include:

- (1) The financial ability of the municipality to meet costs.
- (2) The interests and welfare of the public.
- (3) The hazards of employment, physical, education, and mental qualifications, job training and skills involved.
- (4) 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.
- (5) The decisions and recommendations of the fact finder.
- (6) The average consumer prices for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wages and fringe benefits.
- (8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (9) 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 the parties, in the public service or in private employment.
- (10) The stipulation of the parties.

Any determination or decision of the arbitration panel if supported by material and substantive evidence on the whole record shall be binding upon the parties and may be enforced at the instance of either party or of the arbitration panel in the superior

court in equity; provided, that the scope of arbitration in police matters shall be limited to wages, hours and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign and transfer employees.

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 beginning of said municipal finance year.

If a municipal employer or an employee organization wilfully disobeys a lawful order of enforcement pursuant to this section, or wilfully 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.

Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section. The remaining costs of the arbitration proceedings under this section shall be divided equally between the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment established by the American Arbitration Association.

SECTION 5. The terms of any collective bargaining agreement in effect prior to the effective date of this act shall remain in full force and effect until the expiration date of said agreement.

SECTION 6. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

SECTION 7. The provisions of this act shall take effect on July first, nineteen hundred and seventy-four.

SECTION 8. The provisions of section four of this act shall terminate on June thirtieth, nineteen hundred and seventy-seven. Any arbitration proceedings pending on June thirtieth, nineteen hundred and seventy-seven shall be completed under the provisions of section four.

Approved November 26, 1973.

Chap. 1079. AN ACT EXTENDING THE TIME WITHIN WHICH AN APPLICATION FOR ABATEMENT MAY BE FILED UNDER THE LAW PROVIDING FOR THE ABATEMENT OF CERTAIN TAXES ON PROPERTY DAMAGED BY THE FLOODS OF JUNE TWENTY-NINTH THROUGH JULY SIXTH, NINETEEN HUNDRED AND SEVENTY-THREE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately extend the time within which an application for abatement may be filed under the law providing for the abatement of certain taxes on property damaged by the floods of June twenty-ninth through July sixth, nineteen hundred