

By Mr. Cohen of Newton, petition of David B. Cohen, Michael J. Barrett, Susan D. Schur, Thomas R. Lussier, Lawrence R. Alexander and others relative to the improvement of the management of the Massachusetts Bay Transportation Authority. Public Service.

**The Commonwealth of Massachusetts**

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

AN ACT RELATING TO THE IMPROVEMENT OF THE MANAGEMENT OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY.

*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 161A of the General Laws is hereby  
2 amended by striking out paragraph (d) of section 3 thereof and  
3 inserting therein the following new paragraph:—

4 (d) (i) to direct, appoint, assign employ and promote officers,  
5 agents and employees and to determine the standards therefor.

6 (ii) (A) to transfer, discipline, discharge and terminate em-  
7 ployees subject to the provisions of clauses B and C of this subpara-  
8 graph:

9 (B) No action set forth in clause A of this sub-paragraph shall be  
10 sustained if, in a proceeding invoked in accordance with the provi-  
11 sions of clause C of this sub-paragraph, the employee shall estab-  
12 lish by a preponderance of the evidence that it was based upon race,  
13 color, religion, sex, age, national origin, handicapping condition,  
14 material status, or political affiliation of the employee; a reprisal  
15 against the employee for disclosure of information by an employee  
16 which the employee reasonably believes evidences a violation of  
17 any law, rule or regulation or mismanagement, a gross waste of  
18 funds, or abuse of authority; a reprisal against any employee for  
19 the refusal of any person to engage in political activity; or was  
20 based upon a violation of paragraph (a) of section 10 of Chapter  
21 150E of the General Laws.

22 (C) The parties may include in any written agreement a griev-

23 ance procedure culminating in final and binding arbitration  
24 which may be invoked in the event any employee of the Authority  
25 is aggrieved by any action taken under clause A of this sub-para-  
26 graph.

27 (iii) to plan and determine the levels of service provided by the  
28 Authority.

29 (iv) to direct, supervise, control and evaluation the depart-  
30 ments, units and programs of the Authority: to classify the various  
31 positions of the Authority and ascribe duties and standards of  
32 productivity therefor.

33 (v) to develop and determine levels of staffing, and training  
34 provided however the Authority may bargain for levels of staffing  
35 when such levels directly affect the health or safety of employees.

36 (vi) to determine whether goods or services should be made,  
37 leased, contracted for, or purchased on either a temporary or  
38 permanent basis.

39 (vii) to determine the assignment and apportionment of over-  
40 time, provided however, that no employee shall receive any pen-  
41 sion benefit payment, and no pension benefit payment shall be  
42 paid, with respect to amounts earned as overtime; and to hire  
43 part-time employees.

44 (viii) the authority may bind itself by contract to employ not  
45 more than five senior officers but no such contract shall be for a  
46 period of more than five years.

47 (ix) the authority shall annually, on or before January first,  
48 submit a schedule of salaries of all its employees and any proposed  
49 increases therein to the secretary of administration for his review.  
50 Said secretary may make recommendations to the authority on  
51 said salary structure and shall advise the authority of the prevailing  
52 rates that the commonwealth pays for similar services.

1 SECTION 2. Section 19 of Chapter 161A of the General Laws  
2 is amended by inserting after the word "employees" at the end of  
3 the first sentence thereof the following: — "provided however the  
4 directors shall have no authority to bargain collectively with re-  
5 spect to matters of inherent management rights which shall include  
6 those rights set forth in section 3 of this Chapter."

1 SECTION 3. Section 19F of Chapter 161A of the General Laws  
2 is hereby further amended by inserting at the end of paragraph



3 number 8 after the word "Commonwealth" the following: — ", and  
4 which are not precluded from bargaining under section nineteen of  
5 this chapter."

