HOUSE . . . . . No. 1226

By Mr. Lussier of Pittsfield, petition of Thomas R. Lussier and others for legislation to provide a board of regents employees joint labor-management council to resolve impasses in collective bargaining. Public Service.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT TO PROVIDE A BOARD OF REGENTS EMPLOYEES JOINT LABOR-MANAGEMENT COUNCIL TO RESOLVE IMPASSES IN COLLECTIVE BARGAINING.

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 as enacted by
2 Chapter 1078 of the Acts of 1973 is hereby amended by adding after
3 section 9A the following new section: —
4 *Section 9C.* There shall be in the Department of Labor and
5 Industries, but not subject to the jurisdiction thereof a committee
6 to be known as the Board of Regents Employees Joint Labor-Man-
7 agement Council, in this section referred to as the Council. The
8 Council shall be composed of ten members including a chairperson
9 and a vice-chairperson. Two members shall be the Chairperson of
10 the Board of Conciliation and Arbitration and the Chairperson of
11 the Labor Relations Commission. Six members shall be appointed
12 by the Governor for a term of one year as follows: three from
13 nominations submitted by the Massachusetts Teachers Associa-
14 tion and three from nominations submitted by the Board of Re-
15 gents. Any member of the Council may be removed by the Gover-
16 nor for neglect of duty, malfeasance in office, or upon the request
17 by the nominating body. The Chairperson and Vice-Chairperson
18 shall be nominated by the Council and appointed by the Governor

19 for a term of one year. The Chairperson shall be the chief admini-
20 trative officer of the Council. The Vice-Chairperson shall assist the
21 Chairperson and may be authorized by the Chairperson to act for
22 him/her in his or her absence and shall have the full powers of the
23 Chairperson when so authorized and shall vote only in the absence
24 of the Chairperson. The number of Council members representing
25 the employer and the Council members representing the educa-
26 tional employees organization entitled to vote on any matter com-
27 ing before the Council shall be equal. The Chairperson may cast
28 the deciding vote on any matter relating to a dispute concerning
29 negotiations over the terms and provisions of a collective bargain-
30 ing agreement, including any decision to take jurisdiction over a
31 dispute.
32 Members of this Council shall serve without compensation, but
33 shall be entitled to reimbursement, out of any funds available for
34 the purposes, of reasonable travel or other expenses actually in-
35 curred in the performance of their duties. The Chairperson and
36 Vice-Chairperson shall be compensated to time spent for the
37 Council business on a per diem basis at a rate to be determined by
38 the Secretary of Administration and Finance. The Council may
39 purchase such supplies and equipment and may employ such cleri-
40 cal, staff, and other personnel who shall not be subject to the
41 provisions of section 9A of Chapter 30 or Chapter 31 of the
42 General Laws, as they deem necessary to the conduct of Council
43 business out of any funds available for the purpose. Members of
44 the Council employed by the Commonwealth shall be granted
45 leave, if on duty, by the Commonwealth employer for those regu-
46 larly scheduled work hours spent in the performance of Council
47 business.
48 The Council shall have oversight responsibility for all collective
49 bargaining negotiations involving employees of the Board of Re-
50 gents. The Council shall, at its discretion, have jurisdiction in any
51 dispute over the negotiations of the terms of a collective bargaining
52 agreement involving any employees of the Board of Regents in-
53 cluding the right and authority to determine whether the proceed-
54 ing for the prevention of any prohibited practices filed with the
55 Labor Relations Commission shall or shall not prevent arbitration
56 pursuant to this section.

After notification by the Council, the parties to the Board of Regents negotiations shall file with the Council, in such time as the Council orders:—

1) copies of all requests to bargain and of all bargaining agenda;

2) notification of impasse in bargaining;

3) notification of all pending unfair labor practices proceedings between the parties;

4) copies of any collective bargaining agreements and any relevant personnel rules and regulations; and

5) such other information as the Council may reasonably require.

Notwithstanding the provisions of first paragraph of section 9 of Chapter 150E of the General Laws to the contrary, when either party or parties acting jointly to any employee collective bargaining negotiations, believe that an impasse exists in their negotiations, the parties or either party may petition first the Council for the exercise of jurisdiction and/or the determination of the existance of genuine impasse.

