

By Mr. Glodis of Worcester, petition of William J. Glodis, Jr., Robert A. Durand, John J. Binienda, Larry F. Giordano and Robert B. Ambler for legislation to regulate binding arbitration with school committees. Public Service.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety.

AN ACT TO PROVIDE BINDING ARBITRATION.

*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 9 of Chapter 150E of the General Laws is hereby  
2 amended by adding at the end thereof the following:

3 If an employee organization duly recognized as representing the  
4 employees of a school committee of a city, town or district is  
5 engaged in an impasse which has continued for thirty days after  
6 the publication of the fact-finders report pursuant to section nine  
7 of this chapter, said employee organization shall petition the  
8 board to make an investigation. If, after investigation, the board  
9 determined that:

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

13 (2) thirty days have passed since the date of publication of the  
14 fact-finders report pursuant to said section nine;

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

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

22 Said panel shall be comprised of three arbitrators, one selected  
23 by the employer, one selected by the employee organization, and

24 a third an impartial arbitrator, who shall act as chairman of the  
25 panel, who shall be selected by the two previously selected  
26 arbitrators. In the event that either party fails to select an  
27 arbitrator or for any reason there is a delay in the naming of an  
28 arbitrator, or if the arbitrators fail to select a third arbitrator  
29 within the time prescribed by the board, the board shall appoint  
30 the arbitrator or arbitrators necessary to complete the panel,  
31 which shall act with the same force and effect as if the panel had  
32 been selected without intervention by the board.

33 The arbitration panel shall, acting through its chairman, hold  
34 a hearing within ten days after the date of appointment of the  
35 chairman, and not later than thirty days following the date of  
36 notification set forth in (4) above, at a place within the locality  
37 of the municipality involved, where feasible. The chairman shall  
38 give at least seven days' notice in writing to each of the other  
39 arbitrators, and to the representatives of the employer and  
40 employee organization of the time and place of such hearing. The  
41 chairman shall preside over the hearing and shall take testimony.  
42 Upon application and for good cause shown, a person, labor  
43 organization, or governmental unit having substantial interest  
44 therein may be granted leave to intervene by the arbitration panel.  
45 The proceedings shall be informal. Any oral or documentary  
46 evidence and other data deemed relevant by the arbitration panel  
47 may be received into evidence. The arbitrators shall have the  
48 power to administer oaths and to require by subpoena the  
49 attendance and testimony of witnesses, the production of books,  
50 records, and other evidence relative to or pertinent to the issues  
51 presented to them for determination. If any person refuses to obey  
52 a subpoena, or refuses to be sworn or to testify, or if any witness,  
53 party, or attorney is guilty of any contempt while in attendance  
54 at any hearing, the arbitration panel may, or the district attorney  
55 if requested, shall, invoke the aid of the Superior Court within  
56 the jurisdiction in which the hearing is being held, which Court  
57 shall issue an appropriate order.

58 A record of the proceedings shall be kept, and the chairman  
59 shall arrange for the necessary recording service. Transcripts may  
60 be ordered at the expense of the party ordering them, but the  
61 transcripts shall not be necessary for an award by the panel. The  
62 hearing may be continued at the discretion of the panel and shall

63 be concluded within twenty-five days from the time of  
64 commencement. At the conclusion of the hearing, each party shall  
65 submit a written statement containing its last and best offer for  
66 each of the issues in dispute to the panel, which shall take said  
67 statements under advisement. Within ten days after the conclusion  
68 of the hearing, a majority of the panel shall agree on each of the  
69 issues so submitted and shall immediately give written notice of  
70 same to the parties. The decision of the panel shall be final and  
71 binding upon the parties and upon the appropriate legislative  
72 body.

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

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

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

89 (1) The financial ability of the municipality to meet costs.

90 (2) The interest and welfare of the public.

91 (3) The education, mental qualifications, job training and skills  
92 involved.

93 (4) A comparison of wages, hours and conditions of  
94 employment of the employees involved in the arbitration  
95 proceedings with the wages, hours and conditions of employment  
96 of other employees performing similar services and with other  
97 employees generally in public employment in comparable  
98 communities.

99 (5) The decisions and recommendations of the fact-finder.

100 (6) The average consumer prices for goods and services,  
101 commonly known as the cost of living.

102 (7) The overall compensation presently received by the  
103 employees, including direct wages and fringe benefits.

104 (8) Changes in any of the foregoing circumstances during the  
105 pendency of the arbitration proceedings.

106 (9) Such other factors, not confined to the foregoing, which are  
107 normally or traditionally taken into consideration in the  
108 determination of wages, hours and conditions of employment  
109 through voluntary collective bargaining, mediation, fact-finding,  
110 arbitration or otherwise between the parties, in the public service  
111 or in private employment.

112 (10) The stipulation of the parties.

113 Any determination decision of the arbitration panel if  
114 supported by material and substantive evidence on the whole  
115 record shall be binding upon the parties and may be enforced at  
116 the instance of either party or of the arbitration panel in the  
117 Superior Court in equity.

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

124 If a municipal employer or an employee organization willfully  
125 disobeys a lawful order of enforcement pursuant to this section,  
126 or willfully encourages or offers resistance to such order, whether  
127 by strike or otherwise, the punishment for each day that such  
128 contempt continues may be a fine for each day to be determined  
129 at the discretion of said court.

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

136 The decision of the arbitrators shall be subject to judicial review  
137 upon the filing by a party to the arbitration, within thirty days  
138 following receipt of the final decision of the panel, of a motion  
139 to vacate or modify such decision in the Superior Court for the  
140 judicial district wherein the school district is located. The Superior

141 Court after hearing, may vacate or modify the decision if  
142 substantial rights of a party have been prejudiced because such  
143 decision is: (A) in violation of constitutional or statutory  
144 provisions; (B) in excess of the statutory authority of the panel;  
145 (C) made upon unlawful procedure; (D) affected by other error  
146 of law; (E) clearly erroneous in view of the reliable, probative and  
147 substantial evidence on the whole record. In any action brought  
148 pursuant to this paragraph to vacate or modify the decision of  
149 the panel, reasonable attorney's fees, costs and legal interest on  
150 salaries withheld as the result of an appeal of said decision, may  
151 be awarded at the discretion of the Court.



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