HOUSE . . . . . No. 3958

By Mr. Glodis of Worcester, petition of William J. Glodis, Jr., and Salvatore F. DiMasi relative to impasses in collective bargaining arbitration for certain public employees. Public Service.

The Commonwealth of Massachusetts

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

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 or 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 and 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 employement 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 supported
114 by material and substantive evidence on the whole record shall be
115 binding upon the parties and may be enforced at the instance of
116 either party or of the arbitration panel in the Superior Court in
117 equity; provided, that the scope of arbitration in police matters
118 shall be limited to wages, hours and conditions of employment and
119 shall not include the following matters of inherent managerial
120 policy: the right to appoint, promote, assign and transfer employees.
121 The commencement of a new municipal finance year prior to
122 the final award by the arbitration panel shall not be deemed to
123 render a dispute moot, or to otherwise impair the jurisdiction or
124 authority of the arbitration panel or its award. Any award of the
125 arbitration panel may be retroactive to the expiration date of the
126 last contract.
127 If a municipal employer or an employee organization willfully
128 disobeys a lawful order of enforcement pursuant to this section,
129 or willfully encourages or offers resistance to such order, whether
130 by strike or otherwise, the punishment for each day that such
131 contempt continues may be a fine for each day to be determined
132 at the discretion of said court.
133 Each of the parties shall provide compensation for the
134 arbitrator which he has selected pursuant to this section. The
135 remaining costs of the arbitration proceedings under this section
136 shall be divided equally between the parties. Compensation for
137 the arbitrators shall be in accordance with a schedule of payment
138 established by the American Arbitration Association.
139 The decision of the arbitrators shall be subject to judicial review
140 upon the filing by a party to the arbitration, within thirty days
141 following receipt of the final decision of the panel, of a motion

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