1 SECTION 4. Chapter 161A of the General Laws is hereby  
2 further amended by striking out section 29 and inserting the fol-  
3 lowing: —

4 *Section 29.* The Authority is authorized and directed from time  
5 to time to take all necessary action to secure any federal assistance  
6 which is or may become available to the Commonwealth or any of  
7 its subdivisions for any of the purposes of this chapter. If any  
8 federal law, administrative regulations' or practice requires any  
9 action relating to such federal assistance to be taken by any depart-  
10 ment or instrumentality of the commonwealth other than the  
11 Authority, such other department or instrumentality is authorized  
12 and directed to take all such action, including without limitation  
13 filing applications for assistance, supervising the expenditure of  
14 federal grants or loans to the foregoing, and the Authority is  
15 authorized and directed to take all actions necessary to permit such  
16 other department or instrumentality to comply with all federal  
17 requirements. If the provisions of any federal law, administrative  
18 regulation, or practice governing federal assistance for the pur-  
19 poses of this chapter are inconsistent with any provisions of this  
20 chapter to the extent that the commonwealth or its subdivisions are  
21 prohibited or potentially prohibited from receiving such assist-  
22 ance, the chairman of the Authority shall, within 30 days after the  
23 federal government has notified him that an inconsistency may  
24 exist, notify the governor, and the clerks of the house and senate of  
25 such inconsistency.

1 SECTION 5. Chapter 161A of the General Laws is hereby  
2 amended by adding the following new section 19H after section  
3 19G; —

4 *Section 19H.* (a) For the purpose of this section the following  
5 terms shall have the following meaning:

6 Honorary Member — the Honorary Member, as described in  
7 Article VI of the Agreement.

8 Agreement — The Document entitled "Pension Agreement"  
9 dated January 1, 1973, by and between the Massachusetts Bay

10 Transportation Authority and Local Division 589, Amalgamated  
11 Transit Union, AFL-CIO, CLC and any successor agreement  
12 thereto.

13 (b) (1) The Honorary Member shall be elected to the Retirement  
14 Board of the Massachusetts Bay Transportation Authority Pen-  
15 sion Fund, for such period as the Retirement Board shall deter-  
16 mine, by the other six members of the Retirement Board with the  
17 first election to take place immediately upon the effective date of  
18 this act.

19 (2) If after the expiration of sixty days from the effective date of  
20 this act, an Honorary Member shall not have been appointed the  
21 Honorary Member acting as such on January 17th, 1977, shall be  
22 deemed to have been appointed.

23 The Honorary Member appointed under this sub-paragraph  
24 shall serve for a term of one year and until his successor is qualified;  
25 pursuant to sub-paragraph (b) (1) and the Agreement.

26 (3) If the position of Honorary Member shall be vacant for a  
27 period of 90 days following his death, resignation, disability, dis-  
28 charge, failure to take office, or otherwise then the position shall be  
29 filled as follows:

30 i) By the designee of the Honorary Member, designated in  
31 writing by him and filed with the Retirement Board prior to his  
32 death, resignation, or disability.

33 ii) In the event of the failure to designate or the failure of the  
34 designee to serve, by the designee of the Governor.

35 The Honorary member appointed under this sub-paragraph  
36 shall serve for a term of one year and until his successor is qualified;  
37 pursuant to sub-paragraph (b) (1) and the Agreement.

38 (c) The Honorary Member shall have such duties and shall serve  
39 upon such terms and conditions, not in conflict with this section, as  
40 are set forth in the Agreement. In the event of a conflict between  
41 this section and any of the terms of the Agreement this section shall  
42 prevail.

1 SECTION 6. The provisions of clause (vii) of section one of this  
2 act, in so far as they pertain to the inclusion of amounts earned as  
3 overtime in determining the pension benefits of an employee shall  
4 only apply to persons hired on or after the effective date of this act.

1 SECTION 7. Chapter 161 of the General Laws is hereby  
2 amended by striking out section 91A and inserting the follow-  
3 ing: —

4 *Section 91A.* Every company *except the Massachusetts Bay*  
5 *Transportation Authority* shall, during the operation by it of any  
6 passenger train consisting of more than one car, cause to be station-  
7 ed thereon one guard, or employee having similar duties, for  
8 every two cars of such train. For each violation of this section, the  
9 offending company shall forfeit the sum of five hundred dollars to  
10 the commonwealth.

11 *This section shall not apply to the operation of any passenger*  
12 *train by the Massachusetts Bay Transportation Authority.*

