

general court who has performed with distinction as an elected official from the city of Quincy and has had a deep and abiding interest in providing proper recreational facilities for the people of Quincy during his public career. A suitable marker bearing such designation shall be attached thereon by the metropolitan district commission.

Approved October 2, 1979.

Chap. 592. AN ACT EXEMPTING CERTAIN POSITIONS IN THE OFFICE OF THE PLANNING DEPARTMENT IN THE CITY OF NEW BEDFORD FROM THE PROVISIONS OF THE CIVIL SERVICE LAW.

Be it enacted, etc., as follows:

SECTION 1. The positions of principal planner, senior planning aid and graphic arts technician in the office of the city planner in the city of New Bedford shall not be subject to the provisions of chapter thirty-one of the General Laws. The tenure of the incumbents, Roland John Hebert, principal planner, Benjamin R. Watkins, Jr., senior planning aid IV, and Paul A. Fernandes, graphic arts technician, shall be unlimited until each reaches the age of seventy and they shall hold such positions from the effective date of this act during good behavior, unless incapacitated by physical or mental disability from performing his duties or removed for just cause in the manner provided by section forty-three of chapter thirty-one of the General Laws.

SECTION 2. This act shall take effect upon its passage.
Approved October 4, 1979.

Chap. 593. AN ACT DIRECTING THE CITY OF SALEM TO REGULATE THE USE OF THE TIDAL GATES LOCATED AT THE HEADWATERS OF FOREST RIVER IN SAID CITY.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the city of Salem is hereby authorized and directed to regulate the opening and closing of the tidal gates located at the headwaters of Forest river in said city, during weekends only, from June first to the first Monday of September inclusive of each year. The mayor of said city shall establish a schedule for said opening and closing including any revisions thereto in consultation with the conservation commission of said city.

SECTION 2. This act shall take effect upon its passage.
Approved October 4, 1979.

Chap. 594. AN ACT FURTHER REGULATING COLLECTIVE BARGAINING IMPASSES INVOLVING MEMBERS OF THE BARGAINING UNIT OF THE UNIFORMED BRANCH OF THE STATE POLICE, OR THE UNIT

REPRESENTING METROPOLITAN DISTRICT COMMISSION POLICE OFFICERS SUBORDINATE TO THE RANK OF CAPTAIN.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is, in part, to provide an impasse procedure in collective bargaining for members of the bargaining unit of the uniformed branch of the state police, or the unit representing metropolitan district commission police officers subordinate to the rank of captain, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Section 9 of chapter 150E of the General Laws, as amended by section 1 of chapter 347 of the acts of 1977, is hereby further amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

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

SECTION 2. Chapter 1078 of the acts of 1973 is hereby amended by inserting after section 4A the following section:-

Section 4B. If an employee organization duly recognized as representing the bargaining unit of the uniformed branch of the state police, or the unit representing the metropolitan district commission police officers subordinate to the rank of captain, is engaged in an impasse which has continued for thirty days after the publication of the fact-finder's report pursuant to section nine of chapter one hundred and 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 and fifty E, said employee organization shall petition the board to make an investigation. If, after an investigation, the board determines that:

(1) the requirements of section nine of said 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-finding 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-finder's report; and

(4) an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute shall be resolved by a three-member arbitration panel, or when the parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.

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

a third 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 of the board.

In the event that the parties mutually elect to use a single arbitrator, selected by the board, the parties shall immediately request the board to appoint said arbitrator, who shall act with the same force and effect as if a three member panel had been selected by the parties.

The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within ten days after the date of appointment of its chairman. The chairman shall give at least seven days notice in writing to each of the other arbitrators. The chairman or single arbitrator shall give like notice to the representatives of the employer and employee organizations of the time and place of such hearing.

The single arbitrator or 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 or single arbitrator 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 or single arbitrator 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, whereupon the court shall issue an appropriate order.

A record of the proceedings shall be kept, and the chairman or single arbitrator 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 or single arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator 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 or single arbitrator, who shall take said statements under advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the single arbitrator, shall select as the last and best arbitration award either the employer's written statement of its last and best offer, the employee organization's written statement

of its last and best offer, or the recommendations of the fact-finder, if a fact-finding report and recommendations have been issued, and immediately shall give written notice of the selection to the parties. The selection shall be final and binding upon the parties, subject to appropriation. Within thirty calendar days of the last and best offer selection and award, the impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings.

At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator, 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 decisions by the panel, or single arbitrator, request that the arbitration proceedings be terminated, the panel, acting through its chairman or single arbitrator, shall terminate the proceedings.

The factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at the decision shall include, when applicable:

(1) The financial ability of the district or of the commonwealth to meet the costs. Such factors which shall be taken into consideration shall include but not be limited to (a) the district's state reimbursements and assessments; (b) the commonwealth's or district's long and short term bonded indebtedness; (c) the district's estimated share in the metropolitan district commission deficit; (d) the district's estimated share in the Massachusetts Bay Transportation Authority's deficit.

(2) The interests and welfare of the public.

(3) The hazards of employment, physical, educational 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 districts, communities, or other state or federal jurisdictions.

(5) The decisions and recommendations of the fact-finder, if any.

(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 parties, in the public service or in private employment.

(10) The stipulation of the parties.

Any determination or decision of the arbitration panel or single arbitrator if supported by material and substantive evidence on the whole record shall be subject to appropriation, binding upon the parties and may be enforced at the instance of either party, the single arbitrator or the arbitration panel in the superior court in equity, provided however, 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. Assignments shall not be within the scope; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration.

The commencement of a new fiscal year prior to the final awards 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.

If an 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.

Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section. The remaining costs of 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 3. Said chapter 1078 is hereby further amended by inserting after section 8 the following section:-

Section 8A. The provisions of section four B of this act shall terminate on June thirtieth, nineteen hundred and eighty-two and any arbitration proceedings pending on June thirtieth, nineteen hundred and eighty-two shall be completed under the provisions of said section four B.

Approved October 4, 1979.