The Council shall forthwith review the petition and shall make a determination within thirty days whether to exercise jurisdiction over the dispute. Subject to the provisions of the Tenth paragraph, if the Council declines to exercise jurisidiction 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 of Arbitration and Conciliation, hereinafter referred to as the Board, for disposition in accordance with the provision of section 9 of Chapter 150E of the General Laws.

Said Board shall not accept any petition from a party to a Board of Regents negotiation under section 9 of Chapter 150E of the General Laws if the petition has not been first reviewed in accordance with the provisions of this section by the Council.

The petition to the Council shall identify the issues in dispute, the parties, the efforts of the parties to resolve the dispute, and such other information as may be prescribed in the rules of the Council.

The Council or its representative or mediators appointed by it 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

95 agreement or the procedures to resolve the dispute. The Council
96 shall make every effort to encourage the parties to engage in good
97 faith negotiations to reach settlement through negotiations or
98 mediation. Regardless of whether the Council takes jurisdiction of
99 a dispute the fact finding procedures contained in section 9 of
100 Chapter 150E of the General Laws shall not apply to negotiations
101 involving employees of the Board of Regents.

102 The Council, after consultation with the Board of Arbitration
103 and Conciliation, may remove at any time from the jurisdiction of
104 the Board, any dispute in which the Board has exercised jurisdic-
105 tion, and the Board shall then take no further action in such
106 dispute. The Council may, at any time, remand to the Board any
107 dispute in which the Council has exercised jurisdiction. The Board
108 shall assist and cooperate with the Council in its performance of
109 the Council duties. Disputes over which the Council does not
110 exercise jurisdiction shall be governed by all other applicable
111 provisions of law except as provided herein.

112 The Council shall have exclusive jurisdiction in matters over
113 which it assumes jurisdiction and shall determine if a genuine
114 impasse exists and if the process of collective bargaining has been
115 exhausted. In the event of genuine impasse, the Board of Regents
116 may not unilaterally implement any of its proposals until such time
117 as the provisions of this section are exhausted.

118 If the Council determines that a genuine impasse exists and the
119 process of collective bargaining has been exhausted or in the event
120 that the Labor Relations Commission determines that a strike has
121 occurred, the Council shall order around-the-clock bargaining
122 with the full Board of Regents and its representatives and employee
123 negotiating team and its representatives with recesses only at the
124 discretion of the mediator appointed by the Council. If any parties
125 or their representatives refuse to participate in the bargaining, the
126 aggrieved party, the Council, or the District Attorney if requested,
127 shall petition the Superior Court within the jurisdiction in which
128 negotiations are taking place for an order enforcing provisions of
129 this paragraph. Such court shall issue an order after such hearing
130 as the court deems necessary. If the Council determines that either
131 party has failed to bargain in good faith the aggrieved party may
132 elect to submit the disputed issues to arbitration. In the event that

133 the aggrieved party does not elect to submit the dispute to arbitra-
134 tion, where the aggrieved party is the employee representative it
135 may elect to engage in a strike notwithstanding provisions of
136 section 9A and section 15 of Chapter 150E of General Laws and
137 where the aggrieved party is the Board of Regents it may elect to
138 unilaterally implement its most recent bargaining proposal.
139 In the event that the aggrieved party requests arbitration, the
140 Council shall:—
141 1) specify the issue or issues to be arbitrated;
142 2) nominate the panel of neutral arbitrators from which the
143 arbitrator is to be selected by the parties; if the parties cannot agree
144 on an arbitrator within a time prescribed by the Council, the
145 Council shall appoint the neutral arbitrator or arbitrators or the
146 Council may appoint the Chairperson, the Vice-Chairperson or a
147 panel of the council including the Chairperson or Vice-Chairper-
148 son to arbitrate the dispute;
149 3) determine the form of arbitration, conventional arbitration,
150 issue by issue, last best offer, or such other form as the Council
151 deems appropriate; and
152 4) determine the procedures to be followed in the arbitration
153 proceeding.
154 Except as provided herein, arbitration proceedings in matters
155 over which the Council assumes jurisdiction shall be conducted in
156 accordance with the standards, provisions, and limitations of sec-
157 tion 4 of chapter 1078 of the Acts of 1973 where appropriate. The
158 Council may direct the parties to a dispute to conduct further
159 negotiations concerning issues not specified for arbitration.
160 The appointed arbitrator, or arbitrators, or the Council person-
161 nel or the Chairperson or Vice-Chairperson shall, within ten days
162 of appointment or selection, hold a hearing within the locality of
163 the municipality involved where possible. The arbitrator(s) shall
164 give at least seven days.
165 The Chairperson shall give at least seven (7) days' notice, in
166 writing to each of the other arbitrators, and to the representatives
167 of the Board of Regents and employee organization of the time and
168 place of such hearing. The Chairperson shall preside over the
169 hearing and shall take testimony. The proceedings shall be infor-

