HOUSE . . . . . No. 3250

By Mr. Scaccia of Boston, petition of AFSCME Council 93 and Angelo M. Scaccia for legislation to regulate collective bargaining impasses involving public employees. Public Service.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT REGULATING COLLECTIVE BARGAINING IMPASSES INVOLVING PUBLIC EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 150E of the General Laws is hereby amended by striking out Section 9, as appearing in Section 1 of Chapter 347 of the Acts of 1977, and inserting in place thereof the following section: —

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. Any such mediator shall empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for said purpose of resolving the impasse and negotiating such an agreement.

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.

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 4 or 4B of Chapter one thousand and seventy-eight of the Acts of nineteen hundred and seventy-three. Said waiver shall not constitute a bar to any arbitration award.

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 2. Chapter 1078 of the Acts of 1973 is hereby amended by inserting after Section 4A, as added by Section 1 of Chapter 730 of the Acts of 1977, the following section: —

Section 4B. If an employee organization is engaged in an impasse with a public employer 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

36 and effect as if the panel had been selected without intervention of
37 the board.
38 In the event that the parties mutually elect to use a single arbi-
39 trator, selected by the board to appoint said arbitrator, who shall
40 act with the same force and effect as if a three-member panel had
41 been selected by the parties.
42 The single arbitrator or the arbitration panel acting through its
43 chairman, shall conduct a hearing within ten days after the date of
44 appointment of its chairman, at a place within the locality of the
45 municipality involved where feasible. The chairman shall give at
46 least seven days notice in writing to each of the other arbitrators.
47 The chairman or single arbitrator shall give like notice to the rep-
48 resentatives of the municipal employer and employee organiza-
49 tions of the time and place of such hearing.
50 The single arbitrator or chairman shall preside over the hearing
51 and shall take testimony. Upon application and for good cause
52 shown, a person, labor organization, or governmental unit having
53 substantial interest therein may be granted leave to intervene by
54 the arbitration panel. The proceedings shall be informal. Any oral
55 or documentary evidence and other data deemed relevant by the
56 arbitration panel or single arbitrator may be received into evi-
57 dence. The arbitrators shall have the power to administer oaths
58 and to require by subpoena the attendance and testimony of wit-
59 nesses, the production of books, records and other evidence rela-
60 tive to or pertinent to the issues presented to them for
61 determination. If any person refuses to obey a subpoena or refuses
62 to be sworn or to testify, or if any witness, party or attorney is
63 guilty of any contempt while in attendance at any hearing, the
64 arbitration panel or single arbitrator may, or the district attorney if
65 requested, shall invoke the aid of the superior court within the
66 jurisdiction in which the hearing is being held for the court to
67 issue an appropriate order.
68 A record of the proceedings shall be kept, and the chairman or
69 single arbitrator shall arrange for the necessary recording service.
70 Transcripts may be ordered at the expense of the party ordering
71 them, but the transcripts shall not be necessary for an award by the
72 panel or single arbitrator. The hearing may be continued at the dis-
73 cretion of the panel or single arbitrator and shall be concluded within
74 forty days from the time of commencement. At the conclusion of the

75 hearing, each party shall submit a written statement containing its
76 last and best offer for each of the issues in dispute to the panel or
77 single arbitrator, who shall take said statements under advisement.
78 Within ten days after the conclusion of the hearing, a majority of
79 the panel or the single arbitrator, shall select as the last and best
80 arbitration award either the employer's written statement of its
81 last and best offer, the employee organization's written statement
82 of its last and best offer, or the recommendations of the fact
83 finder, if a fact finding report and recommendations have been
84 issued, and immediately shall give written notice of the selection
85 to the parties. The selection shall be final and binding upon the
86 parties and upon the appropriate legislative body. Within thirty
87 calendar days of the last and best offer selection and award, the
88 impartial chairperson of the arbitration panel or, the single arbi-
89 trator, shall issue a written opinion inclusive of an analysis of all
90 statutory facts applicable to the proceedings.
91 At any time before the rendering of an award, the chairman of
92 the arbitration panel or single arbitrator, if he is of the opinion
93 that it would be useful or beneficial to do so, may remand the dis-
94 pute to the parties for further collective bargaining. If the dispute
95 is remanded for further collective bargaining, the time provisions
96 of this act shall be extended for a period equal to that of the
97 remand.
98 In the event that the representatives of the parties mutually
99 resolve each of the issues in dispute and agree to be bound
100 accordingly, said representatives may at any time prior to the final
101 decisions by the panel, or single arbitrator, request that the arbi-
102 tration proceedings be terminated, the panel, acting through its
103 chairman or single arbitrator, shall terminate the proceedings.
104 The factors among others, to be given right by the arbitration
105 panel or single arbitrator in arriving at the decision shall include:
106 1. The financial ability of the municipality to meet costs. Such
107 factors which shall be taken into consideration shall include but
108 not be limited to (a) the city, town or district's state reimburse-
109 ments and assessments; (b) the city, town or district's long and
110 short term bonded indebtedness; (c) the city, town or district's
111 estimated share in the metropolitan district commission deficit;
112 (d) the city, town or district's estimated share in the
113 Massachusetts Bay Transportation Authority's deficit; and