170 mal. Any oral or documentary evidence and other data deemed
171 relevant by the arbitration panel may be received into evidence.
172 A record of the proceedings shall be kept, and the Chairperson
173 shall arrange for the necessary recording service. Transcripts may
174 be ordered at the expense of the party ordering them, but the
175 transcripts shall not be necessary for an award by the panel. The
176 hearing may be continued at the discretion of the panel and shall be
177 concluded within forty days from the time of commencement.
178 Any determination or decision of the arbitration panel shall be
179 binding upon the parties and may be enforced at the request of
180 either party pursuant to Chapter 150C of the General Laws. The
181 Genral Court shall, notwithstanding section 7(C) of Chapter 150E
182 or any general or special law to the contrary, appropriate sufficient
183 funds necessary to implement all cost items contained in the award.
184 The commencement of a new municipal finance year prior to the
185 final award by the arbitration panel shall not be deemed to render a
186 dispute moot, or to otherwise impair the jurisdiction or authority
187 of the authority of the arbitration panel or its award. Any award of
188 the arbitration panel may be retroactive to the expiration date of
189 the last contract.
190 If the Board of Regents or member thereof or an emplyee
191 organization or member thereof willfully disobeys a lawful order of
192 enforcement pursuant to this section, or willfully and intentional-
193 ly encourages or offers resistance to such order, whether by strike
194 or otherwise, the punishment for each day that such contempt
195 continues may be a fine for each day not to exceed $500.
196 Each of the parties shall provide compensation for the arbitrator
197 which he has selected pursuant to this section. The remaining cost
198 of the arbitration proceedings under this section shall be divided
199 equally between the parties. Compensation for the arbitrators shall
200 be in accordance with a schedule of payment established by the
201 American Arbitration Association.
202 In disputes resolution conducted by other than the Council or its
203 members or staff, the parties shall share and pay equally the costs
204 involved in such resolution.
205 The Council shall promulgate rules and regulations necessary
206 for the performance and enforcement of the responsibilities and

207 powers set forth herein in this act: provided, however, that said
208 Council file a copy of any regulations or amendments thereto with
209 the clerks of the Senate and the House of Representatives who,
210 with the approval of the President of the Senate and Speaker of the
211 House of Representatives, shall refer such regulations to an appro-
212 priate committee of the General Court. Within thirty days after
213 such filing, the appropriate committee of the General Court shall
214 hold a hearing on such regulations and shall issue a report and file a
215 copy with the Joint Labor-Management Council. Said Joint Labor-
216 Management Council shall consider such report and make revisions
217 in the regulations as it deems appropriate in view of such report and
218 shall forthwith file a copy of the final regulations with the Chair-
219 person of the committee of the General Court to which the regula-
220 tions were referred.
221 The provisions of Chapter 30A of the General Laws, unless
222 otherwise provided, shall apply to the Council.
223 The Council shall have the power to administer oaths and to
224 require by subpoena the attendance and testimony of witnesses, the
225 production of books, records, and other evidence relative to or
226 pertinent to the issues presented to the Council.
227 It is hereby declared that the provisions of this act are severable,
228 and if any provision of this act shall be declared unconstitutional
229 by the valid judgment or decree of any court of competent jurisdic-
230 tion, such unconstitutionality shall not affect any of the remaining
231 provisions of this act.