114 (e) consideration of the average per capita property tax burden,
115 average annual income of members of the community, the effect
116 any accord by the panel or single arbitrator might have on the
117 respective property tax rates on the city or town.
118 2. The interests and welfare of the public.
119 3. The hazards of employment, physical, educational and
120 mental qualifications, job training and skills involved.
121 4. A comparison of wages, hours and conditions of employment
122 of the employees involved in the arbitration proceedings with the
123 wages, hours and conditions of employment of other employees
124 performing similar services and with other employees generally in
125 public and private employment in comparable communities.
126 5. The decisions and recommendations of the fact finder, if any.
127 6. The average consumer prices for goods and services com-
128 monly known as the cost of living.
129 7. The overall compensation presently received by the
130 employees including direct wages and fringe benefits.
131 8. Changes in any of the foregoing circumstances during the
132 pendency of the arbitration proceedings.
133 9. Such other factors, not confined to the foregoing, which are
134 normally or traditionally taken into consideration in the determi-
135 nation of wages, hours and conditions of employment through
136 voluntary collective bargaining, mediation, fact finding, arbitra-
137 tion or otherwise between parties, in the public service or in pri-
138 vate employment.
139 10. The stipulation of the parties.
140 Any determination or decision of the arbitration panel or single
141 arbitrator if supported by material and substantive evidence on the
142 whole record shall be binding upon the parties and may be
143 enforced at the instance of either party, the single arbitrator or the
144 arbitration panel in the superior court in equity, provided however,
145 that the scope of arbitration in policy matters shall be limited to
146 wages, hours, and conditions of employment and shall not include
147 the following matters of inherent managerial policy: the right to
148 appoint, promote, assign and transfer employees; and provided,
149 further, that the scope of arbitration in firefighter matters shall not
150 include the right to appoint and promote employees. Assignments
151 shall not be within the scope; provided, however, that the subject
152 matters of initial station assignment upon appointment or promotion

153 shall be within the scope or arbitration. The subject matter of
154 transfer shall not be within the scope of arbitration, provided,
155 however, that the subject matters of relationship of seniority to
156 transfers and disciplinary and punitive transfers shall be within
157 the scope of arbitration. Notwithstanding any other provisions of
158 this chapter to the contrary, no municipal employer shall be
159 required to negotiate over subjects of minimum manning of shift
160 coverage, with an employee organization representing municipal
161 police officers and firefighters.
162 The commencement of a new municipal finance year prior to
163 the final awards by the arbitration panel shall not be deemed to
164 render a dispute moot, or to otherwise impair the jurisdiction or
165 authority of the arbitration panel or its award. Any award of the
166 arbitration panel may be retroactive to the expiration date of the
167 last contract.
168 If a municipal employer, or an employee organization willfully
169 disobeys a lawful order of enforcement pursuant to this section,
170 or willfully encourages or offers resistance to such order whether
171 by strike or otherwise, the punishment for each day that such con-
172 tempt continues may be a fine for each day to be determined at
173 the discretion of said court
174 Each of the parties shall provide compensation for the arbi-
175 trator which he has selected pursuant to this section. The
176 remaining costs of arbitration proceedings under this section shall
177 be divided equally between the parties. Compensation for the
178 arbitrators shall be in accordance with a schedule of payment
179 established by the American Arbitration Association.